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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

ATLANTA, GA

When: September 15 at 9:30 a.m.
Where: Jimmy Carter Presidential Library
One Copenhill Avenue, Atlanta, GA
Reservations: Federal Information Center
1–800–347–1997

WASHINGTON, DC

(two briefings)

When: September 17 at 9:00 am and 1:30 pm
Where: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
Reservations: 202–523–4538

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 93–30 of July 2, 1993

Determination Under Section 405(a) of the Trade Act of 1974, as Amended—Romania

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act"), I determine, pursuant to section 405(a) of the Trade Act (19 U.S.C. 2435(a)), that the "Agreement on Trade Relations between the Government of the United States of America and the Government of Romania" will promote the purposes of the Trade Act and is in the national interest.

You are authorized and directed to transmit copies of this determination to the appropriate Members of Congress and publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 2, 1993.

[FR Doc. 93–20141
Filed 8–16–93; 4:07 pm]
Billing code 4710–10–M

Editorial note: For the President's letter to Congressional leaders and the proclamation on trade with Romania, see the *Weekly Compilation of Presidential Documents* (vol. 29, p. 1224).

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 320, and 381

[Docket No. 91-006F-C]

RIN 0583-AB34

Nutrition Labeling of Meat and Poultry Products; Corrections

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; corrections.

SUMMARY: The Food Safety and Inspection Service (FSIS) is making corrections to its final rule on nutrition labeling of meat and poultry products, which was published in the Federal Register on January 6, 1993 (58 FR 632).

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC (202) 254-2565.

SUPPLEMENTARY INFORMATION:

Background

The final rule on nutrition labeling that is the subject of these corrections was published in the Federal Register on January 6, 1993 (58 FR 632). The final rule amends the Federal meat and poultry products inspection regulations by permitting voluntary nutrition labeling on single-ingredient, raw meat and poultry products, and by establishing mandatory nutrition labeling for all other meat and poultry products, with certain exceptions.

Need for Corrections

As published, the final rule contains errors which may be misleading; these errors, therefore, must be corrected.

FSIS inadvertently included the term "unsaturated fatty acids" in the nutrient content claims regulations (9 CFR 317.354 and 381.454) for "good source," "high," and "more." FSIS is deleting this term from the regulations because there is no Daily Reference Value (DRV) for unsaturated fat.

In addition, the Agency is correcting various nutrient content claims provisions because of errors made in cross-referencing the Food and Drug Administration's (FDA) regulations. FSIS failed to cross-reference 21 CFR 101.54(e) in § 317.354 and § 381.454, pertaining to relative claims using the terms "more," "fortified," "enriched," and "added." FSIS is adding that cross-reference.

FSIS cross-referenced several provisions in 21 CFR 101.54, 101.56, 101.60, 101.61, and 101.62, which provide FDA's definitions for meal products and main dish products. FSIS clearly explained its position on meal-type products in the preamble to its final rule, published on January 6, 1993. The Agency explained that FDA, in response to comments received on its proposed meal products definition, established a separate definition, "main dish product," that would represent a significant portion of the meal and have separate criteria for claims on these products. However, FSIS received strong support for its proposed meal-type products definition and deemed it unnecessary to create a separate criteria for main dish products. In cross-referencing FDA's regulations, FSIS inadvertently cross-referenced several provisions providing FDA's definitions for meal products and main dish products. Because FDA and FSIS have different definitions for meal products, FSIS is clarifying that the meal-type products definition, as it pertains to meat and poultry products, shall be as prescribed in 9 CFR part 317 and part 381, and that FSIS's regulations do not provide a definition for main dish products.

FSIS also incorrectly cross-referenced several provisions in 21 CFR 101.62 which provide disclosure levels for total fat and cholesterol. As the Agency explained in the preamble of its final rule, FSIS is clarifying that its regulations do not provide disclosure levels for total fat and cholesterol.

The provision providing the synonym for percent fat free was unintentionally omitted from the final nutrition labeling regulations. In the preamble of its final rule on nutrition labeling, FSIS clearly explained that it is adopting FDA's definition for "_____ percent fat free" claims and providing the synonym "_____ percent lean" as an alternative for meat and poultry products. FSIS is, therefore, adding to § 317.362(a) and § 381.462(a) of the regulations a provision providing the synonym for percent fat free.

FDA published final nutrition labeling regulations on January 6, 1993 (58 FR 2065). On April 1 and 2, 1993, FDA published corrections to its final regulations on nutrition labeling. In its final nutrition labeling regulations, FSIS cross-referenced all the provisions of FDA's regulations where the provisions were identical, and provided codified language only for those provisions where there were variations from FDA because of the different products that FSIS regulates. FDA has now made corrections to its final regulations. FSIS has carefully reviewed those corrections, and agrees that they are necessary and appropriate. FSIS is adopting the corrections FDA made to its final regulations on nutrition labeling since both agencies are committed to providing consumers with the most consistent food labeling system possible. FSIS adopts the corrections made to cross-referenced provisions as follows: Food Labeling; Serving sizes (58 FR 17085); Food Labeling; Reference daily intakes and daily reference values (58 FR 17104); Food Labeling; mandatory status of nutrition labeling and nutrient content revision, format for nutrition label (58 FR 17328); and Food Labeling; Nutrient content claims, general principles, petitions, definition of terms, definitions of nutrient content claims for the fat, fatty acid, and cholesterol content of food (58 FR 17341).

Correction of Publication

Accordingly, the final rule on nutrition labeling of meat and poultry products, published January 6, 1993 (58 FR 632), is corrected as follows:

Preamble [corrected]

1. On page 643, Table 2, under the nutrient "Cholesterol," the Increments rounding column is corrected from "Nearest .5 mg" to "Nearest 5 mg."

2. On page 650, first column, #7, second line of the title, the word "her" is corrected to read "per."

3. On page 653, first column, #3, seventh line from the bottom, the words "and the calories" is corrected to read "or the calories."

4. On page 654, Table 7, under the Nutrient "Total Fat," the "Low" column is corrected to read "Reference Amount: > 30g or > 2 T: <=3 g/RACC <=30g or <=2 T: <=3 g/RACC & /50g."

5. On page 657, first column, second paragraph, fifth line from the bottom, after the word "Administration," the words "200 C Street, SW." are added, and after "Washington, DC," the zip code "20240" is corrected to read "20204."

§ 317.309 [Corrected]

6. On page 665, second column, eighth line of § 317.309(b), the reference to "§ 317.400(b)" is corrected to read "§ 317.400(c)."

7. On page 665, third column, the second sentence of § 317.309(f)(1) is corrected to read "Nutrition information may be given in a linear fashion only if the label will not accommodate a tabular display and, in that case, any subcomponents declared shall be listed parenthetically after principal components (e.g., saturated fat shall be declared in parenthesis after total fat)."

8. On page 665, third column, last line, after the words "core nutrients" (§ 317.309(g)(1)), the following parenthetical phrase is added: "(i.e., calories, total fat, sodium, total carbohydrate, and protein)."

9. On page 666, third column, eighth line, in § 317.309(h)(5), the word "below" is corrected to read "above."

§ 317.312 [Corrected]

10. On page 667, in § 317.312(b) Table 2, under the Reference Amount for Ready-to-cook for the ninth Product Category entry (Entrees without sauce, . . .), "106 g." is corrected to read "114 g."

§ 317.313 [Corrected]

11. On page 669, third column, second line (§ 317.313(i)), the reference to "21 CFR 101.13(i) (1) through (3)" is corrected to read "21 CFR 101.13(i)."

12. On page 669, third column, last line of § 317.313(p), the reference to "101.13(p) (1)" is corrected to read "101.13(p)."

§ 317.354 [Corrected]

13. On page 670, third column, the section heading for § 317.354 is corrected to read as follows: § 317.354 *Nutrient content claims for "good source," "high," and "more."*

14. On page 670, third column, fifth line of § 317.354, the reference to "101.9(c)(11)(iv)" is corrected to read "101.9(c)(8)(iv)."

15. On page 670, third column, seventh line of § 317.354, the reference to "CFR 101.9(c)(12)(i)" is corrected to read "CFR 101.9(c)(9)."

16. On page 670, third column, eighth and ninth lines of § 317.354, the words "and unsaturated fatty acids" are removed.

17. On page 671, first column, the second line (§ 317.354) is corrected to read "101.54, except the meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products."

§ 317.356 [Corrected]

18. On page 671, first column, the last line of § 317.356(a) is corrected to read "101.56, except the meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products."

§ 317.360 [Corrected]

19. On page 671, first column, the last line of § 317.360 is corrected to read "with 21 CFR 101.60, except the meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products."

§ 317.361 [Corrected]

20. On page 671, first column, the last two lines of § 317.361 are corrected to read "accordance with 21 CFR 101.61, except the meal products definition shall be as prescribed in § 317.313(l), and there shall be no provision for main dish products."

21. On page 671, first column, § 317.362(a) is corrected to read as follows:

§ 317.362 Nutrient content claims for fat, fatty acids, and cholesterol content of meat products.

(a) A claim about the level of fat, fatty acid, and cholesterol in a meat product may only be made on the label and in the labeling of the product in accordance with:

(1) 21 CFR 101.62(a);

(2) 21 CFR 101.62(b), except the meal products definition shall be as prescribed in § 317.313(l), there will be no provision for main dish products, and the following provision shall be added: A synonym for the term "— percent fat free" is "— percent lean";

(3) 21 CFR 101.62(c), except there will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 317.313(l), and there will be no provision for main dish products;

(4) 21 CFR 101.62(d)(1);

(5) 21 CFR 101.62(d)(1)(i) (A) through (D) and (d)(1)(ii)(F), except there will be no provision for main dish products;

(6) 21 CFR 101.62(d)(2), except the meal products definition shall be as prescribed in § 317.313(l) and there will be no provision for main dish products;

(7) 21 CFR 101.62(d)(2)(i), except for the phrase "and contain 13 g or less of fat per reference amount customarily consumed";

(8) 21 CFR 101.62(d)(2)(i) (A) through (C);

(9) 21 CFR 101.62(d)(2)(ii), except for the phrase "and contain 13 g or less of total fat per reference amount customarily consumed, per labeled serving, and per 50 g (for dehydrated foods that are typically consumed when rehydrated with only water, the per 50 g refers to the 'as prepared' form)";

(10) 21 CFR 101.62(d)(2)(ii) (A) through (C);

(11) 21 CFR 101.62(d)(2)(iii)(E);

(12) 21 CFR 101.62(d)(4), except the meal products definition shall be as prescribed in 317.313(l) and there will be no provision for main dish products;

(13) 21 CFR 101.62(d)(4)(i) (A) through (C);

(14) 21 CAR 101.62(d)(4)(iii);

(15) 21 CFR 101.62(d)(5), except the meal products definition shall be as prescribed in 317.313(l), and there will be no provision for main dish product; and

(16) 21 CFR 101.62(d)(5)(i) (A) through (C).

* * * * *

§ 317.380 [Corrected]

22. On page 674, third column, the last line of § 317.380(c), the reference to "§ 317.360(b)(2) and (3)" is corrected to read "§ 137.360."

§ 381.409 [Corrected]

23. On page 676, first column, eighth line of § 381.409(b), the reference to "§ 381.500(b)" is corrected to read "§ 381.500(c)."

24. On page 676, second column, the second sentence of § 381.409(f)(1) is corrected to read "Nutrition information may be given in a linear fashion only if the label will not accommodate a tabular display and, in that case, any subcomponents declared shall be listed parenthetically after principal components (e.g., saturated fat shall be declared in parenthesis after total fat)."

25. On page 676, second column, last line, after the words "core nutrients" (§ 381.409(g)(1)), the following parenthetical phrase is added: "(i.e., calories, total fat, sodium, total carbohydrate, and protein)."

26. On page 677, second column, twelfth line of § 381.409(h)(5), the word "below" is corrected to read "above."

§ 381.412 [Corrected]

27. On pages 677 and 678, in § 381.412(b) Table 2, the column headings which read "Reference" are corrected to read "Reference Amount."

28. On page 678, in § 381.412(b) Table 2, under the Reference Amount for Ready-to-cook for the first Product Category entry (Entrees without sauce, * * *, "106g" is corrected to read "114g."

§ 381.413 [Corrected]

29. On page 680, first column, last line of § 381.413(i), the reference to "21 CFR 101.13(i)(1) through (3)" is corrected to read "21 CFR 101.13(i)."

30. On page 680, second column, last line of § 381.413(p), the reference to "101.13(p)(1)" is corrected to read "101.13(p)."

31. On page 681, second column, the section heading for § 381.454 is corrected to read as follows:

§ 381.454 Nutrient content claims for "good source," "high," and "more."

32. On page 681, second column, fifth line of § 381.454, the reference to "101.9(c)(11)(iv)" is corrected to read "101.9(c)(8)(iv)."

33. On page 681, second column, seventh line of § 381.454, the reference to "CFR 101.9(c)(12)(i)" is corrected to read "CFR 101.9(c)(9)."

34. On page 681, second column, eighth and ninth lines of § 381.454, the words "and unsaturated fatty acids" are removed.

35. On page 681, second column, the last line of § 381.454 is corrected to read" 101.54, except the meal products definition shall be as prescribed in § 381.413(1), and there shall be no provision for main dish products."

§ 381.456 [Corrected]

36. On page 681, second column, the last line of § 381.456(a) is corrected to read "101.56, except the meal products definition shall be as prescribed in § 381.413(1), and there shall be no provision for main dish products."

§ 381.460 [Corrected]

37. On page 681, second column, the last line of § 381.460 is corrected to read " with 21 CFR 101.60, except the meal products definition shall be as prescribed in § 381.413(1), and there shall be no provisions for main dish products."

§ 381.461 [Corrected]

38. On page 681, second column, the last two line of § 381.461 are corrected to read "accordance with 21 CFR 101.61, except the meal products definition shall be as prescribed in § 381.413(1), and there shall be no provision for main dish products."

39. On page 681, third column, § 381.462 is corrected to read as follows:

§ 381.462 Nutrient content claims for fat, fatty acids, and cholesterol content of poultry products.

(a) A claim about the level of fat, fatty acid, and cholesterol in a poultry product may be made on the label and in the labeling of the product in accordance with:

(1) 21 CFR 101.62(a);

(2) 21 CFR 101.62(b), except the meal products definition shall be as prescribed in § 381.413(1), there will be no provision for main dish products, and the following provision shall be added: "A synonym for the term "_____ percent fat free" is _____ percent lean";

(3) 21 CFR 101.62(c), except there will be no disclosure of the level of total fat and cholesterol in the food in immediate proximity to such claim each time the claim is made, the meal products definition shall be as prescribed in § 381.413(1) and there will be no provision for main dish products;

(4) 21 CFR 101.62(d)(1);

(5) 21 CFR 101.62(d)(1)(i) (A) through (D) and (d)(1)(ii)(F), except there will be no provision for main dish products;

(6) 21 CFR 101.62(d)(2), except the meal products definition shall be as prescribed in § 381.413(1) and there will be no provision for main dish products;

(7) 21 CFR 101.62(d)(2)(i), except for the phrase "and contain 13 g or less of fat per reference amount customarily consumed";

(8) 21 CFR 101.62(d)(2)(i) (A) through (C);

(9) 21 CFR 101.62(d)(2)(ii), except for the phrase "and contain 13 g or less of total fat per reference amount customarily consumed, per labeled serving, and per 50 g (for dehydrated foods that are typically consumed when rehydrated with only water, the per 50 g refers to the "as prepared" form)";

(10) 21 CFR 101.62(d)(2)(ii) (A) through (C);

(11) 21 CFR 101.62(d)(2)(iii)(E);

(12) 21 CFR 101.62(d)(4), except the meal products definition shall be as prescribed in § 381.413(1) and there will be no provision for main dish products;

(13) 21 CFR 101.62(d)(4)(i) (A) through (C);

(14) 21 CFR 101.62(d)(4)(iii);

(15) 21 CFR 101.62(d)(5), except the meal products definition shall be as prescribed in § 381.413(1), and there will be no provision for main dish product; and

(16) 21 CFR 101.62(d)(5)(i) (A) through (C).

* * * * *

§ 381.480 [Corrected]

40. On page 685, first column, the last line of § 381.480(c), the reference to "§ 381.460(b)(2) and (3)" is corrected to read "§ 381.460."

Done at Washington, DC, on August 4, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19886 Filed 8–17–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–16–AD; Amendment 39–8657; AD 93–15–12]

Airworthiness Directives; SAAB–SCANIA Models SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain SAAB–SCANIA Models SAAB SF340A and SAAB 340B series airplanes, that currently requires replacement of certain life-limited components associated with the main landing gear (MLG) and nose landing gear (NLG) in accordance with revised life limits. This amendment requires replacement of additional life-limited components. This amendment is prompted by the identification of life limits for additional landing gear components on the affected airplanes. The actions specified by this AD are intended to prevent reduced structural capability of the MLG and the NLG.

DATES: Effective on September 17, 1993.

The incorporation by reference of SAAB Service Bulletin SAAB 340–32–066, Revision 2, dated June 12, 1992, as listed in the regulations, is approved by the Director of the Federal Register as of September 17, 1993.

The incorporation by reference of SAAB–Scania Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990 (including Attachments 1 through 8), as listed in the regulations, was approved previously by the Director of the Federal Register as of March 16, 1992 (57 FR 5376, February 14, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from SAAB–SCANIA AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. This information

may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–03–08, Amendment 39–8163 (57 FR 5376, February 14, 1992), which is applicable to certain SAAB–SCANIA Models SAAB SF340A and SAAB 340B series airplanes, was published in the **Federal Register** on April 12, 1993 (58 FR 19071). The action proposed to require replacement of certain life-limited components associated with the main landing gear (MLG) and nose landing gear (NLG) in accordance with revised life limits.

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 supports the proposed 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.

The FAA estimates that 210 airplanes of U.S. registry will be affected by this AD, that it will take approximately 48 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $4,700 per airplane. (These work hours and parts cost estimates are reiterated from AD 92–03–08.) This AD will not add any new additional economic burden on affected operators, other than minimal costs associated with replacing additional life-limited landing gear components identified in Attachment 9 of the referenced service bulletin. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,541,400, or $7,340 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8163 (57 FR 5376, February 14, 1992), and by adding a new airworthiness directive (AD), amendment 39–8657, to read as follows:

93–15–12 SAAB-Scania: Amendment 39–8657. Docket 93–NM–16–AD. Supersedes AD 92–03–08, Amendment 39–8163.

Applicability: Model SF340A series airplanes, serial numbers 004 through 159, inclusive; and SAAB 340B series airplanes, serial numbers 160 and subsequent; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper operation of the main landing gear (MLG) and the nose landing gear (NLG), accomplish the following:

(a) Remove the MLG and NLG components identified in the attachments (listed below) to SAAB Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990, and replace them with serviceable components prior to the accumulation of the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List," or within 60 days after April 15, 1991 (the effective date of AD 91–07–02, Amendment 39–6932), whichever occurs later. Thereafter, replace these components with serviceable components at intervals not to exceed the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List."

SAAB SERVICE BULLETIN SAAB 340–32–066 ATTACHMENTS

AP Precision Hydraulics Service Bulletin Number	Date Issued	Attachment Number
AIR83530–32–07 ..	January 1990.	1
AIR83570–32–04 ..	January 1990.	2
AIR83572–32–01 ..	January 1990.	3
AIR84306–32–07 ..	January 1990.	4
AIR84350–32–01 ..	January 1990.	5
AIR83022–32–18 REV 1.	August 1990	6

(b) Remove the MLG and NLG components identified in the attachments (listed below) to SAAB Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990, and replace them with serviceable components prior to the accumulation of the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List," or within 60 days after March 16, 1992 (the effective date of AD 92–03–08, Amendment 39–8163), whichever occurs later. Thereafter, replace these components with serviceable components at intervals not to exceed the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List."

SAAB SERVICE BULLETIN SAAB 340–32–066 ATTACHMENTS

AP Precision Hydraulics Service Bulletin Number	Date Issued	Attachments Number
AIR83064–32–02 ..	January 1990.	7
AIR84310–32–07 ..	January 1990.	8

(c) Remove the MLG and NLG components identified in the attachments (listed below) to SAAB Service Bulletin SAAB 340–32–066, Revision 2, dated June 12, 1992, and replace them with serviceable components prior to the accumulation of the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List," or within 60 days after the effective date of this AD, whichever occurs later. Thereafter, replace these components with serviceable components at intervals not to exceed the number of landings listed in the "Fatigue Life Flights" column of the applicable "Life Limited Parts List."

SAAB SERVICE BULLETIN SAAB 340–32–066 ATTACHMENTS

AP Precision Hydraulics Service Bulletin Number	Date Issued	Attachment Number
AIR83530–32–07 Rev 1.	January 1992.	1
AIR83570–32–04 Rev 1.	January 1992.	2
AIR83572–32–01 Rev 1.	January 1992.	3
AIR84306–32–07 Rev 1.	January 1992.	4
AIR84350–32–01 Rev 1.	January 1992.	5
AIR83022–32–18 Rev 2.	January 1992.	6
AIR83064–32–02 Rev 1.	January 1992.	7
AIR84310–32–07 Rev 1.	January 1992.	8
AIR83608–32–01 ..	January 1992.	9

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The modifications shall be done in accordance with SAAB Service Bulletin SAAB 340–32–066, Revision 2, dated June 12, 1992, and SAAB Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990. Revision 2 of SAAB Service Bulletin SAAB 340–32–066 contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
Title Page, 1.	2	June 12, 1992.
	Attachment 1	
1	1	January 1992.
2–3	Original	January 1990.
	Attachment 2	
1–2	1	January 1992.
	Attachment 3	
1	1	January 1992.
2	Original	June 1990.
	Attachment 4	
1–2	1	January 1992.
	Attachment 5	
1–2	1	January 1992.
	Attachment 6	
1, 3	2	January 1992.
2, 4	Original	January 1990.
	Attachment 7	
1, 3	1	January 1992.
2	Original	January 1990.
	Attachment 8	
1	1	January 1992.
2–3	Original	January 1990.
	Attachment 9	
1–2	Original	January 1992.

The incorporation by reference of SAAB Service Bulletin SAAB 340–32–066, Revision 2, dated June 12, 1992, is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of SAAB Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990, was approved previously by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 16, 1992 (57 FR 5376, February 14, 1992). Copies may be obtained from SAAB-SCANIA AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

This amendment becomes effective on September 17, 1993.

Issued in Renton, Washington, on August 4, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19953 Filed 8–17–93; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On June 9, 1993, the Commodity Futures Trading Commission ("Commission" or "CFTC") published for comment proposed amendments to Regulation 4.5 ("the proposal"),[1] which excludes certain otherwise regulated persons from the definition of the term "commodity pool operator" ("CPO") under conditions specified in § 4.5 (c)–(f). Currently, § 4.5(a)(4) (i)–(iii) provides that the definition of the term "commodity pool" (as set forth in § 4.10(d)) shall not be construed to include certain pension plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and pension plans defined as government plans in ERISA. Therefore, these pension plans do not have to meet the conditions specified in § 4.5 (c)–(f). The proposed amendments would have extended this "pool exclusion" provision to certain ERISA and government employee welfare benefit plans. In addition, the Commission proposed to permit a person who is a "designated" fiduciary of a pension plan or an employee welfare benefit plan subject to ERISA to be excluded from the definition of the term CPO with respect to such person's operation of such plans and subject to compliance with the provisions of § 4.5. Only named fiduciaries of these ERISA plans currently are so excluded. Finally, the Commission clarified an issue which is related to the calculation of the five percent margin/premium operating constraint specified in § 4.5(c)(2)(i).

The comment period ended on July 9, 1993, and no written comments were received. However, in consideration of certain technical information provided by telephone by staff of the U.S. Department of Labor to Commission staff during the comment period, the Commission has determined to adopt the proposed amendments to Regulation 4.5 in slightly modified form, as discussed herein. Specifically, since under no employee welfare benefit plans subject to ERISA are plan benefits tied to the performance of the plan investments, under the final rule all such plans will be excluded from the term "commodity pool."

EFFECTIVE DATE: September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Supervisory Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254–6990.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4m(1) of the Commodity Exchange Act ("Act") makes it unlawful for any person to engage in business as

[1] 56 FR 32314 (June 9, 1993).

a CPO without being registered as such.[2] Part 4 of the Commission's regulations governs the operations and activities of CPOs through certain operational, disclosure, reporting and recordkeeping requirements set forth in subpart B thereof.[3]

Regulation 4.5 (50 FR 15868–84, April 23, 1985), which became effective on April 23, 1985, and was amended effective March 1, 1993 (58 FR 6371–74, January 28, 1993), provides for the exclusion from the CPO definition, under specified conditions, of certain otherwise regulated persons—registered investment companies, state or federally regulated financial depository institutions, state regulated insurance companies, and trustees and named fiduciaries of pension and employee welfare benefit plans covered by ERISA—in connection with their operation of "qualifying entities".

In addition, the rule provides that the definition of the term "commodity pool" (as set forth in § 4.10(d)) shall not be construed to include certain pension plans so that such plans do not have to meet these specified conditions. Specifically, § 4.5(a)(4) (i)–(iii) excludes from the commodity pool definition (1) noncontributory pension plans covered under title I of ERISA, (2) contributory defined benefit plans covered by title IV of ERISA (which commit no voluntary employee contributions to margin or premium for futures or option contracts), and (3) plans defined as governmental plans in section 3(32) of title I of ERISA.

II. Discussion

When the Commission amended § 4.5 earlier this year, it made the operators of employee welfare benefit plans covered by ERISA eligible for exclusion from the CPO definition under the conditions of the rule but did not exclude any such plans from the definition of a commodity pool. In the proposed rulemaking, the Commission stated that the arguments made previously for the current pension plan pool exclusion could be articulated for specific types of employee welfare benefit plans and that parallel treatment therefore should be afforded to such employee welfare benefit plans. However, the Commission now believes that such parallel treatment can be effected by excluding from the commodity pool definition all employee welfare plans that are subject to the fiduciary responsibility provisions of ERISA and that the distinctions that were made in the proposal between contributory and noncontributory plans are unnecessary. This because all employee welfare plans subject to ERISA specify benefits which are not tied to the performance of the plan investments regardless of whether employees contribute to the plan or not.

As proposed, the Commission also is amending § 4.5 to permit ERISA fiduciaries other than named fiduciaries to avail themselves of the CPO exclusion. Also as proposed, the final rule continues to permit such non-named fiduciaries to claim the exclusion through the notice of eligibility filed by the named fiduciary.

In addition to these amendments to § 4.5, the Commission wishes to reiterate herein the clarification concerning computation of the rule's five percent initial margin/premium constraint on the assumption or non-hedge positions. As stated in the proposed rulemaking, it is the Commission's intent that unrealized profits and losses on a qualifying entity's existing futures and option positions are to be accounted for in the calculation of the liquidation value of the entity's portfolio only when additional futures and option positions would be assumed. This will prevent funds from assuming additional positions when substantial amounts of money have previously been committed to existing positions but not require funds to liquidate positions as a result of market forces beyond the control of the fund. The Commission notes that its staff has received several informal inquiries on this aspect of the rule since the rule was amended earlier this year and believes that the clarification made herein is responsive to such questions.

III. Other Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has previously submitted this rule in its proposed form and its associated information collection requirements to the Office of Management and Budget. While this rule has no burden, the group of rules (3038–0005) of which this is a part has the following burden:

Average Burden Hours Per Response—29.10
Number of Respondents—2,822
Frequency of Response—Monthly, Quarterly, Semi-Annually, Annually, on Occasion

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB Washington DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in § 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that such persons and entities would be small entities for purposes of the RFA, the Commission believes that § 4.5 as amended would not have a significant economic impact on them because it would not require the refiling of a notice with the Commission. Moreover, the Commission notes that the amended rule potentially would relieve a greater number of those persons (and entities) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Acting Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the amended § 4.5 will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Commodity futures, Commodity options.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a, 4k, 4l, 4m, 4n,

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[2] The term commodity pool operator is defined in section 1a(4) of the Commodity Exchange Act, as amended, to mean:

"[A]ny person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order."

[3] Sections 4.20–4.23. Commission rules referred to herein are found at 17 CFR ch. I (1992).

4o, 8a and 14 thereof, 7 U.S.C. 2, 6k, 6l, 6m, 6n, 6o, and 12a and 18, the Commission is amending part 4 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: Sections 1a, 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a, and 19 of the Act, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

2. Section 4.5 is proposed to be amended by revising paragraphs (a)(4), (b)(4), the introductory text in paragraph (c), and adding a new paragraph (a)(4)(iv) to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

(a) * * *

(4) A trustee of, a named fiduciary of (or a person designated or acting as a fiduciary pursuant to a written delegation from or other written agreement with the named fiduciary) or an employer maintaining a pension plan that is subject to title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That for purposes of this § 4.5 the following employee benefit plans shall not be construed to be pools:

(i) * * *

(ii) * * *

(iii) * * *

(iv) Any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974.

* * * * *

(b) * * *

(4) With respect to any person specified in paragraph (a)(4) of this section, and subject to the proviso thereof, a pension plan that is subject to title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That such entity will be operated in the manner specified in paragraph (c)(2) of this section.

(c) Any person who desires to claim the exclusion provided by this section shall file with the Commission a notice of eligibility; *Provided, however,* That a plan fiduciary who is not a named fiduciary but who has an agreement with a named fiduciary as described in paragraph (a)(4) of this section may claim the exclusion through the notice filed by the named fiduciary.

* * * * *

Issued in Washington DC, on August 11, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–19812 Filed 8–17–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fermenta Animal Health Co. under the National Academy of Sciences/National Research Council, Drug Efficacy Study Implementation Program. The supplemental application provides for: (1) Expanding the "me-too" use of oxytetracycline hydrochloride (OTC HCl) soluble powder to the drinking water of chickens for the control of infectious synovitis, chronic respiratory disease, air sac infections, and fowl cholera caused by bacteria susceptible to oxytetracycline (21 CFR 520.1660d(e)(1)(i)); and (2) decreasing the preslaughter withdrawal period of medicated turkey drinking water from 5 to 4 days.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153, is the sponsor of NADA 38–200 which provides for use of OTC HCl soluble powder in the drinking water of turkeys for the control of specific diseases caused by bacteria susceptible to oxytetracycline. The firm has filed a supplemental application providing for: (1) Expanding the "me-too" use of OTC HCl soluble powder to the drinking water of chickens for the control of infectious synovitis, chronic respiratory disease, air sac infections, and fowl cholera caused by bacteria susceptible to oxytetracycline (21 CFR 520.1660d(e)(1)(i)); and (2) decreasing the preslaughter withdrawal period of medicated turkey drinking water from 5 to 4 days. The supplemental NADA is approved as of July 9, 1993, and 21 CFR 520.1660d is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. The agency is further amending this section by adding new paragraph (a)(5) to list the concentration of OTC HCl (i.e., the grams of drug product containing 1 gram of OTC HCl) in Fermenta's several products.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for an exclusivity period because no new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) conducted or sponsored by the applicant were essential to the approval of the supplemental NADA.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.1660d is amended by adding new paragraph (a)(5), by revising paragraph (b)(3), and by revising the last two sentences in paragraphs (e)(1)(ii)(A)(*3*), (e)(1)(ii)(B)(*3*), and (e)(1)(ii)(C)(*3*) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

(a) * * *

(5) Each 4.2 grams of powder contains 1 gram of OTC HCl (packets: 3.8 and 15.2 oz; pails: 4.74 and 23.7 lb).

(b) * * *

(3) No. 054273 for use of OTC HCl concentration in paragraph (a)(5) of this section in turkeys and chickens.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(A) * * *

(*3*) * * * Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter those products sponsored by Nos. 000069 and 017144 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter those products sponsored by No. 054273.

(B) * * *

(*3*) * * * Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter those products sponsored by Nos. 000069 and 017144 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter those products sponsored by No. 054273.

(C) * * *

(*3*) * * * Do not use in birds producing eggs for human consumption. Withdraw 5 days prior to slaughter those products sponsored by Nos. 000069 and 017144 in § 510.600(c) of this chapter. Withdraw 4 days prior to slaughter those products sponsored by No. 054273.

* * * * *

Dated: August 4, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–19736 Filed 8-17-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Gallimycin® (Erythromycin) Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Sanofi Animal Health, Inc. (Sanofi), providing for use of Gallimycin® (Erythromycin) Injection for the treatment of cattle for bovine respiratory disease (shipping fever complex and bacterial pneumonia) associated with *Pasteurella multocida*. One supplement reflects compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group (DESI) evaluation of the drug's effectiveness and FDA's conclusions. The other provides for revising the tolerance for residues of erythromycin in edible tissues of beef cattle to 0.1 parts per million (ppm).

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION: Sanofi Animal Health, Inc., 7101 College Blvd., suite 610, Overland Park, KS 66210, filed two supplements to its approved NADA 12–123 Gallomycin® (Erythromycin) Injection. The NADA provides for the treatment of cattle for bovine respiratory disease (shipping fever complex and bacterial pneumonia) associated with *P. multocida* susceptible to erythromycin. The drug contains 200 milligrams (mg) of erythromycin per milliliter of sterile nonaqueous solution for intramuscular use at 4 mg per pound of body weight once daily for up to 5 days. The application was originally approved on March 22, 1960.

The drug was the subject of a NAS/NRC DESI evaluation of effectiveness (DESI 12123V); the findings were published in the **Federal Register** of August 18, 1970 (35 FR 13157). NAS/NRC evaluated the drug as "probably effective" for use in the treatment of certain diseases in cattle, sheep, swine, horses, dogs, cats, chickens, and turkeys, when such diseases are caused by micro-organisms sensitive to erythromycin. NAS/NRC stated:

(1) Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease claim cannot be so qualified the claim must be dropped.

(2) Claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of."

(3) The dosages in large animals and frequency of administration in all species need to be documented. The dosage should be expressed on the basis of milligrams of erythromycin per pound of body weight.

(4) The resistance statement and statements claiming more effectiveness than other antimicrobial agents need to be deleted.

(5) Certain items in the labeling need revision including withdrawal times, cautions, misleading association of sensitivity statement and certain diseases, and the recommended use as an aid in curtailing weight loss due to handling and transporting cattle.

(6) Directions for use should provide for administering the preparation with sterile equipment.

(7) Directions for lay use are inadequate.

FDA concurred with the NAS/NRC findings.

The NAS/NRC evaluation is concerned only with the drug's effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

Sanofi filed a supplemental NADA which reflected compliance with the results of the NAS/NRC DESI review and FDA's conclusions.

Sanofi filed another supplement which revised the tolerance for residues of erythromycin in uncooked, edible beef cattle tissues to 0.1 parts per million (ppm). The current tolerance of zero is an outmoded expression of an intent to regulate residues at the sensitivity of the existing analytical method. The revised tolerance of 0.1 ppm is consistent with toxicological data supporting the current tolerance in uncooked, edible swine tissues.

The supplements are approved as of June 30, 1993, and the regulations are amended by revising §§ 522.820 and 556.230 (21 CFR 552.820 and 556.230) to reflect the approvals.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this

approval does not qualify for an exclusivity period because reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approvals and conducted or sponsored by the applicant were not required.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal Drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.820 is revised to read as follows:

§ 522.820 Erythromycin injection.

(a) *Sponsor.* See 050604 in § 510.600(c) of this chapter.

(b) *NAS/NRC status.* The conditions of use have been reviewed by NAS/NRC and found effective.

(c) *Dogs and cats.*—(1) *Specifications.* Each milliliter of polyethylene glycol vehicle contains 100 milligrams of erythromycin base with 2 percent butyl aminobenzoate.

(2) *Conditions of use*—(i) *Amount.* 3 to 5 milligrams per pound of body weight, intramuscularly, two to three times daily, for up to 5 days.

(ii) *Indications for use*—(A) *Dogs.* For the treatment of bacterial pneumonia, upper respiratory infections (tonsillitis, bronchitis, tracheitis, pharyngitis, pleurisy), endometritis and metritis, and bacterial wound infections caused by *Staphylococcus* spp., *Streptococcus* spp., and *Corynebacterium* spp., sensitive to erythromycin.

(B) *Cats.* For the treatment of bacterial pneumonia, upper respiratory infections (rhinitis, bronchitis), secondary infections associated with panleukopenia, and bacterial wound infections caused by *Staphylococcus* spp. and *Streptococcus* spp., susceptible to erythromycin.

(iii) *Limitations.* Administer by deep intramuscular injection into the heavy muscles of the neck and limbs. Do not administer intravenously or intraperitoneally. Avoid subscutaneous use. Do not administer from moist or wet syringe. As with all antibiotics, appropriate in vitro culturing and susceptibility testing of samples taken before treatment should be conducted. Do not administer in conjunction with penicillin. As with all antibiotics, excessive continuous use may result in an overgrowth of nonsusceptible organisms. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Cattle.*—(1) *Specifications.* Each milliliter of nonaqueous, buffered, alcohol base sterile solution contains 200 milligrams of erythromycin base.

(2) *Related tolerances.* See § 556.230 of this chapter.

(3) *Conditions of use*—(i) *Amount.* 4 milligrams of erythromycin base per pound of body weight once daily for up to 5 days.

(ii) *Indications for use.* For the treatment of bovine respiratory disease (shipping fever complex and bacterial pneumonia) associated with *Pasteurella multocida* susceptible to erythromycin.

(iii) *Limitations.* For intramuscular use only. Do not use in female dairy cattle over 20 months of age. Do not slaughter treated animals within 6 days of last treatment. To avoid excess trim, do not slaughter within 21 days of last injection.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Sec. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.230 is amended by revising paragraphs (a) and (b) to read as follows:

§ 556.230 Erythromycin.

* * * * *

(a) 0.1 part per million in uncooked edible tissues of beef cattle and swine.

(b) Zero in milk.

* * * * *

Dated: August 4, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–19739 Filed 8–17–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Transfer of Levo-alphacetylmethadol From Schedule I Into Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Administrator of the Drug Enforcement Administration (DEA) transfers the Schedule I narcotic, levo-alphacetylmethadol (LAAM), into Schedule II of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of Schedule II will be applicable to the manufacture, distribution, importation and exportation of LAAM. Additionally, the use of LAAM for the treatment of narcotic addiction will be subject to compliance with the requirements of the Narcotic Addict Treatment Act of 1974 and regulations concerning narcotic treatment programs.

EFFECTIVE DATE: August 18, 1993, except for those individuals who are currently registered with DEA and possess LAAM shall take inventory and meet recordkeeping requirements on or before September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: LAAM is a synthetic opioid agonist. It will be marketed under the trade name of ORLAAM for the treatment of narcotic addiction. In a letter dated March 12, 1993, the Assistant Secretary for Health, acting on behalf of the Secretary of the Department of Health and Human Services, recommended to the Administrator of the DEA that LAAM be transferred from Schedule I into Schedule II of the CSA pending approval of a New Drug Application (NDA) for the use of LAAM in the

treatment of narcotic addiction. The Administrator of the DEA, in an April 28, 1993 **Federal Register** notice (58 FR 25790), proposed to transfer LAAM into Schedule II of the CSA if and when the Food and Drug Administration (FDA) approved an NDA for LAAM. This notice provided an opportunity for all interested persons to submit their comments, objections or requests for a hearing in writing on the proposed transfer of LAAM from Schedule I into Schedule II. Comments to the Administrator of the DEA were to be received on or before May 28, 1993. The Administrator received one comment supporting the transfer of LAAM into Schedule II but received no objections or requests for a hearing regarding this proposal. The FDA has notified the DEA that LAAM is safe and effective for use in the treatment of narcotic addiction as recommended in the approved labeling. The NDA for LAAM was approved on July 9, 1993.

Based on the information gathered and reviewed by the DEA, the scientific and medical evaluation and scheduling recommendation of the Assistant Secretary for Health, and the FDA's approval of the NDA for LAAM, the Administrator of the DEA, pursuant to the provisions of 21 U.S.C. 811 (a) and (b) and 812(b), finds that:

(1) LAAM has a high potential for abuse;

(2) LAAM has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; and

(3) Abuse of LAAM may lead to severe psychological or physical dependence.

The above findings are consistent with the placement of LAAM into Schedule II of the CSA. This transfer will apply to the *levo* isomer of alphacetylmethadol while all other isomers of alphacetylmethadol will remain in Schedule I.

The following regulations are effective with respect to LAAM on August 18, 1993, except for those individuals who are currently registered with DEA in accordance with part 1301 or 1311 of title 21 of the Code of Federal Regulations and possess LAAM shall take inventory and meet recordkeeping requirements on or before September 17, 1993:

1. *Registration.* Any person who manufactures, distributes, dispenses, delivers, imports or exports LAAM, or who conducts a narcotic treatment program using LAAM, or who engages in research or conducts instructional activities with LAAM, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with parts 1301 and 1311 of title 21 of the Code of Federal Regulations.

2. *Security.* LAAM must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of title 21 of the Code of Federal Regulations.

3. *Labeing and packaging.* All labels and labeling for commercial containers of LAAM must comply with the requirements of §§ 1302.03–1302.05, 1302.07, and 1302.08 of title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for LAAM shall submit applications pursuant to 21 CFR 1303.11, 1303.12, and 1303.22.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of LAAM shall take an inventory pursuant to §§ 1304.11–1304.19 of title 21 of the Code of Federal Regulations.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.29 of title 21 of the Code of Federal Regulations shall do so regarding LAAM.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34–1304.37 of title 21 of the Code of Federal Regulations shall do so regarding LAAM.

8. *Order forms.* All registrants involved in the procurement or distribution of LAAM shall comply with the order form requirements of part 1305 of title 21 of the Code of Federal Regulations.

9. *Prescriptions.* All prescriptions for products containing LAAM shall comply with §§ 1306.01–1306.07 and §§ 1306.11–1306.15 of title 21 of the Code of Federal Regulations.

10. *Importation and exportation.* All importation and exportation of LAAM shall be in compliance with part 1312 of title 21 of the Code of Federal Regulations.

11. *Criminal liability.* Any activity with respect to LAAM not authorized by, or in violation of the CSA or the Controlled Substances Import and Export Act shall be unlawful. The applicable penalties before August 18, 1993, shall be those of a Schedule I narcotic controlled substance. On August 18, 1993 LAAM, for the purposes of criminal liability, shall be treated as a Schedule II narcotic substance.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the transfer of LAAM will have no significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). Many of the regulatory requirements imposed on Schedule II substances are similar to those imposed on Schedule I substances. Additionally, substances in Schedule II may be used in medical treatment in the United States and this action will allow the marketing of the product ORLAAM that has been approved by FDA.

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

In accordance with the provisions of 21 U.S.C. 811(a), this ruling to transfer LAAM from Schedule I to Schedule II is a formal rule making "on the record after opportunity for hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements for Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and Record keeping requirements.

Under the authority vested in the Attorney General (21 U.S.C. 811(a)) and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), the Administrator hereby rules that 21 CFR part 1308 be revised as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.11 is amended by revising paragraph (b)(4) to read as follows:

§ 1308.11 Scedule I.

* * * * *

(b) * * *

(4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM)—9603

* * * * *

3. Section 1308.12 is amended by redesignating the existing paragraphs (c)(11) through (c)(25) as (c)(12) through (c)(26) respectively and adding a new paragraph (c)(11) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(11) Levo-alphacetylmethadol—9648

[Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM]

* * * * *

Dated: August 11, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–19818 Filed 8–17–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8483]

RIN 1545–AR06

Earnings and Profits of Regulated Investment Companies and Real Estate Investment Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final income tax regulations relating to regulated investment companies (RICs) and real estate investment trusts (REITs). The regulations provide guidance to RICs and REITs that have earnings and profits (E&P) accumulated by a corporation during a taxable year when the corporation was not taxable as a RIC or REIT. This guidance is needed to clarify the requirements for maintaining RIC or REIT status after a merger or other reorganization. The regulations also provide procedural guidance to REITs that distribute non-REIT E&P.

DATES: The effective date of these regulations is December 22, 1992.

These regulations apply to taxable years ending on or after December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Silver, 202–622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds §§ 1.852–12 and 1.857–11 to the Income Tax Regulations (26 CFR part 1) under sections 852 and 857 of the Internal Revenue Code (Code).

On December 23, 1992, the Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** (57 FR 61017). One commentator submitted written comments concerning the proposed regulations and requested a public hearing. A public hearing on those comments was held on March 1, 1993.

Explanation of Provisions

This document provides guidance to a RIC or REIT that has non-RIC or non-REIT E&P (that is, E&P that was accumulated by a corporation during a taxable year when the corporation was not taxable as a RIC or REIT). The regulations clarify that a company is not taxable as a RIC or REIT for a taxable year if it has non-RIC or non-REIT E&P at the close of the taxable year, even if the E&P was succeeded to in a reorganization.

The regulations prescribe identical rules for both RICs and REITs. Under the regulations, a RIC that succeeds to non-RIC E&P is generally required to distribute that E&P if the RIC is to continue to be taxable as a RIC. Similarly, a REIT that succeeds to non-REIT E&P is generally required to distribute that E&P if the REIT is to continue to be taxable as a REIT.

The one commentator on the proposed regulations questioned the scope of the regulations and argued that the statutory language of section 852(a)(2) of the Code is directed at a non-RIC that elects RIC status and not at a non-RIC that attains RIC status through a merger or other reorganization with an existing RIC. The commentator suggested that the E&P acquired by a RIC when it acquires a non-RIC through a merger or other reorganization is not "accumulated" for purposes of section 852(a)(2) of the Code since, under section 381(c)(2), the RIC succeeds to the E&P on the date of the reorganization. The commentator also suggested that, in enacting section 852(a)(2), Congress was concerned with operating companies that would sell their assets used in business, purchase investment assets, and then elect RIC status without distributing accumulated E&P. The commentator reasoned that Congress was not concerned with this happening through a merger of a non-RIC into a RIC because the continuity of business enterprise requirement for a reorganization would not be satisfied.

As asserted by the commentator, the legislative history of section 852(a)(2) of the Code indicates that Congress was concerned with operating companies that sold their assets, invested the proceeds in passive investment assets, and obtained conduit treatment without distributing the earnings from the operating activities. H.R. Rep. No. 432, 98th Cong., 2d Sess., pt. 2, at 1744 ff. (1984). There is no indication, however, that Congress intended to limit the application of the statute to that particular fact situation. The resulting statute clearly is broader than the transaction described in the legislative history and applies to all non-RIC E&P, no matter what its source.

The same concerns arise no matter how the non-RIC E&P comes to be held by a RIC. For instance, a historic investment business may not elect RIC status without distributing its non-RIC E&P. There is no reason to distinguish between that transaction and one in which the same company merges into a RIC. Moreover, any interpretation of the statute that distinguishes between corporations electing RIC status and corporations reorganizing into RICs would result in inconsistent tax treatment based solely on the form of the transaction.

After consideration of the comments, the Service continues to believe that the regulations are supported by legislative history and accurately reflect congressional concern. Section 852(a)(2) of the Code was intended to require a RIC that had non-RIC E&P, from whatever source, to distribute that E&P as a prerequisite to the RIC being taxable under subchapter M, part I.

The legislative history of section 857(a)(3) of the Code indicates that section 857(a)(3) serves a purpose similar to that of section 852(a)(2): Congress did not want companies to be taxable as REITs if they had non-REIT E&P. S. Rep. No. 313, 99th Cong., 2d Sess. 769, 775 (1986). As with RICs, the same principles apply to non-REIT E&P, whether it is carried over when the company converts to REIT status or it is succeeded to when a REIT reorganizes with a corporation that is not taxable as a REIT.

Finally, the regulations retain the rule in the proposed regulations that distribution rules similar to those in section 852(e) are to apply to REITs. No comments were received on this portion of the proposed regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nellie Howard of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 1.852–12 and 1.857–11 are added to read as follows:

§ 1.852–12 Non-RIC earnings and profits.

(a) *Applicability of section 852(a)(2)(A)*—(1) *In general.* An investment company does not satisfy section 852(a)(2)(A) unless—

(i) Part I of subchapter M applied to the company for all its taxable years ending on or after November 8, 1983; and

(ii) For each corporation to whose earnings and profits the investment company succeeded by the operation of section 381, part I of subchapter M applied for all the corporation's taxable years ending on or after November 8, 1983.

(2) *Special rule.* See section 1071(a)(5)(D) of the Tax Reform Act of 1984, Public Law 98–369 (98 Stat. 1051), for a special rule which treats part I of subchapter M as having applied to an investment company's first taxable year ending after November 8, 1983.

(b) *Applicability of section 852(a)(2)(B)*—(1) *In general.T1 An investment company does not satisfy section 852(a)(2)(B) unless, as of the close of the taxable year, it has no earnings and profits other than earnings and profits that—*

(i) Were earned by a corporation in a year for which part I of subchapter M applied to the corporation and, at all times thereafter, were the earnings and profits of a corporation to which part I of subchapter M applied;

(ii) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part I of subchapter M applied and, at all times thereafter, were the earnings and profits of a corporation to which part I of subchapter M applied;

(iii) Were accumulated in a taxable year ending before January 1, 1984, by a corporation to which part I of subchapter M applied for any taxable year ending before November 8, 1983; or

(iv) Were accumulated in the first taxable year of an investment company that began business in 1983 and that was not a successor corporation.

(2) *Prior law.* For purposes of paragraph (b) of this section, a reference to part I of subchapter M includes a reference to the corresponding provisions of prior law.

(c) *Effective date.* This regulation is effective for taxable years ending on or after December 22, 1992.

§ 1.857–11 Non-REIT earnings and profits.

(a) *Applicability of section 857(a)(3)(A).* A real estate investment trust does not satisfy section 857(a)(3)(A) unless—

(1) Part II of subchapter M applied to the trust for all its taxable years beginning after February 28, 1986; and

(2) For each corporation to whose earnings and profits the trust succeeded by the operation of section 381, part II of subchapter M applied for all the corporation's taxable years beginning after February 28, 1986.

(b) *Applicability of section 857(a)(3)(B); in general.* A real estate investment trust does not satisfy section 857(a)(3)(B) unless, as of the close of the taxable year, it has no earnings and profits other than earnings and profits that—

(1) Were earned by a corporation in a year for which part II of subchapter M applied to the corporation and, at all times thereafter, were the earnings and profits of a corporation to which part II of subchapter M applied; or

(2) By the operation of section 381 pursuant to a transaction that occurred before December 22, 1992, became the earnings and profits of a corporation to which part II of subchapter M applied and, at all times thereafter, were the earnings and profits of a corporation to which part II of subchapter M applied.

(c) *Distribution procedures similar to those for regulated investment companies to apply.* Distribution procedures similar to those in section 852(e) for regulated investment companies apply to non-REIT earnings and profits of real estate investment trusts.

(d) *Effective date.* This regulation is effective for taxable years ending on or after December 22, 1992.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 13, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–19573 Filed 8–17–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–4694–8]

Prevention of Significant Deterioration, Delegation of Authority; North Coast Unified Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9, San Francisco, has delegated to North Coast Unified Air Quality Management District, California, authority to implement the NO_2 increment program and implement the Federal Prevention of Significant Deterioration (PSD) Program for sources with stack heights greater than 65 meters.

DATES: The effective date of the initial delegation was August 30, 1985. The effective date of the revised delegation is January 8, 1993. A petition for review must be filed by October 18, 1993.

ADDRESSES: North Coast Unified Air Quality Management District, 2389 Myrtle Avenue, Eureka, CA 95501.

FOR FURTHER INFORMATION CONTACT: Matt Haber, New Source Section (A–5–1), Stationary Source Branch, Air and Toxics Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. Telephone: (415) 744–1254.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency has delegated authority under the provision which are found in 40 CFR 52.21(u), to the North Coast Unified Air Quality Management District to:

(A) Implement the PSD provisions for major stationary sources or major modifications which would either have stacks taller than 65 meters or would use "dispersion techniques" which commence construction after the effective date of this delegation; and

(B) Implement the Nitrogen Oxides provisions of the PSD rule promulgated

by EPA on October 17, 1988 at 53 FR 40656.

Information on this delegation together with a copy of the delegation is provided below: North Coast Unified Air Quality Management District received authority for PSD on August 30, 1985. The amended delegation became effective on January 8, 1993. The following letter and attached agreement represent the terms and conditions of the amended delegation.

Date: The PSD Delegation of Authority is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must filed by October 18, 1993.

Dated: August 10, 1993.

David P. Howekamp,

Director, Air and Toxics Division, Region 9.

January 11, 1993.

Wayne Morgan,

Air Pollution Control Officer, North Coast Unified Air Quality Management District, 2389 Myrtle Avenue, Eureka, CA 95501.

Dear Mr. Morgan: I am pleased to transmit the EPA–NCUAQMD Prevention of Significant Deterioration (PSD) delegation agreement. The agreement extends the District's PSD authority to include scources with stack heights greater than 65 meters, and the federal NO_2 increment provisions.

EPA will continue to provide any guidance or technical assistance that may be needed in the District's implementation of this agreement. EPA is committed to including the District in decisions relating to determinations of compliance or noncompliance with permits issued under this agreement, intended PSD enforcement actions, and in any intended revocation proceedings related to this agreement. We are also committed to maintaining, as I know you are, unobstructed channels of communication between our agencies. We look forward to a continuing partnership in the permitting program.

Sincerely,

Daniel W. McGovern,

John Wise,

for Regional Administrator.

U.S. EPA-North Coast Unified AQMD Agreement for Delegation of Authority for Prevention of Significant Deterioration of Air Quality (40 CFR 52.21)

The undersigned, on behalf of the North Coast Unified Air Quality Management District (NCUAQMD or the District) and the United States Environmental Protection Agency (U.S. EPA), hereby agree to the delegation of authority of the administrative and enforcement elements of the stationary source review and the Nitrogen Dioxide Increment provisions of 40 CFR 52.21, Prevention of Significant Deterioration (PSD), from the U.S. EPA to the NCUAQMD, subject to the terms and conditions below. In the July 31, 1985 **Federal Register** (50 FR 30943), EPA approved the North Coast Air Basin Air Pollution Control Regulations which were adopted by NCUAQMD on November 3, 1982 and amended subsequently. The PSD portion of Regulation 1 was determined to generally meet the requirements of 40 CFR 52.21. However, EPA retained the authority to apply 40 CFR 52.21 for projects which are major stationary sources or major modifications under 40 CFR 52.21 and which would either have stacks taller than 65 meters or would use "dispersion techniques" as defined in 40 CFR 51.1. This delegation agreement authorizes NCUAQMD to implement the PSD provisions for any such sources or modifications which commence construction after the effective date of this delegation. In addition, this delegation agreement authorizes NCUAQMD to implement the Nitrogen Oxides provisions of the PSD rule promulgated by EPA on October 17, 1988 at 53 FR 40656. District Authorities to Construct (permits) issued in accordance with the provisions of § 52.21 will be deemed to meet Federal PSD permit requirements pursuant to the provisions of this delegation agreement. This delegation is executed pursuant to 40 CFR 52.21(u), Delegation of Authority.

Permits

1. For those major stationary sources, or major modifications, with stack heights greater than 65 meters: In determining the degree of air pollutant emission limitation required under the applicable State Implementation Plan or this delegation agreement, no credit shall be given for: (1) That portion of any stack height which exceeds good engineering practice (GEP) or for (2) any other dispersion technique. (Refer to the enclosed June 1985 EPA Guideline for Determination of GEP Stack Height.)

2. District permits issued pursuant to this agreement must meet the requirements of 40 CFR 52.21. District Authorities to Construct must be issued prior to the beginning of actual construction, as that term is defined in 40 CFR 52.21(b)(11), as required by 40 CFR 52.21(i)(1).

3. EPA reserves authority for performing the review of the visibility impacts of new or modified major stationary sources that may adversely impact visibility in mandatory Class I areas, unless the District permits comply with EPA's final regulations regarding visibility review (50 FR 28544, July 12, 1985).

4. The North Coast AQMD shall forward to EPA, at or prior to the beginning of the public comment period, a summary of: (1) The findings related to each PSD application for new sources, major modifications and permit amendments (2) the justification for the District's preliminary determination, and (3) a copy of the draft PSD permit. Should there be any comments or concerns about the pending PSD permit, EPA will communicate them to the District as soon as possible prior to the close of the public comment period.

5. The North Coast AQMD shall forward to EPA copies of the proposed final action on PSD permit applications prior to issuance, as well as copies of substantive public comments. Any substantive public comments not incorporated will be addressed, and a summary of the response will be provided.

6. The North Coast AQMD will send to EPA a copy of all applicability determinations and justifications made that would involve PSD exemptions for new or modified major sources.

7. The North Coast AQMD will request EPA guidance on any matter involving the interpretation of sections 160–169 of the Clean Air Act or 40 CFR 52.21 to the extent that implementation, review, administration or enforcement of these sections has not been covered by determinations or guidance sent to the District.

8. Pursuant to its authority under the Clean Air Act and upon reasonable notice, EPA may review the permits issued by the District under this agreement to ensure that the District's implementation of § 52.21 is consistent with the contemporaneous time frame and actual emissions baseline requirements of federal regulations (40 CFR 52.21(b)(3)).

9. Pursuant to provisions of section 7(a) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)), EPA may not delegate and hereby retains its responsibilities to ensure that PSD permitting actions by the District are not likely to jeopardize the continued existence of endangered or threatened species, or adversely modify their critical habitats.

10. Pursuant to the provisions of 40 CFR 52.21(u)(2), the District shall consult with the appropriate State or local agency primarily responsible for managing land use prior to making any determinations under this Agreement.

11. The District shall conduct a periodic review of the NO_2 increment status for each section 107 area designated as attainment over which it has jurisdiction and shall prepare a summary report of that review. Such

review shall be made in accordance with current U.S. EPA guidance as provided to the District. Emissions from the following sources consume NO_2 increment: (1) Any new major stationary source or modification of a major stationary source on which construction begins after February 8, 1988; and (2) minor, area, and mobile sources, after the minor source baseline date as defined by 40 CFR 52.21. The initial review of the NO_2 increment status shall address the consumption of NO_2 increment, if any, between February 8, 1988, and the effective date of this Agreement. If NO_2 increment consumption has not begun, the summary report shall so state.

12. Pursuant to its authority under the Act and upon reasonable notice, EPA may review NO_2 increment consumption analyses performed by NCUAQMD under this agreement to ensure that the District's implementation of Regulation 1 is consistent with the requirements of the federal regulations (40 CFR 52.21).

13. District permits issued pursuant to this agreement which meet the requirements of 40 CFR 52.21 will be considered valid by EPA. The determination of whether District permits are in compliance or noncompliance with 40 CFR 52.21 shall be made by EPA.

14. The primary responsibility for enforcement of the PSD regulations in the District will rest with the District. The District will enforce the provisions that pertain to the PSD program, except in those cases where the rules and policy of the District are more stringent. In that case, the District may elect to implement the more stringent requirements. In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, the District will immediately notify the Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority. Nothing in this agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations or any PSD permit issued by the District pursuant to this agreement.

General Conditions

1. This delegation may be amended at any time by the formal written agreement of both the NCUAQMD and the U.S. EPA, including amendment to add, change, or remove conditions or terms of this agreement.

2. If the District adopts revisions to Regulation 1 that EPA deems to be less stringent than 40 CFR 52.21 provisions or conditions of this agreement, EPA may take steps to revoke the delegation in whole or in part pursuant to condition 3 below or the parties may amend the agreement pursuant to condition 1 above. Any substantive amendments to Regulation 1 that are adopted by the District shall not be applied under this agreement until the agreement is amended so to provide.

3. If the U.S. EPA determines that the NCUAQMD is not implementing the PSD program in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act, this delegation, after having provided written notification to the District of the deficiencies and allowed a reasonable time to respond, may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the NCUAQMD.

4. The permit appeal provisions of 40 CFR 124 shall apply to all appeals to the Administrator on permits issued by the NCUAQMD under this delegation (address enclosed). For purposes of implementing the federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a draft preliminary determination or draft permit conditions, the final permit issued by the NCUAQMD shall contain a statement that for Federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19: (1) The effective date of the permit is 30 days after the date of the final decision to issue, modify, or revoke and reissue the permit; and (2) if an appeal is made to the Administrator, the effective date of the permit is suspended until such time as the appeal is resolved. The NCUAQMD shall inform EPA Region IX in accordance with conditions of this delegation when there is public comment requesting a change in the preliminary determination or in a draft permit condition. Failure by the NCUAQMD to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

6. This delegation of authority becomes effective upon the date of the signatures of both parties to this Agreement.

Dated: December 22, 1992.

Wayne Morgan,

North Coast Unified Air Quality Management District.

Dated: January 8, 1993.

John Wise,

U.S. Environmental Protection Agency.

[FR Doc. 93–19976 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6993

[NM–010–4210–06; NMNM 86724]

Withdrawal of Public Land for Juana Lopez Research Natural Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 40 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the palentological resource values of Juana Lopez Research Natural Area. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM, Rio Puerco Resource Area, 435 Montano NE., Albuquerque, New Mexico 87107, 505–761–8700.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management research natural area:

New Mexico Principal Meridian

T. 19 N., R. 1 W.,
Sec. 14, E½SE¼SW¼, and W½SW¼SE¼;

The area described contains 40 acres in Sandoval County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976. 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 6, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–19908 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–FB–M

43 CFR Public Land Order 6994

[OR–943–4210–06; GP3–249; OR–47551]

Withdrawal of National Forest System Lands for the North Fork John Day River-Elkhorn Drive Scenic Byway Corridor; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,189.37 acres of National Forest System lands in the Umatilla and Whitman National Forests from mining for a period of 20 years for the Department of Agriculture, Forest Service, to protect the North Fork John Day River-Elkhorn Drive Scenic Byway Corridor. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the scenic, recreational, water quality, and fishery resource values of the North Fork John Day River-Elkhorn Drive Scenic Byway Corridor:

Willamette Meridian

Umatilla National Forest

T. 7 S., R. 35½ E.,
Sec. 34, those portions of the W½NE¼ and NE¼SE¼ outside the boundary for the North Fork John Day Wilderness.

Whitman National Forest

Tracts of land located within the following described townships and sections as more particularly identified and described below:

T. 7 S., R. 35½ E.,
Secs. 35 and 36.
T. 7 S., R. 36 E.,
Secs. 27 and 31 to 35, inclusive.

Beginning at a point on the west section line of sec. 35, T. 7 S., R. 35½ E., and 500 feet north of the centerline of Forest Development Road (FDR) 73 as shown on U.S.G.S. 7.5 minute topographic quadrangle maps Trout Meadows, Oreg. dated 1972 and photorevised 1983 and Crawfish Lake, Oreg. dated 1972 and photorevised 1984; Thence following a line in an easterly direction 500 feet north of the centerline of said FDR 73 as shown on said map to where said line intersects the north section line of sec. 33, T. 7 S., R. 36 E.; Thence easterly along said north section line to the northeast section corner of said sec. 33; Thence southerly along the east section line of said sec. 33 to a point on said east section line 500 feet north of the centerline of FDR 7300380 as shown on U.S.G.S. 7.5 minute topographic quadrangle map Crawfish Lake, Oreg. dated 1972 and photorevised 1984; Thence following a line in an easterly direction 500 feet north of the centerline of said FDR 7300380 as shown on said map and continuing in a southerly direction on a line 500 feet east of the centerline of USFS Trail 1640 from the point where said trail intersects FDR 7300380 as shown on said map to where said line intersects the north boundary of the North Fork John Day Wilderness in the S½, sec. 35, T. 7 S., R. 36 E.; Thence westerly along said north boundary of the North Fork John Day Wilderness to the northwest corner of said Wilderness in the SW¼, sec. 36, T. 7 S., R. 35½ E.; Thence southeasterly along the Wilderness boundary to a point on the Wilderness boundary which intersects a line 330 feet south of the centerline of the North Fork John Day River as shown on U.S.G.S. 7.5 minute topographic quadrangle maps Crawfish Lake, Oreg. dated 1972 and photorevised 1984 and Trout Meadows, Oreg. dated 1972 and photorevised 1983; Thence following a line in a westerly direction 330 feet south of the centerline of said river as shown on the said maps to where said line intersects the west section line of sec. 35, T. 7 S., R. 35½ E.; Thence northerly along said west section line to the point of beginning. The areas described aggregate 1,189.37 acres in Grant County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 6, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–19909 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–33–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7581]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate

Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program:			
New Hampshire, Lincoln, town of, Grafton County	330062	May 10, 1993	Sept. 7, 1979.
Nebraska, Otoe County, unincorporated areas	310462	July 2, 1993	—
Texas, Houston County, unincorporated areas	480872	.....do	Nov. 1, 1977.
Washington, SeaTac, city of, King County	530320	July 16, 1993	—
New Hampshire, Dummer, town of, Coos County	330201	July 20, 1993	Jan. 17, 1975.
Arkansas, Oppelo, city of, Conway County	050597	July 26, 1993	—
Texas, Vernon, city of, Wilbarger County	481652	.....do	—
Arkansas, Marvell, city of, Phillips County	050170	July 28, 1993	Mar. 12, 1976.
New Eligibles—Regular Program:			
Missouri, Weldon Spring, city of, St. Charles County	290901	July 2, 1993	Dec. 15, 1992.
Iowa, Des Moines County, unincorporated areas	190113	July 20, 1993	Feb. 17, 1982.
Massachusetts, Hamilton, town of, Essex County	250084	July 26, 1993	June 4, 1990.
Illinois, Pontoosuc, village of, Hancock County	170272	July 30, 1993	Oct. 18, 1983.
Reinstatements—Regular Program:			
Ohio, Perry, village of, Lake County	390320	June 11, 1975, Emerg.; Dec. 15, 1978, Reg.; Mar. 19, 1990, Susp.; July 16, 1993, Rein.	Dec. 15, 1978.
Alabama, Hobson City, town of, Calhoun, County	010021	Apr. 16, 1975, Emerg.; Sept. 30, 1983, Reg.; Sept. 30, 1983, Susp.; July 16, 1993, Rein.	Sept. 30, 1983.
New York, Cherry Creek, village of, Chautauqua County.	360136	Aug. 8, 1978, Emerg.; Aug. 8, 1978, Reg.; Nov. 4, 1992, Susp.; July 26, 1993, Rein.	Feb. 15, 1978.
Westford, town of, Otsego County	361282	Oct. 12, 1976, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.; July 26, 1993, Rein.	June 1, 1988.
South Dakota, Montrose, city of, McCook County	460052	Dec. 16, 1975, Emerg.; Aug. 5, 1986, Reg.; Aug. 3, 1989, Susp.; July 20, 1993, Rein.	Aug. 5, 1986.
Massachusetts, Webster, town of, Worcester County.	250343	July 28, 1975, Emerg.; July 5, 1982, Reg.; June 16, 1993, Susp.; Aug. 4, 1993, Rein.	June 16, 1993.
Regular Program Conversions:			
Region II			
New York, Schoharie, town of, Schoharie County	361198	July 5, 1993, Suspension Withdrawn	July 5, 1993.
Schoharie, village of, Schoharie County	361061	.....do	July 5, 1993.
Region III			
Pennsylvania, Bristol, township of, Bucks County	420984	.....do	Dec. 18, 1979.
Rockdale, township of, Crawford County	422394	.....do	May 1, 1986.
South Shenango, township of, Crawford County	422397	.....do	July 7, 1985.
Turbot, township of, Northumberland County	420744	July 5, 1993, Suspension Withdrawn	Aug. 15, 1979.
Valley, township of, Chester County	421206	.....do	Aug. 1, 1984.
Venango, township of, Crawford County	421574	.....do	Feb. 1, 1985.
Woodcock, Borough of, Crawford County	422403	.....do	Jan. 17, 1985.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region IV			
Georgia, Fannin County, unincorporated areas	130249	.....do	July 5, 1993.
Region I			
Maine, St. George, town of, Knox County	230229	July 19, 1993, Suspension Withdrawn	July 19, 1993.
Region IV			
North Carolina, Cherokee County, unincorporated areas.	370059	.....do	July 19, 1993.
Tennessee, Rogersville, city, Hawkins County	470086	.....do	July 19, 1993.
Region VI			
Oklahoma, Sand Springs, city of Tulsa and Saga Counties.	400211	.....do	July 19, 1993.

Code for reading fourth column:
Emerg.—Emergency; Reg.—Regular; Susp—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: August 11, 1993.

Donald L. Collins,

Assistant Administrator, Federal Insurance Administration.

[FR Doc. 93–19811 Filed 8–17–93; 8:45 am]

BILLING CODE 6718–21–P

44 CFR Part 65

[Docket No. FEMA–7074]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: Boulder	City of Boulder	Aug. 5, 1993, Aug. 12, 1993, *Boulder Daily Camera.*	The Honorable Leslie Durgin, Mayor, City of Boulder, 1739 Broadway, Boulder, Colorado 80306.	July 8, 1993	080024
Georgia: DeKalb	Unincorporated areas	July 16, 1993, July 23, 1993, *Atlanta Journal.*	Ms. Liane Levetan, Chief Executive Officer of DeKalb County, 1300 Commerce Drive, Decatur, Georgia 30030.	July 9, 1993	130065 C
North Carolina: Wake	Town of Cary	Aug. 4, 1993, Aug. 11, 1993, *Cary News.*	The Honorable Koka E. Booth, Mayor of the Town of Cary, P.O. Box 1147, Cary, North Carolina 27512–1147.	July 27, 1993	370238 E
Texas: Denton	City of Denton	July 22, 1993, July 29, 1993, *Denton Record Chronicle.*	The Honorable Bob Castleberry, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201.	July 8, 1993	480194
Texas: Tarrant	City of Colleyville	July 22, 1993, July 29, 1993, *Colleyville News and Times.*	The Honorable Richard Newton, Mayor, City of Colleyville, P.O. Box 185, Colleyville, Texas 76034.	June 23, 1993	480590
Texas: Tarrant	City of Fort Worth	July 23, 1993, July 29, 1993, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	July 16, 1993	480596
Texas: Tarrant	City of Fort Worth	July 9, 1993, July 15, 1993, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	June 28, 1993	480596
Texas: Tarrant	City of Westworth Village.	July 9, 1993, July 15, 1993, *Fort Worth Star Telegram.*	The Honorable W.O. Henker, Mayor, City of Westworth Village, 311 Burton Hill Road, Fort Worth, Texas 76114.	June 28, 1993	480616
Texas: Tarrant	Town of Westover Hills	July 9, 1993, July 15, 1993, *Fort Worth Star Telegram.*	The Honorable Sam Berry, Mayor, Town of Westover Hills, 5824 Merrymount Road, Fort Worth, Texas 76107.	June 28, 1993	480615

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 5, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–19696 Filed 8–17–93; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropraite flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Cleburne (FEMA Docket No. 7069).	Unincorporated areas ..	May 5, 1993, May 12, 1993, *The Sun Times.*	The Honorable Claude Dill, County Judge, County Courthouse, Heber Springs, Arkansas 72543.	Apr. 6, 1993	050424
Arkansas: Van Buren (FEMA Docket No. 7067).	Unincorporated areas ..	Apr. 23, 1993, Apr. 30, 1993, *The Sun Times.*	The Honorable Dale Lynch, Van Buren County Judge, P.O. Box 160, Clinton, Arkansas 72031.	Apr. 6, 1993	050566

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Contra Costa (FEMA Docket No. 7067).	Unincorporated areas ..	Apr. 21, 1993, Apr. 28, 1993, *Contra Costa Times.*	The Honorable Tom Torlakson, Chairman, Contra Costa County Board of Supervisors, 300 East Leland Road, Pittsburg, California 94565.	Apr. 15, 1993	060025
California: San Diego (FEMA Docket No. 7067).	City of San Diego	Apr. 22, 1993, Apr. 29, 1993, *San Diego Daily Transcript.*	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	Apr. 13, 1993	060295
California: Ventura (FEMA Docket No. 7067).	Unincorporated areas ..	Apr. 23, 1993, Apr. 29, 1993, *Star Free Press.*	Ms. Susan Lacey, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	Apr. 13, 1993	060413
Colorado: Arapahoe (FEMA Docket No. 7067).	City of Greenwood Village.	Apr. 22, 1993, Apr. 29, 1993, *The Villagers Newspaper.*	The Honorable Rollin Barnard, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, Colorado 80111–4591.	Apr. 16, 1993	080195
Connecticut: New London (FEMA Docket No. 7065).	Town of East Lyme	Mar. 5, 1993, Mar. 12, 1993, *The Day.*	Mr. David Cini, First Selectman of the Town of East Lyme, New London County, P.O. Box 519, Niantic, Connecticut 06357.	Feb. 26, 1993	090096 D
Idaho: Ada (FEMA Docket No. 7069).	Unincorporated areas ..	May 14, 1993, May 21, 1993, *Idaho Statesman.*	The Honorable Bern Bisterfeldt, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, Idaho 83702.	Apr. 23, 1993	160001
Oklahoma: Oklahoma (FEMA Docket No. 7069).	City of Oklahoma City .	Apr. 22, 1993, Apr. 29, 1993, *The Journal Record.*	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker, Oklahoma City, Oklahoma 73102.	Mar. 18, 1993	405378
Texas: Tarrant (FEMA Docket No. 7067).	City of Fort Worth	Apr. 2, 1993, Apr. 8, 1993, *Fort Worth Star Telegram.*	The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	Mar. 24, 1993	480596

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 5, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–19701 Filed 8–17–93; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and

modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Carefree (town), Maricopa County (FEMA Docket No. 7057)	
Grapvine, Wash:	
Approximately 1,300 feet upstream of the confluence with Rowe Wash	*2,517
Approximately 0.51 mile upstream of Father Kino Trail	*2,725
Galloway Wash-North Tributary:	
Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash	*2,311
Approximately 0.53 mile downstream of Father Kino Trail	*2,449
Approximately 0.44 mile downstream of Father Kino Trail	*2,462
Approximately 0.8 mile upstream of Father Kino Trail	*2,629
Rowe Wash:	
Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1	*2,537
Approximately 0.6 mile upstream of the confluence with Rowe Wash-Tributary 1	*2,704
Maps are available for review at Town Hall, 100 Easy Street, Carefree, Arizona.	
Cave Creek (town), Maricopa County (FEMA Docket No. 7057)	
Grapevine Wash:	
At the confluence with Rowe Wash ...	*2,482
Approximately 1,300 feet upstream of the confluence with Rowe Wash	*2,517
Galloway Wash-North Tributary:	
At the confluence with Unnamed Tributary to Galloway Wash	*2,216
Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash	*2,311
Approximately 0.53 mile downstream of Father Kino Trail	*2,449
Approximately 0.44 mile downstream of Father Kino Trail	*2,462
Ocotillo Wash-Tributary 1:	
Approximately 450 feet upstream of the confluence with Ocotillo Wash .	*2,291
Approximately 0.84 mile upstream of the confluence with Ocotillo Wash-Tributary 1A	*2,450
Ocotillo Wash-Tributary 1A:	
At the confluence with Ocotillo Wash-Tributary 1	*2,319
Approximately 0.7 mile upstream of the confluence with Ocotillo Wash-Tributary 1	*2,453
Ocotillo Wash-Tributary 2:	
At the confluence with Ocotillo Wash	*2,228
At Echo Canyon Road	*2,274
Approximately 0.73 mile upstream of Echo Canyon Road	*2,402
Ocotillo Wash-Tributary 3:	
At the confluence with Ocotillo Wash	*2,164
At Echo Canyon Road	*2,284
Just upstream of Highland Road (upper crossing)	*2,374
Ocotillo Wash-Tributary 4:	
At the confluence with Ocotillo Wash	*2,124
Approximately 100 feet upstream of Schoolhouse Road	*2,215
Approximately 700 feet upstream of Echo Canyon Road	*2,314
Rowe Wash:	
Approximately 1,900 feet upstream of Echo Canyon Road	*2,315
At the confluence with Grapevine Wash	*2,484
Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1	*2,537
Willow Springs Wash:	
Approximately 700 feet downstream of the confluence with Willow Springs Wash-Tributary 2	*2,188
Approximately 275 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,218
Approximately 2,000 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,255
Approximately 2,550 feet downstream of Sierra Vista Drive (lower crossing)	*2,273
Willow Springs Wash-Tributary 1:	
At the confluence with Willow Springs Wash	*2,101
Approximately 1,250 feet downstream of Morningstar Road	*2,162
Willow Springs Wash-Tributary 2:	
At the confluence with Willow Springs Wash	*2,211

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 100 feet upstream of the confluence with Willow Springs Wash	*2,211
Willow Springs Wash-Tributary 5:	
At the confluence with Willow Springs Wash	*2,063
Approximately 100 feet upstream of Spur Cross Road	*2,118
Just downstream of Schoolhouse Road	*2,200
Just downstream of Rockway Hills Drive	*2,251
Willow Springs Wash-Tributary 5A:	
At the confluence with Willow Springs Wash-Tributary 5	*2,119
Approximately 0.6 mile upstream of the confluence with Willow Springs-Wash-Tributary 5	*2,194
Maps are available for review at the Planning Department, Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.	
Chandler (city), Maricopa County (FEMA Docket No. 7063)	
Flooding behind Southern Pacific Spur:	
Approximately 100 feet southeast of the intersection of Southern Pacific Spur and West Tremaine Drive	*1,212
At the intersection of Santan Street and Sacramento Street	*1,217
Just east of the intersection of Germann Road and Southern Pacific Spur	*1,218
Approximately 200 feet northeast of the intersection of Chandler Heights Road and Southern Pacific Spur	*1,217
Approximately 500 feet east of the intersection of Rigge Road and Southern Pacific Spur	*1,216
Flooding behind Southeast branch of Southern Pacific Spur:	
Approximately 1,500 feet southeast of the intersection of Chandler Heights Road and Southern Pacific Spur	*1,219
Flooding behind Consolidated Canal East Branch:	
Approximately 200 feet south and 300 feet east of Chandler Heights Road and Consolidated Canal East Branch	*1,221
Just south of the intersection of McQueen Road and Consolidated Canal East Branch	*1,228
Approximately 700 feet south of the intersection of Germann Road and Consolidated Canal East Branch	*1,229
Just northeast of the intersection of Willis Road and Consolidated Canal East Branch	*1,231
Just northeast of the intersection of Pecos Road and Consolidated Canal East Branch	*1,233
Flooding behind Consolidated Canal East Branch:	
Approximately 2,800 feet south and 700 feet east of the intersection of Ray Road and Cooper Road	*1,236
Maps are available for review at the Department of Public Works, 200 East Commonwealth Avenue, Chandler, Arizona.	
Coconino County (unincorporated areas) (FEMA Docket No. 7063)	
Oak Creek:	
Approximately 4,435 feet downstream of the confluence with Munds Canyon Creek	*4,485
Approximately 3,820 feet downstream of the confluence with Munds Canyon Creek	*4,500
Approximately 3,000 feet downstream of the confluence with Munds Canyon Creek	*4,519
Approximately 1,050 feet downstream of the confluence with Munds Canyon Creek	*4,552
Maps are available for review at Coconino County, Department of Community Development, 219 East Cherry, Flagstaff, Arizona.	
Gila Bend (town), Maricopa Country (FEMA Docket No. 7057)	
Gila Bend Canal:	
Approximately 300 feet east of the intersection of Old U.S. Highway 80 and Papago Street	#3
Approximately 100 feet east of the intersection of Watermelon Road and Gila Bend Canal	#2
Maps are available for review at the Town Administration Office, 644 West Pima Street, Gila Bend, Arizona.	
Gilbert (town), Maricopa County (FEMA Docket No. 7063)	
Flooding behind Southern Pacific Railroad:	
Approximately 200 feet south of the intersection of McQueen Road and Baseline Road	*1,213
At Guadalupe Road	*1,220
Just downstream of Western Canal	*1,226
Approximately 200 feet west of the intersection of Western Canal and Oak Street	*1,231
Approximately 500 feet east of the intersection of Southern Pacific and Roosevelt Water Conservation District Canal	*1,322
At Power Road	*1,332
Flooding behind Southern Pacific Spur:	
Approximately 200 feet southeast of the intersection of Southern Pacific Spur and Baseline Road	*1,212
Approximately 500 feet southeast of the intersection of Elliot Road and Southern Pacific Spur	*1,214
Flooding behind Consolidated Canal East Branch:	
Approximately 400 feet north of the intersection of Ray Road and 131st Street	*1,239
Approximately 2,000 feet southwest along Consolidated Canal from the intersection of Southern Pacific and Consolidated Canal East Branch	*1,240
At the intersection of Elliot Road and Lindsay Road	*1,243
Just southeast of the intersection of Baseline Road and Consolidated Canal East Branch	*1,247
Flooding behind Eastern canal:	
Approximately 1,200 feet south and 300 feet west of the intersection of Germann Road and Lindsay Road	*1,260
Approximately 600 feet south of the intersection of Ray Road and Eastern Canal	*1,267
Approximately 1,000 feet east of the intersection of Guadalupe Road and Eastern Canal	*1,271
Approximately 400 feet south of the intersection of Guadalupe Road	*1,279
Approximately 2,000 feet north of the intersection of Guadalupe Road and Eastern Canal	*1,279
Just south of the intersection of Baseline Road and South Greenfield Road	1,281
Maps are available for review at the Engineering Department, Municipal Center, 1025 South Gilbert Road, Gilbert, Arizona.	
Maricopa County (unincorporated areas) (FEMA Docket No. 7068)	
Aguila Farm Channel:	
At the confluence with Centennial Wash	*2,110
Just upstream of Eagle Eye Avenue	*2,162
Approximately 1.86 miles upstream of Eagle Eye Avenue	*2,197
North Branch Centennial Wash:	
At the confluence with Aguila Farm Channel	*2,119
Approximately 2.65 miles upstream of the confluence with Aguila Farm Channel	*2,164
Caterpillar Tank Wash:	
At the confluence with Agua Fria River	*1,266
At Caterpillar Tank Road	*1,397
Upstream of CAP Canal	*1,526
Cave Creek Wash:	
Approximately 1,700 feet upstream of the Granite Reef Aqueduct (CAP Canal)	*1,519
Just downstream of Cave Buttes Dam	*1,563
Approximately 740 feet upstream of Morning Star Road	*2,148
At the confluence with Cottonwood Creek	*2,291
At Spur Cross Road	*2,349
Centennial Wash:	
At La Paz-Maricopa County line	*2,050
At the confluence with Aguila Farm Channel	*2,110
Cline Creek:	
At the confluence with Skunk Creek	*2,002
At New River Road	*2,055
Approximately 2,350 feet upstream of 12th Street	*2,208
Tributary X5:	
At the confluence with Cline Creek	*2,092
Approximately 1,350 feet upstream of 14th Street	*2,259
Tributary C6:	
At the confluence with Cline Creek	*2,076
Approximately 630 feet upstream of 18th Street (at the confluence with Tributary X1)	*2,239
Tributary C8:	
At the confluence with Cline Creek	*2,076
Just downstream of 16th Street	*2,205
Approximately 1.53 miles upstream of 16th Street	*2,390
Tributary X1:	
Approximately 800 feet downstream of 20th Street (at the confluence with Tributary C6)	*2,238
Approximately 2,950 feet upstream of 22nd Street	*2,425
Tributary X2:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 200 feet downstream of 18th Street (at the confluence with Tributary C6)	*2,219
Approximately 1,200 feet upstream of 22nd Street	*2,422
Tributary X3:	
Approximately 370 feet downstream of 14th Street (at the confluence with Tributary C6)	*2,160
Approximately 580 feet upstream of 20th Street	*2,314
Tributary X4A:	
At the confluence with Tributary C6	*2,093
Approximately 1,200 feet upstream of 12th Street	*2,194
Tributary X4B:	
At the confluence with Tributary X4A	*2,126
Approximately 525 feet upstream of 12th Street	*2,190
Cottonwood Creek:	
At the confluence with Cave Creek Wash	*2,292
Just upstream of Sierra Vista Drive	*2,388
Approximately 1.5 miles upstream of the confluence with Cottonwood Creek-Tributary 1	*2,672
Approximately 3.25 miles upstream of the confluence with Cottonwood Creek-Tributary 1	*3,220
Cottonwood Creek Tributary 1:	
At the confluence with Cottonwood Creek	*2,410
Approximately 2,500 feet upstream of the confluence with Cottonwood Creek-Tributary 2	*2,545
Cottonwood Creek Tributary 2:	
At the confluence with Cottonwood Creek-Tributary 1	*2,452
Approximately 1,150 feet upstream of the confluence with Cottonwood Creek-Tributary 1	*2,507
East Garambullo Wash:	
At the confluence with Twin Buttes Wash	*1,420
Upstream of CAP Canal	*1,529
Fleming Springs Wash:	
At the confluence with Willow Springs Wash	*2,534
Approximately 800 feet upstream of Unnamed Road	*2,823
Gila River:	
Approximately 1.0 mile north of the Intersection of Indian Road and Stout Road	*661
Approximately 3,400 feet downstream of Fornes Road	*661
At Pierpont Road	*679
At Woods Road	*698
Approximately 4,300 feet west of the intersection of Old U.S. Highway Eighty and Section Line 35/36 in Township 2 North and Range 5 West	*732
Just upstream of Gillespie Dam	*765
Flooding behind Gila Bend Canal:	
Approximately 2,000 feet east, then 1,200 feet downstream from the Intersection of Old U.S. Highway eighty and Pierpont Road	*745
Approximately 2,000 feet east, then 1.0 mile upstream from the intersection of Old U.S. Highway Eighty and Pierpont Road	*753
Approximately 4,000 feet downstream of Gillespie Dam	#1
Approximately 2,800 feet east and 1,500 feet south of the intersection of Old U.S. Highway Eighty and Patterson Road	#1
Approximately 4,500 feet south and 3,500 feet east of the intersection of Old U.S. Highway Eighty and Fornes Road	#1
Approximately 200 feet north of the intersection of Old U.S. Highway Eighty and Section Line 35/36 in Township 2 South and Range 5 West	#2
Approximately 1,000 feet east of the intersection of Old U.S. Highway Eighty and Patterson Road	#2
Just north of Woods Road	#2
Approximately 2,500 feet south and 4,000 feet east of Old U.S. Highway Eighty and Pierpont Road	#2
Approximately 2,500 feet south and 4,300 feet east of the intersection of Old U.S. Highway Eighty and Fornes Road	#2
Approximately 100 feet east of the intersection of Watermelon Road and Gila Bend Canal	#2
Approximately 1.7 miles upstream of Woods Road	#3
Just south of Woods Road	#3
Approximately 1,500 feet south and 3,000 feet east of the intersection of Old U.S. Highway Eighty and Pierpont Road	#3
Approximately 8,000 feet south and 5,000 feet east of the intersection of Old U.S. Highway Eighty and Pierpont Road	#3
Approximately 500 feet east of the intersection of Old U.S. Highway Eighty and Cotton Center Road	#3
Grass Wash:	
At the Atchison, Topeka, and Santa Fe Railroad	*2,159
Approximately 200 feet upstream of U.S. Highway 60 & 70	*2,160
At Black Eagle Road	*2,174
Approximately 3.7 miles upstream of Black Eagle Road	*2,211
Jackrabbit Wash:	
Approximately 700 feet Canal	*1,358
At Wickenburg Road	*1,522
Approximately 200 feet upstream of Vulture Mine Road	*1,710
Unnamed Tributary of Jackrabbit Wash:	
At the confluence with Jackrabbit Wash	*1,450
Just downstream of Wickenburg Road	*1,508
At Vulture Mine Road	*1,703
Morgan City Wash:	
At the confluence with Agua Fria River	*1,419
Just upstream of Castle Hot Springs Road	*1,686
At the confluence of Tributary M–8	*1,864
At the confluence of Tributary M–5	*2,135
Approximately 2,900 feet upstream of the confluence of M–2 Tributary	*2,520
Rodger Creek:	
At the confluence with Skunk Creek	*1,916
At New River Road	*2,037
At the confluence with Tributary R–2	*2,282
Approximately 2.0 miles upstream of the confluence with Tributary R–2	*2,555
Rowe Wash:	
Approximately 1,925 feet downstream of the confluence with Rowe Wash-Tributary 2	*2,704
Approximately 25 feet downstream of the confluence with Roe Wash-Tributary 2	*2,844
Star Wash:	
At the confluence with Jackrabbit Wash	*1,367
Approximately 2.1 miles above the confluence with Jackrabbit Wash	*1,422
Trilby Wash:	
Approximately 1,350 feet upstream of CAP Canal (at Jomax Road Alignment)	*1,556
At Patton Road	*1,587
At White Wing Road	*1,669
Just downstream of the convergence with Trilby Wash-West Channel	*1,742
At Grand Avenue (U.S. Highway 60 & 89)	*1,855
Trilby Wash Middle Channel:	
At the convergence with Trilby Wash-West Channel	*1,751
At the divergence from Trilby Wash	*1,774
Trilby Wash West Channel:	
At the convergence with Trilby Wash	*1,743
At the divergence from Trilby Wash	*1,783
Twin Buttes Wash:	
At the confluence with Agua Fria River	*1,240
Just downstream of Beardsley Canal crossing	*1,318
At the confluence of East Garambullo Wash	*1,420
Upstream of CAP Canal	*1,518
Wagner Wash:	
At the confluence with Hassayampa River	*1,247
At the lower crossing of Sun Valley Parkway	*1,439
At the upper crossing of Sun Valley Parkway	*1,499
At the CAP Canal	*1,552
West Garambullo Wash:	
At the confluence of East Garambullo Wash	*1,424
Upstream of CAP Canal	*1,534
White Peak Wash:	
At the confluence with Twin Buttes Wash	*1,373
At the confluence of West Fork White Peak Wash	*1,458
Upsteam of CAP Canal	*1,533
West Fork White Peak Wash:	
At the confluence of White Peak Wash	*1,458
Upstream of CAP Canal	*1,533
Willow Springs Wash:	
Approximately 275 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,218
Approximately 2,000 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,255
Approximately 2,550 feet downstream of Sierra Vista Drive (lower crossing)	*2,273
At Sierra Vista Drive (lower crossing)	*2,334
Approximately 1,800 feet upstream of the confluence with Fleming Springs Wash and Unnamed Road	*2,612
Willow Springs Wash-Tributary 1:	
Approximately 1,250 feet downstream of Morningstar Road	*2,162
Just upstream of Spur Cross Road	*2,204
Approximately 2.1 miles upstream of Spur Cross Road	*2,519
Willow Springs Wash-Tributary 1A:	
At the confluence with Willow Springs Wash-Tributary 1	*2,210
Approximately 0.97 mile upstream of the confluence with Willow Springs Wash-Tributary 1	*2,490
Willow Springs Wash-Tributary 2:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 100 feet upstream of the confluence with Willow Springs Wash	*2,211
At the confluence with Willow Springs Wash-Tributary 2A	*2,282
Approximately .94 mile upstream of the confluence with Willow Springs Wash-Tributary 2A	*2,467
Willow Springs Wash-Tributary 2A:	
At the confluence with Hollow Springs Wash-Tributary 2	*2,282
Approximately 1.0 mile upstream of the confluence with Willow Springs Wash-Tributary 2	*2,462
Willow Springs Wash-Tributary 4:	
At the confluence with Willow Springs Wash	*2,336
Approximately 1.1 miles upstream of the confluence with Willow Springs Wash	*2,562
Flooding behind CAP Canal:	
Just upstream of the confluence of Daggs Wash and CAP Canal	*1,382
Approximately 2,800 feet west and 1,200 feet south of the intersection of CAP siphon and Hassayampa River	*1,349
Approximately 3,500 feet west and 2,500 feet south of the intersection of CAP siphon and Hassayampa River	*1,355
Approximately 2,300 feet west and 500 feet south of CAP siphon and Hassayampa River	*1,353
500 feet north of the intersection of the CAP Canal and Wagner Wash	*1,552
Approximately 1,800 feet west of the intersection of CAP Canal and Jackrabbit Wash	*1,381
Approximately 3,300 feet east and 1,500 feet north of the intersection of CAP Canal and Jackrabbit Wash	*1,377
Approximately 7,000 feet west and 2,000 feet north of the intersection of CAP Canal and Wickenburg Hassayampa Road	*1,362
Flooding behind Consolidated Canal East Branch:	
Approximately 2,000 feet south and 700 feet east of the intersection of Chandler Heights Road and Consolidated Canal East Branch	*1,221
Approximately 3,000 feet south of the intersection of Queen Creek Road and McQueen Road	*1,228
Just northeast of the intersection of Queen Creek Road and Consolidated Canal East Branch	*1,229
Just northeast of the intersection of Germann Road and Consolidated Canal East Branch	*1,231
Approximately 500 feet south of the intersection of Frye Road and Cooper Road	*1,233
Approximately 2,000 feet south of the intersection of Ray Road and Consolidated Canal East Branch	*1,236
Approximately 200 feet east and 1,000 feet south of the intersection of Ray Road and Consolidated Canal East Branch	*1,237
Approximatley 500 feet east and 100 feet north of the intersection of Warner Road and Gilbert Road	*1,240
Just east of the intersection of Baseline Road and Consolidated Canal East Branch	*1,247
Flooding behind Eastern Canal:	
Just upstream of the intersection of Riggs Road and Gilbert Road	*1,250
Approximately 1,500 feet south of the intersection of Germann Road and Eastern Canal	*1,260
Approximately 500 feet east of the intersection of Val Vista Drive and Eastern Canal	*1,267
Approximately 1,400 feet east and 300 feet north of the intersection of Val Vista Drive and Ray Road	*1,268
Just north of the intersection of Warner Road and Greenfield Road	*1,273
Approximately 1,300 feet south of the intersection of Guadalupe Road and Eastern Canal	*1,278
Approximately 300 feet south and 100 feet east of the intersection of Baseline Road and South Greenfield Road	*1,281
Flooding behind Southern Pacific Railroad:	
Approximately 500 feet east and 200 feet south of the intersection of Southern Pacific and Williams Field Road	*1,301
At Signal Butte Road	*1,437
Approximately 2,100 feet upstream from Signal Butte Road	*1,446
Flooding behind Southern Pacific Spur:	
Approximately 200 feet northeast of the intersection of Southern Pacific Spur and Queen Creek Road	*1,218
Just northeast of the intersection of Ocotollo Road and Southern Pacific Spur	*1,221
Approximately 1,000 feet south and 500 feet east of the intersection of Consolidated Canal East Branch and Southern Pacific Spur	*1,219
Maps are available for review at the Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, Arizona.	

Maricopa County (unincorporated areas) (FEMA Docket No. 7039)

Basin 6A:	
Approximately 2,500 feet south and 2,000 feet east of the intersection of 64th Street and Lone Mountain Road	#3
Subject to flooding from more than one source:	
Basin 3, 4A, 4B, 4C or 4D:	
At the Intersection of Grovers Avenue and 68th Street	#1
Basin 5, 6A, 6B, or 6C:	
Approximately 1,900 feet west and 1,300 feet south of the northeast corner of Section 31 in Township 5 North Range 4 East	#1
Basin 6A, 6B, or 6C:	
Approximately 1,100 feet south of the intersection of 64th Street and Lone Mountain Road	#1
Maps are available for review at the Maricopa County Flood Control District, 3335 West Durango Street, Phoenix, Arizona.	

Mesa (city), Maricopa County (FEMA Docket No. 7063)

Flooding Behind Southern Pacific Railroad:	
At Power Road	*1,332
At the intersection of Sossaman Road and Germann Road	*1,356
Maps are available for review at the Engineering Department, 20 East Main Street, Suite 400, Mesa, Arizona.	

Phoenix (city), Maricopa County (FEMA Docket No. 7039)

Subject to flooding from more than one source:	
Basin 3, 4A, 4B, 4C or 4D:	
Approximately 500 feet west and 1,000 feet south of the intersection of Scottsdale Road and Beardsley Road	#1
Basin 4A, 4B, 4C or 4D:	
Approximately 1,000 feet west of the intersection of Scottsdale Road and Deer Valley Road	#1
Approximately 3,000 feet north of the intersection of Anderson Drive and 58th Way	#1
Basin 5, 6A, 6B, or 6C:	
Approximately 2,200 feet north and 500 feet west of the southeast corner of Section 31, in Township 5 North Range 4 East	#1
Maps are available for review at the Street Transportation Department, 125 East Washington Street, Phoenix, Arizona.	

Phoenix (city), Maricopa County (FEMA Docket No. 7068)

Cave Creek:	
At the confluence with Moon Valley Wash	*1,281
Just downstream of 19th Avenue	*1,321
Just downstream of Bell Road	*1,363
Approximately 800 feet downstream of Central Avenue	*1,408
At Beardsley Road	*1,433
Approximately 1,700 feet upstream of the Granite Reef Aqueduct (CAP Canal)	*1,519
East Fork Cave Creek:	
At the confluence with Cave Creek	*1,329
At 7th Avenue	*1,346
Approximately 1,400 feet downstream of Central Avenue	*1,355
Maps are available for review at the Street Transportation Department, 125 East Washington Street, Phoenix, Arizona.	

Queen Creek (town), Maricopa County (FEMA Docket No. 7063)

Flooding Behind Southern Pacific Railroad:	
Approximately 200 feet southeast of the intersection of Sossaman Road and Southern Pacific	*1,356
Just east of the intersection of Southern Pacific and Ellsworth Road	*1,396
At Signal Butte Road	*1,437
Maps are available for review at the Planning Department, Town Hall, 22350 South Ellsworth Road, Queen Creek, Arizona.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Scottsdale (city), Maricopa County (FEMA Docket No. 7039)	
Basin 1A:	
Approximately 2,500 feet west of the intersection of 104th Street and Section Line 29/32 of Township 4 North Range 5 East	#1
At the intersection of Mountain Spring Road and 112th Street	#3
Basin 2B:	
At the intersection of Pima Road and Beardsley Road	#1
At the intersection of Foothill Road and Church Road	#1
Basin 3:	
Approximately 900 feet south of the intersection of Alma School Road and Desert Highland Drive	#1
Basin 4A:	
Approximately 4,000 feet east of the intersection of Pima Road and Dynamite Boulevard	#1
Basin 4C:	
Approximately 2,000 feet north and 3,000 feet east of the intersection of Pima Road and Dynamite Boulevard	#2
Approximately 100 feet north and 1,700 feet east of the intersection of Pima Road and Dynamite Boulevard	#3
Basin 5:	
Approximately 2,600 feet west and 2,600 feet north of the intersection of Scottsdale Road and Dynamite Boulevard	#1
At the intersection of Lone Mountain Road and Section Line 23/24 in Township 5 North Range 4 East	#2
Basin 6A:	
Approximately 1,500 feet south and 200 feet west of the intersection of Scottsdale Road and Lone Mountain Road	#3
Approximately 2,000 feet north of the intersection of Lone Mountain Road and Section Line 13/14 in Township 5 North Range 4 East	#2
Approximately 500 feet north of the intersection of Pima Road and Dove Valley Road	#3
Basin 6C:	
Approximately 1,500 feet east of the intersection of Dove Valley Road and Section Line 13/14 in Township 5 of North Range 4 East	#2
Subject to flooding from more than one source:	
Basin 1A or 1B:	
Approximately 1,000 feet east and 2,500 feet south of the intersection of Beardsley Road and 96th Street	#1
Approximately 500 feet north of the intersection of Mountain Spring Road and 104th Street	#3
Basin 1A, 1B, 2A, or 2B:	
At the intersection of Old Verde Canal and Section Line 5/6 in Township 3 North Range 5 East	#1
Basin 2A or 2B:	
At the intersection of Beardsley Road and 96th Street	#1
At the intersection of Deer Valley Road and Church Road	#2
Basin 2A, 2B or 3:	
At the southwest corner of Section 36 in Township 4 North Range 4 East	#1
Basin 2B or 3:	
At the intersection of Union Hills Road and Section Line 35/26 in Township 4 North Range 4 East	#1
Basin 2B, 3, 4A, 4B, 4C or 4D:	
Approximately 2,000 feet east and 1,000 feet north of the intersection of Bell Road and Scottsdale Road	#1
Basin 3, 4A, 4B, 4C or 4D:	
At the intersection of Scottsdale Road and Beardsley Road	#1
Basin 4A or 4B:	
Approximately 2,500 feet east of the intersection of Pima Road and Dynamite Boulevard	#2
Basin 4A, 4B or 4C:	
At the intersection of Jomax Road and Wrangler Road	#1
Approximately 1,000 feet east and 1,000 feet south of the intersection of Pima Road and Dynamite Boulevard	#2
Approximately 1,500 feet east and 200 feet south of the intersection of Pima Road and Dynamite Boulevard	#3
Basin 4A, 4B, 4C or 4D:	
At the intersection of Pinnacle Peak Road and Los Portones Drive	#1
At the intersection of Happy Valley Road and Section Line ½ in Township 4 North Range 4 East	#2
Approximately 1,000 feet west of the intersection of Saddlehorn Road and Gate Road	#2
Approximately 100 feet south and 1,700 feet west of the intersection of Jomax Road and Wrangler Road	#3
Basin 6A, 6B or 6C:	
Approximately 300 feet north of the intersection of Scottsdale Road and Lone Mountain Road	#1
Maps are available for review at City Clerk's Office, 3939 Civic Center Plaza, Scottsdale, Arizona.	
Scottsdale (city), Maricopa County (FEMA Docket No. 7068)	
Cottonwood Creek:	
Approximately 3.25 miles upstream of the confluence with Cottonwood Creek-Tributary 1	*3,220
Approximately 3.28 miles miles upstream of the confluence with Cottonwood Creek-Tributary 1	*3,230
Grapevine Wash:	
Approximately 0.51 mile upstream of Father Kino Trail	*2,725
Approximately 0.53 mile upstream of Father Kino Trail	*2,728
Galloway Wash-North Tributary:	
Approximately 0.8 mile upstream of Father Kino Trail	*2,629
Approximately 0.95 mile upstream of Father Kino Trail	*2,650
Maps are available for review at the Transportation Panning Department, 7447 East Indian School Road, Scottsdale, Arizona.	
Surprise (town), Maricopa County (FEMA Docket No. 7058)	
Trilby Wash:	
At the concrete overchute at C.A.P. Canal	*1,546
Approximately 1,350 feet upstream of C.A.P. Canal (at Jomax Road Alignment)	*1,556
Maps are available for review at the Building Administration and Community Development Department, 15818 North Hollyhock Street, Surprise, Arizona.	
CALIFORNIA	
Sacramento (city), Sacramento County (FEMA Docket No. 7063)	
American River:	
Just upstream of confluence with the Sacramento River	*31
Just upstream of State Highway 160	*36
Approximately 8,000 feet upstream of Business Interstate 80	*42
Approximately 2,000 feet upstream of H Street	*46
Approximately 700 feet downstream of Watt Avenue	*52
American River (Detailed flooding adjacent to the River):	
At the intersection of N Street and 28th Street	*26
At the intersection of W Street and 33rd Street	*26
At the intersection of 35th Street and Folsom Boulevard	*28
At the intersection of 41st Street and M Street	*30
At the intersection of D Street and 46th Street	*32
Just north of the intersection of Business Route 80 and the Southern Pacific Railroad	*43
At the intersection of Callister and Carlson Drive	*44
Approximately 3,000 feet south of the intersection of Arden Way and Challenge Way	*44
At the intersection of Jordan Way and Jed Smith Drive	*45
At the intersection of Juliard Drive and Occidental Drive	*48
At the Mossglen Circle	*49
Arcade Creek:	
Just upstream of the confluence with Natomas East Main Drainage Canal	*36
Approximately 1,300 feet upstream of Rio Linda Boulevard	*37
Just upstream of Marysville Boulevard	*40
Deep Ponding:	
At the intersection of Deer Gren Drive and Red Deer Way	*15
Approximately 1,000 feet west of the intersection of Archean Way and Deer Creek Drive	*15
At the intersection of Decathalon Circle and Archean Way	*15
Approximately 500 feet west of the intersection of Deer Gren Drive and Red Deer Way	*15
Approximately 800 feet west of Black Trail Drive and Deer Gren Drive	*15
At the intersection of Deer Lake Drive and Evalita Way	*15
Approximately 300 feet east of the intersection of Deer Water Way and Sea Meadow Way	*15
Approximately 800 feet southeast of the intersection of Deer Lake Drive and SeaForest Way	*15
At the intersection of Amina Way and Chinquapin Way	*15
Approximately 2,000 feet southwest of the intersection of Emhardt Avenue and Franklin Boulevard	*15

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 3,000 feet southwest of the intersection of Earnhardt Avenue and Franklin Boulevard	*15
Approximately 400 feet southwest of the intersection of Ernhardt Avenue and Franklin Boulevard	*15
Approximately 400 feet north of the intersection of Eddington Court and Euler Way	*15
At the intersection of Deer Creek Drive and Decathlon Circle	*15
Approximately 200 feet south of the intersection of Mack Road and Archean Way	*15
South of the intersection of Deer Lake Drive and De la Vina Way	*15
Approximately 300 feet east of the intersection of Deer Water Way and Deer Lake Drive	*15
Approximately 50 feet southwest of the intersection of Valley Hi Drive and Chinquapin Way	*15
Approximately 800 feet south of the intersection of Deer Lake Drive and Sea Forest Way	*15
At the intersection of Valley Hi Drive and Halker Way	*15
Approximately 1,000 feet south of the intersection of La Coruna Drive and Valley Hi Drive	*15
Approximately 8,000 feet south of the intersection of 23rd Street and Craig Avenue	*15
At the intersection of Meadowview Road and 24th Street	*18
At the intersection of Meadowgate Drive and Winner Way	*18
At the intersection of Golfview Drive and Mangrum Avenue	*18
At the intersection of Greenhaven Drive and Pocket Road	*19
At the intersection of Havenside Drive and Florin Road	*19
At the intersection of Riverside Boulevard and Park Riviera Drive	*19
At the intersection of 26th Avenue and Euclid Avenue	*19
At the intersection of Freeport Boulevard and Wentworth Avenue	*24
At the intersection of 9th Avenue and 33rd Street	*24
At the intersection of P Street and 18th Street	*24
At the intersection of Truxel Road and West El Camino Avenue	*33
At the intersection of Del Paso Road and El Centro Road	*33
At the intersection of Orchard Lane and West El Camino Avenue	*33
At the intersection of Bercut Drive and Richards Boulevard	*35
At the intersection of North 12th Street and Sitka Street	*35
At the intersection of Bell Court Avenue and Englewood Street	*36
At the intersection of Taylor Street and Interstate Highway 880	*36
At the intersection of Norwood Avenue and Las Palmas Avenue	*36
Approximately 2,000 feet west of the intersection of 20th Street and A Street	*38
At the intersection of Response Road and Heritage Lane	*41
Dry Creek:	
Just upstream of the confluence with Natomas East Main Drainage Canal	*38
Approximately 8,700 feet upstream of the confluence with Natomas East Main Drainage Canal	*38
Lower Magpie Creek:	
Approximately 500 feet upstream of Natomas East Main Drainage Canal	*36
Just downstream of Rio Linda Boulevard	*36
Morrison Creek:	
Approximately 300 feet upstream of Elk Grove Florin Road	*47
Natomas East Drainage Canal:	
Just upstream of the confluence with Natomas Main Drainage Canal	*33
Just downstream of Elkhorn Boulevard	*33
Natomas East Main Drainage Canal:	
Approximately 1,000 feet upstream of Northgate Boulevard	*35
Just downstream of Interstate 880	*37
Approximately 2,500 feet upstream of Main Avenue	*38
Just downstream of the City of Sacramento Corporate Limits	*38
Natomas Main Drainage Canal:	
Just upstream of Garden Highway	*33
Just upstream of Interstate 880	*33
Natomas West Drainage Canal:	
Just upstream of the confluence with Natomas Main Drainage Canal	*33
Just downstream of Del Paso Road	*33
Robla Creek:	
Just upstream of the confluence with Natomas East Main Drainage Canal	*38
Just upstream of Rio Linda Boulevard	*39
Sacramento River:	
Approximately 4,000 feet downstream of Sleepy River Way	*26
Approximately 200 feet upstream of Evros River Court	*27
Approximately 1,200 feet upstream of 43rd Avenue	*29
Approximately 1,000 feet upstream of Darnel Way	*30
Approximately 3,000 feet upstream of I Street	*31
Shallow Flooding:	
Approximately 500 feet southeast of the intersection of Arden Way and Challenge Way	*#2
At the intersection of Woodbine Avenue and 47th Avenue	*#2
Approximately 500 feet north of the intersection of 47th Avenue and Romack Circle	*#3
At the intersection of Kitchner Avenue and Zelda Way	*#3
At the intersection of Edna Street and 24th Street	*#3
At the intersection of Alvarado and Rivera Drive	*#2
At the intersection of Arcade Boulevard and Clay Street	*#1
Approximately 1,500 feet north of the intersection of Tùnis Road and Barros Drive	*#2
Approximately 800 feet south of the intersection of Arden Way and Evergreen Street	*#1
Unionhouse Creek:	
Just upstream of the confluence with Morrison Creek	*15
Approximately 400 feet downstream of Franklin Boulevard	*15

Maps are available for review at the Department of Public Works, Engineering Division, 927 10th Street, Room 100, Sacramento, California.

Sutter County (unincorporated areas) (FEMA Docket No. 7063)

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cross Canal (Distance upstream of confluence with Sacramento River):	
Just upstream	*39
Approximately 10,000 feet	*40
Approximately 20,000 feet	*40
Approximately 28,000 feet	*40
Curry Creek:	
Approximately 1,500 feet downstream of the Union Pacific Railroad	*41
Just upstream of the Union Pacific Railroad	*41
Just downstream of Pleasant Grove Road	*41
Approximately 2,000 feet upstream of Pleasant Grove Road	*41
Approximately 3,000 feet upstream of Pleasant Grove Road	*41
Deep Ponding:	
At the intersection of Riego Road and Power Line Road	*33
At the intersection of Pacific Avenue and Riego Road	*33
At the intersection of Sankey Road and Power Line Road	*33
At the intersection of Sankey Road and Pacific Avenue	*33
Just south of the intersection of Howsley Road and Route 70/90	*33
Howsley Creek:	
Approximately 5,000 feet downstream of the Union Pacific Railroad	*40
Approximately 1,000 feet downstream of the Union Pacific Railroad	*40
Approximately 1,000 feet upstream of the Union Pacific Railroad	*40
Approximately 3,800 feet upstream of the Union Pacific Railroad	*41
Natomas East Main Drainage Canal:	
Approximately 5,800 feet downstream of Riego Road	*39
Approximately 1,000 feet downstream of Riego Road	*39
Approximately 5,000 feet upstream of Riego Road	*40
Approximately 7,500 feet upstream of Riego Road	*40
Natomas East Main Drainage Canal (Shallow Flooding):	
Approximately 5,000 feet downstream of Riego Road, west overbank	#3
Approximately 3,000 feet downstream of Riego Road, west overbank	#2
Approximately 1,500 feet downstream of Riego Road, west overbank	#2
Approximately 2,000 feet upstream of Riego Road, west overbank	#2
Approximately 4,500 feet upstream of Riego Road, west overbank	#3
Approximately 6,000 feet upstream of Riego Road, west overbank	#3
Approximately 7,500 feet upstream of Riego Road, west overbank	#1
Approximately 1,000 feet downstream of Sankey Road	#2
Pleasant Grove Creek:	
Approximately 4,000 feet downstream of the Union Pacific Railroad	*41
Approximately 500 feet upstream of the Union Pacific Railroad	*41
Approximately 1,400 feet upstream of Fifield Road	*41

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pleasant Grove Creek Canal (Shallow Flooding):	
Just downstream of Sankey Road, west overbank	#1
Pleasant Grove Creek Bypass:	
Approximately 2,000 feet downstream of the Union Pacific Railroad	*40
Approximately 500 feet upstream of the Union Pacific Railroad	*40
Approximately 2,500 feet upstream of the Union Pacific Railroad	*41
Approximately 3,800 feet upstream of the Union Pacific Railroad	*41
Pleasant Grove Creek Canal:	
Just downstream of Howsley Road	*40
Approximately 400 feet upstream of Fifield Road	*41
Approximately 200 feet downstream of Key Road	*41
Just downstream of Sankey Road	*41
Sacramento River:	
Approximately 5,000 feet downstream of Riego Road	*38
Approximately 1,000 feet upstream of the confluence with Cross Canal	*39
Yolo Bypass	
Just downstream of the Freemont Weir	*36
Just upstream of the Freemont Weir	*39
Maps are available for review at the Sutter County Department of Public Works, Planning Department, 1160 Civic Center Boulevard, Suite A, Yuba City, California.	
West Sacramento (city), Yolo County (FEMA Docket No. 7063)	
Sacramento River:	
Approximately 36,000 feet downstream of Tower Bridge	*28
Approximately 26,000 feet downstream of Tower Bridge	*29
Approximately 13,500 feet downstream of Tower Bridge	*30
Approximately 4,000 feet upstream of Tower Bridge	*31
Approximately 1,400 feet downstream of Interstate 80	*31
Deep Ponding:	
At the intersection of Bevan Avenue and Jefferson Boulevard	*25
At the intersection of Interstate Highway 80/National Highway 40 and Harbor Boulevard	*25
Approximately 1,500 feet north of the intersection of Enterprise Boulevard and Lake Road	*27
At the intersection of F Street and Fifth Street	*28
At the intersection of Reed Avenue and Interstate Highway 80	*30
Sacramento River Deep Watership Channel:	
Approximately 24,000 feet downstream of Jefferson Boulevard	*25
Approximately 32,000 feet downstream of Jefferson Boulevard	*25
Yolo Bypass:	
Approximately 17,000 feet downstream of Interstate Highway 80/National Highway 40	*26
Approximately 3,500 feet downstream of Interstate Highway 80/Interstate Highway 40	*27
Maps are available for review at the Department of Public Works, Community Development Department, 1951 South River Road, West Sacramento, California.	
COLORADO	
Greenwood Village (city), Arapahoe County (FEMA Docket No. 7063)	
Goldsmith Gulch:	
Approximately 650 feet downstream of East Orchard Road	*5,643
Just upstream of East Orchard Road	*5,670
At the corporate limits just upstream of South Dayton Street	*5,670
Maps are available for review at the Planning and Zoning Department, City Hall, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, Colorado.	
Wellington (town), Larimer County (FEMA Docket No. 7063)	
Boxelder Creek:	
At County Road 62	*5,180
At Burlington, Northern Railroad	*5,185
Just upstream of Cleveland Avenue	*5,194
Approximately 1,000 feet downstream of County Road 64	*5,205
Approximately 450 feet upstream of County Road 64	*5,213
Maps are available for review at Town Hall, 3735 Cleveland Street, Wellington, Colorado.	
CONNECTICUT	
Manchester (town), Hartford County (FEMA Docket No. 7057)	
Hop Brook:	
At a point approximately 600 feet upstream of the confluence with Hockanum River	*75
At a point approximately 1,525 feet upstream of South Main Street Ramp "E"	*225
Porter Brook:	
At the confluence with Hop Brook	*225
At a point approximately 120 feet upstream of the confluence with Hop Brook	*227
Birch Mountain Brook:	
At the confluence with Hop Brook	*225
At a point approximately 70 feet upstream of the confluence with Hop Brook	*225
Folly Brook:	
At a point approximately 1,500 feet upstream of the confluence with Hop Brook	*114
At a point approximately 5,750 feet upstream of the confluence with Hop Brook	*118
Globe Hollow Brook:	
At the confluence with Hop Brook	*187
At a point approximately 560 feet upstream of the confluence with Hop Brook	*187
Maps are available for inspection at the Department of Planning, 494 Main Street, Manchester, Connecticut 06045.	
IDAHO	
Canyon County (unincorporated areas) (FEMA Docket No. 7063)	
Boise River:	
Approximately 1,300 feet upstream of the confluence with the Snake River	*2,187
Approximately 200 feet downstream of Hexon Road	*2,212
Just downstream of Parma-Roswell Road (State Highway 18)	*2,223
Approximately 400 feet downstream of U.S. Highway 95	*2,245
Just downstream of Notus-Greenleaf Road	*2,297
Approximately 100 feet upstream of Union Pacific Railroad	*2,396
Approximately 900 feet downstream of Canyon-Ada County Line	*2,451
Mill Slough:	
At the upstream corporate limits of City of Middleton	*2,398
Approximately 1,700 feet upstream of the upstream Corporate Limits of City of Middleton	*2,400
Maps are available for review at the Department of Planning and Zoning, 1115 Albany, Caldwell, Idaho.	
Middleton (city), Canyon County (FEMA Docket No. 7063)	
Boise River:	
At the west corporate limits located approximately 1,300 feet to the west of Whiffin Lane	*2,380
At the confluence of Mill Creek	*2,383
Maps are available for review at City Hall, City of Middleton, 15 North Dewey, P.O. Box 176, Middleton, Idaho.	
Notus (city), Canyon County (FEMA Docket No. 7063)	
Boise River:	
Approximately 6,100 feet downstream of Notus-Greenleaf Road	*2,287
At the intersection of Alpine Avenue and First Street	*2,295
At Notus-Greenleaf Road	*2,297
Approximately 1,450 feet upstream of Notus-Greenleaf Road	*2,300
Maps are available for review at City Hall, 375 Notus Road, Notus, Idaho.	
Parma (city), Canyon County (FEMA Docket No. 7063)	
Boise River:	
Along Main Street 1,200 feet west of Roswell Boulevard, just north of the railroad	*2,217
At Parma Airport	*2,223
At the extreme southeastern corner of the City of Parma	*2,226
Maps are available for review at City Hall, 305 North Third Street, Parma, Idaho.	
KANSAS	
Erie (city), Neosho County, (FEMA Docket No. 7058)	
Puckets Run Creek:	
Approximately 1,300 feet downstream of Fifth Street	*888

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Third Street	*889
Just upstream of Canville Street	*891
Approximately 100 feet downstream of Atchison, Topeka and Santa Fe Railroad	*896
Maps are available for review at the City Clerks Office, Erie City Hall, 224 South Main Street, Erie, Kansas.	
LOUISIANA	
Alexandria (city), Rapides Parish (FEMA Docket No. 7064)	
Chatlin Lake Canal:	
Approximately 500 feet upstream of Midway Avenue	*73
At the confluence of Mill Bayou	*74
At the confluence of West Tributary Chatlin Lake Canal	*74
West Tributary Chatlin Lake Canal:	
At the confluence with Chatlin Lake Canal	*74
Approximately, 1,500 feet upstream of Texas and Pacific Railroad	*75
Hynson Bayou:	
Just upstream of the confluence of Horseshoe Drainage Canal	*73
Approximately 500 feet upstream of Texas and Pacific Railroad	*74
Just upstream of Lee Street	*76
Approximately 500 feet downstream of Bryn Mawr Drive, at a pedestrian bridge	*78
Just upstream of Georges Lane	*79
Maps are available for review at the City of Alexandria Utility Building, 1546 Jackson Street, Alexandria, Louisiana.	
MISSOURI	
Rolla (city), Phelps County (FEMA Docket No. 7063)	
Burgher Branch:	
Approximately 70 feet upstream of the corporate limits	*967
Approximately 100 feet upstream of Soest Road	*993
Approximately 120 feet upstream of 10th Street	*1,015
Just downstream of old St. James Road	*1,058
Approximately 0.57 mile upstream of old St. James Road	*1,065
East Fork of Burgher Branch:	
At the confluence with Burgher Branch	*987
Approximately 60 feet upstream of Soest Road	*991
Approximately 80 feet upstream of 10th Street	*1,024
Burgher Branch Tributary:	
Approximately 270 feet upstream of the confluence with Burgher Branch	*1,002
Just downstream of Holloway Street	*1,046
Approximately 100 feet downstream of Iowa Street	*1,055
Dutrocarter Creek:	
At the corporate limits, located approximately 900 feet downstream of State Highway "0"	*977
Just upstream of Pete Avenue	*1,031
Approximately 100 feet upstream of State Highway 72	*1,050
Approximately 80 feet downstream of Burlington Northern Railway	*1,069
Debie Branch:	
At the confluence with Dutrocarter Creek	*980
Just upstream of State Highway "0"	*985
At the corporate limits located approximately 0.25 mile upstream of State Highway "0"	*992
Spring Creek Tributary:	
At the limit of detailed study located at the downstream most corporate limits	*963
Just downstream of Meadow Brook Drive	*973
Approximately 50 feet downsteam of Vichy Road	*991
At the upstream limit of detailed study, located approximately 0.4 mile upstream of Vichy Road	*1,019
Maps are available for review at City Hall, City of Rolla, 102 West 9th Street, Rolla, Missouri.	
West Plains (city), Howell County (FEMA Docket No. 7063)	
North Fork Howell Creek:	
At the confluence with Howell Creek	*964
Just upstream of Thornburgh Street	*969
Approximately 1,700 feet upstream of Thornburgh Street (streamside/landside of levee)	*973/*972
Approximately 600 feet downstream of Burlington Northern Railroad (streamside/landside of levee)	*975/*972
Just downstream of Burlington Northern Railroad	*976
South Fork Howell Creek:	
Approximately 2,700 feet upstream of Outer Road	*1,018
Just upstream of Unnamed Road	*1,023
Approximately 800 feet upstream of Unnamed Road	*1,026
Burton Branch:	
Approximately 1,000 feet upstream of Davis Drive	*1,011
Approximately 600 feet upstream of Harrison Road	*1,021
Approximately 4,000 feet upstream of U.S. Highway 63	*1,031
Maps are available for review at the City Hall, 1910 Holiday Lane, West Plains, Missouri.	
NEVADA	
Carson City (city), Independent City (FEMA Docket No. 7058)	
Carson River:	
Approximately 8,000 feet downstream of the confluence of Clear Creek	*4,639
At the confluence of Clear Creek	*4,645
Approximately 7,000 feet upstream of the confluence of Clear Creek, at the Corporate Limits	*4,646
Clear Creek:	
Approximately 800 feet upstream of the confluence with Carson River	*4,645
Maps are available for review at the Community Development Department, 2621 Northgate Lane, Suite 62, Carson City, Nevada.	
NEW YORK	
Rockland (town), Sullivan County (FEMA Docket No. 7061)	
Beaver Kill:	
At its confluence of Willowemoc Creek	*1,276
At approximately 1.46 miles upstream of Old State Route 17	*1,306
Little Beaver Kill:	
At confluence with Willowemoc Creek	*1,421
Approximately 150 feet upstream of County Route 178	*1,467
Willowemoc Creek:	
At confluence with Beaver Kill	*1,277
Approximately 0.6 mile upstream of County Route 178	*1,444
Stewart Brook:	
At confluence with Willowemoc Creek	*1,290
Approximately 530 feet upstream of confluence with Willowemoc Creek	*1,290
Cattail Brook:	
At confluence with Willowemoc Creek	*1,421
Approximately 350 feet upstream of confluence with Willowemoc Creek	*1,421
Maps available for inspection at the Town Clerk's Office, Main Street, Livingston Manor, New York.	
NORTH CAROLINA	
Burke County (unincorporated areas) (FEMA Docket No. 7061)	
Linville River:	
At confluence with Lake James	*1,207
Approximately 2.6 miles upstream of State Route 126	*1,308
Maps available for inspection at the Burke County Resource Center, Morganton, North Carolina.	
Davis County (unincorporated areas) (FEMA Docket No. 7061)	
Yadkin River:	
Approximately 1,300 feet downstream of Idols Dam	*700
Approximately 500 feet upstream of Interstate Route 40	*710
Carter Creek Tributary:	
At confluence of Carter Creek	*701
Approximately 0.65 mile upstream of confluence of Carter Creek	*701
Carter Creek:	
Within community	*701
Bailey Creek:	
Approximately 2,500 feet downstream of SR 1621	*701
Approximately 1,800 feet upstream of Private Drive	*721
Smith Creek:	
At confluence with Carter Creek	*701
Approximately 1,000 feet upstream of Interstate Route 40	*749
Maps available for inspection at the Davie County Courthouse, 123 South Main Street, Mocksville, North Carolina.	
Winston-Salem (city), Forsyth County (FEMA Docket No. 7063)	
Hanes Park Branch:	
Just downstream of Buena Vista Road	*800
Approximately 1,300 feet upstream of Robinhood Road	*830
Monarcas Creek:	
Just downstream of Bethabara Road	*801
Just upstream of Bethabara Road	*807
Just downstream of North Cliffe Drive	*822
Just upstream of North Cliffe Drive	*829
Just upstream of University Parkway	*840

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Building Inspector's Office, 100 Liberty Walk, Winston-Salem, North Carolina.	
NORTH DAKOTA	
Forest River (city), Walsh County (FEMA Docket No. 7063)	
Forest River:	
Approximately 2,400 feet downstream of Burlington Northern Railroad	*858
Just upstream of County Road 6	*863
Approximately 3,500 feet upstream of Soo Line Railroad	*865
Maps are available for review at the First American Bank, Main Street, Forest River, North Dakota.	
OHIO	
Powell (vil), Delaware County (FEMA Docket No. 7064)	
Bartholomew Run:	
Approximately 1,000 feet downstream of confluence of Tylers Run	*820
Approximately 50 feet upstream of CSX Transportation	*921
Tylers Run:	
At downstream corporate limits	*830
At upstream corporate limits	*861
Retreat Run:	
Approximately 100 feet downstream of State Route 315	*775
Approximately 600 feet upstream of Retreat Lane West	*910
Maps available for inspection at the City Hall, 260 Village Park Drive, Powell, Ohio.	
OKLAHOMA	
Chickasha (city), Grady County (FEMA Docket No. 7058)	
Congo Creek:	
Approximately 1,500 feet downstream of the Chicago, Rock Island and Pacific Railroad	*1,086
Just upstream of First Street	*1,092
Just upstream of Ninth Street	*1,125
Just downstream of Country Club Road	*1,163
Just upstream Brookpart Lane	*1,192
Congo Creek East Branch:	
Just upstream of the Chicago, Rock Island and Pacific Railroad	*1,088
Just upstream of Grand Avenue	*1,090
Just downstream of H.E. Bailey Turnpike	*1,098
Lightner Diversion of Congo Creek:	
At the confluence with Congo Creek	*1,106
Approximately 860 feet upstream of the confluence with Congo Creek	*1,107
At the divergence from Congo Creek	*1,112
9th Street Diversion of Congo Creek:	
At the confluence with Congo Creek	*1,117
Approximately 300 feet upstream of the confluence with Congo Creek	*1,123
At the divergence from Congo Creek	*1,124
Congo Creek Middle Branch:	
Just downstream of Country Club Road	*1,149
Approximately 950 feet upstream of Country Club Road	*1,154
Approximately 4,350 feet upstream of Country Club Road	*1,175
Line Creek:	
Just upstream of Highway 62	*1,098
Approximately 1,000 feet downstream of Iowa Avenue	*1,105
Just downstream of 29th Street	*1,110
Just upstream of 29th Street	*1,112
Approximately 4,280 feet upstream of 29th Street	*1,121
Rock Hollow Creek:	
Just upstream of Dan Allen Drive	*1,100
Just downstream of Frisco Avenue	*1,101
Approximately 3,140 feet upstream of 29th Street	*1,103
West Side Creek:	
At the confluence with Line Creek	*1,108
Just upstream of Georgia Avenue	*1,120
Just upstream of Grand Avenue	*1,136
Just upstream of Carolina Avenue	*1,149
Approximately 3,100 feet upstream of Country Club Road	*1,170
West Side Creek Tributary A:	
At the confluence with West Side Creek	*1,156
Just upstream of 29th Street	*1,166
Just upstream of the upper dam	*1,196
Maps are available for review at City Hall, 101 North Sixth Street, Chickasha, Oklahoma.	
PUERTO RICO	
Rio Culebrinas Basin (FEMA Docket No. 7061)	
Rio Guayabo:	
Approximately 110 meters upstream of confluence with Bahia De Aguadilla (Atlantic Ocean)	*2.7
At the confluence of Rio Culebra	*3.1
Rio Culebra:	
Approximately 3.4 kilometers above confluence with Bahia De Aguadilla (Atlantic Ocean)	*12.0
At the confluence with Rio Guayabo	*3.1
Cano Guayabo:	
At confluence with Rio Culebra	*7.1
Approximately 1.5 kilometers upstream of confluence with Rio Culebra	*9.5
Unnamed Stream:	
At confluence with Cano Guayabo	*9.5
Approximately 510 meters upstream of confluence with Cano Guayabo	*10.1
*Elevations in Meters (Mean Sea Level)	
Maps available for inspection at the Minillas Governmental Center, De Diego Avenue, Stop 22, North Building, 13th Floor, San Juan, Puerto Rico.	
RHODE ISLAND	
North Smithfield, Town (Providence County) (FEMA Docket No. 7063)	
Crookfall Brook:	
At confluence with Blackstone River	*116
Aprpoximately 630 feet upstream of Old Great Road	*279
Maps available for inspection at the Town Clerk's Office, Memorial Town Building, 1 Main Street, Slatersville, Rhode Island.	
UTAH	
Carbon County (unincorporated areas) (FEMA Docket No. 7063)	
Price River:	
At the confluence with Cardinal Wash	*5,462
Approximately 200 feet upstream of 400 East Street	*5,490
Approximately 500 feet downstream of the confluence of Gordon Creek	*5,586
Approximately 2,800 feet upstream of Third West Street and North of Highway 6	*5,517
Meads Wash:	
At the upstream side of Highway 6	*5,487
At the Denver and Rio Grande Western Railroad	*5,499
Approximately 2.3 miles upstream of the Denver and Rio Grande Western Railroad	*5,672
Maps are available for review at the Planning and Zoning Department, 65 South First East, Price, Utah.	
Price (city), Carbon County (FEMA Docket No. 7063)	
Price River:	
Approximately 400 feet downstream of Carbon Avenue	*5,498
Just downstream of 300 West Street	*5,506
Approximately 600 feet upstream of 100 North Street	*5,530
At the intersection of 300 South Street and Seventh West Street	*5,517
Approximately 200 feet north of the intersection of 100 North Street and Price River Drive	*5,528
Meads Wash:	
Approximately 1,050 feet downstream of 400 South Street	*5,502
Just upstream of 100 North Street	*5,570
Approximately 1,300 feet upstream of 800 North Street	*5,660
Maps are available for review at the Department of Public Works, 432 West 600 South, Price, Utah.	
St. George (city), Washington County (FEMA Docket No. 7063)	
Fort Pierce Wash:	
Approximately 3,300 feet downstream of Fort Pierce Drive	*2,552
Approximately 1,400 feet downstream of Fort Pierce Drive	*2,561
Approximately 100 feet upstream of Fort Pierce Drive	*2,569
Approximately 2,350 feet upstream of Fort Pierce Drive	*2,578
Maps are available for review at the Office of the City Engineer, 175 East 200 North, St. George, Utah.	
VIRGINIA	
Montgomery County (unincorporated areas) (FEMA Docket No. 7058)	
Roanoke River:	
Approximately 725 feet downstream of County boundary (in Roanoke County)	*1,180
Approximately 200 feet downstream of confluence of North and South Forks Roanoke River	*1,194
North Fork Roanoke River:	
At upstream side of Norfolk and Western Railway	*1,196
Approximately 300 feet upstream of Interstate Route 81	*1,232
South Fork Roanoke River:	
Approximately 300 feet upstream of confluence with Roanoke River	*1,195
Approximately 250 feet upstream of Norfolk and Western Railway	*1,214

*Elevations in Meters (Mean Sea Level)

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Montgomery County Courthouse, Franklin and Main Street, Christiansburg, Virginia.	
Pulaski (town), Pulaski County (FEMA Docket No. 7063)	
Peak Creek:	
Approximately 0.6 mile downstream of the confluence of Thom Spring Branch	*1,865
At upstream side of Commerce Street	*1,934
Tract Fork:	
At the confluence with Peak Creek	*1,918
At upstream side of Altoona Road	*1,929
Sproules Run:	
At the confluence with Peak Creek	*1,904
Approximately 0.10 mile downstream of U.S. Route 11 (5th Street)	*1,909
Maps available for inspection at the Town Engineer's Office, 42 1st Street, N.W., Pulaski, Virginia.	
WISCONSIN	
Unincorporated areas of Jackson County (FEMA Docket No. 7058)	
East Fork Black River:	
Just upstream of Pray Road	*930
About 0.5 mile downstream of Cranberry Road	*961
Maps available for inspection at the County Courthouse, 307 Main Street, Black River Falls, Wisconsin.	
Malden Rock (village), Pierce County (FEMA Docket No. 7058)	
Mississippi River:	
Within community	*682
Unnamed Coules:	
At mouth	*682
About 440 feet downstream of County Highway S, at bottom of steps	*758
About 400 feet downstream of County Highway S, at top of steps	*765
About 90 feet upstream of County Highway S	*783
Maps available for inspection at the Village Hall, Malden Rock, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: August 5, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–19702 Filed 8–17–93; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 76

[MM Docket No. 92–266; FCC No. 93–389]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rules; limited temporary stay.

SUMMARY: The Commission has temporarily stayed the effectiveness of its rules implementing the rate regulation provisions of the Cable Act of 1992 with respect to small cable television systems—that is, those systems that have 1,000 or fewer subscribers. This action is necessary to enable the Commission to review petitions for reconsideration that indicate that the rules create administrative burdens and costs of compliance that disproportionately affect small cable systems. This action is intended to permit the Commission to make any necessary modifications to its rules consistent with the Cable Act's directive that the Commission reduce the administrative burdens and costs of compliance for small cable systems. This action does *not* affect cable television systems that have more than 1,000 subscribers. For those systems, the rate regulation rules are effective September 1, 1993, as scheduled.

EFFECTIVE DATE: The effective date of the amendments to parts 0 and 76, published at 58 FR 29737 (May 21, 1993), extended to October 1, 1993, by an order, published at 58 FR 33560 (June 18, 1993), and moved to September 1, 1993 by an order, published at 58 FR 41042 (August 2, 1993), is temporarily stayed for those cable systems that have 1,000 or fewer subscribers. This limited, temporary stay is effective September 1, 1993 and will remain in effect until the Commission terminates the stay and establishes a new effective date in an order on reconsideration addressing the administrative burdens and costs of compliance for small cable systems. The Commission will publish in the Federal Register the new effective date of the rules with respect to small cable systems at that time.

FOR FURTHER INFORMATION CONTACT: Richard K. Welch, Office of the General Counsel, 202–632–6990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Memorandum Opinion and Order segment of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC No. 93–389, adopted August 10, 1993, and released August 10, 1993. A synopsis of the Further Notice of Proposed Rulemaking segment of this decision is published elsewhere in this issue of the Federal Register. The complete text of the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at 202–857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of the Memorandum Opinion and Order

The Commission's Memorandum Opinion and Order addresses three petitions to stay the effectiveness of the Commission's rules implementing the rate regulation provisions of the Cable Act of 1992. The Commission adopted these rules in a Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92–266, FCC 93–177 (released May 3, 1993), 58 FR 29736 (May 21, 1993). In an Order released July 27, 1993, MM Docket No. 92–266, FCC 93–372, 58 FR 41042 (Aug. 2, 1993), the Commission established September 1, 1993, as the effective date of the rules. The petitions seek a stay of the rules until the Commission resolves pending petitions for reconsideration and completes a parallel rulemaking concerning cost-of-service standards for cable systems subject to rate regulation, or, in the alternative, until judicial review of the rules is complete.

The Commission denies the petitions to the extent they seek a universal stay of the rules for all cable systems nationwide. The petitioners have not met the standards for grant of such a stay. In particular, the petitioners have not demonstrated that the cable industry will suffer irreparable harm if a stay is not granted.

Nevertheless, the Commission has decided that a limited, temporary stay of the rules with respect to small cable systems—those systems that have 1,000 or fewer subscribers—will serve the public interest. The Cable Act of 1992 directs the agency to design its rules to reduce the administrative burdens and costs of compliance for cable systems that have 1,000 or fewer subscribers. Moreover, the Commission has received numerous petitions for reconsideration indicating that the rules as currently drafted pose inordinate burdens for small cable systems. Accordingly, a temporary stay of the rules with respect to cable systems that have 1,000 or fewer subscribers will give the Commission an opportunity to evaluate fully the arguments and proposals currently before the Commission on ways to reduce administrative burdens and costs of compliance that may disproportionately affect small cable systems. The temporary stay for small

cable systems will remain in effect until the effective date of the Commission's order on reconsideration addressing the application of the rules to small cable systems. Thus, to the extent that the petitions for stay request this limited relief, the Commission grants the petitions.

The Commission emphasizes that the temporary, limited stay does not apply to cable systems that have more than 1,000 subscribers. For such systems, which do not fall within the statutory definition of "small system," the rate regulation rules will take effect September 1, 1993, as scheduled.

Ordering Clauses

Accordingly, *it is ordered,* That the petitions for stay filed by InterMedia Partners, and the Coalition of Small System Operators, Prime Cable of Alaska, L.P., and the Community Antenna Television Association, Inc., on July 28, 1993, and Century Communications Corp. on August 2, 1993, are granted to the limited extent they seek a stay of the cable television rate regulation rules with respect to cable systems that have 1,000 or fewer subscribers, and otherwise are denied.

It is further ordered, That the Commission's cable television rate regulation rules adopted in Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92–266, FCC 93–177 (released May 3, 1993), 58 FR 29736 (May 21, 1993) are temporarily stayed with respect to those cable systems with 1,000 or fewer subscribers. This limited stay shall remain in effect until the effective date of the Commission's order on reconsideration addressing issues concerning administrative burdens and costs of compliance for small cable systems.

List of Subjects in 47 CFR Part 76

Cable Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–19889 Filed 8–13–93; 4:54 pm]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 27A)]

Rail General Exemption Authority: Used Motor Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Final Rule.

SUMMARY: The Commission is exempting from its regulation the rail transportation of used motor vehicles (STCC 41–118). The Commission has concluded that regulation of the rail transportation of the commodities contained in this code is not necessary to carry out the rail transportation policy, and that such regulation is not needed to protect shippers from the abuse of market power. Accordingly, as set forth below, these commodities are being added to the list of exempt commodities in our regulations.

EFFECTIVE DATE: This action is effective on September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: In a decision served January 25, 1993, and published January 26, 1993, (58 FR 6104), we instituted a proceeding to consider whether to exempt from the provisions of 49 U.S.C. subtitle IV the rail transportation of used motor vehicles (STCC 41–118).[1] We concluded, preliminarily, that exemption of the rail transportation of STCC 41–118 commodities would be consistent with the 49 U.S.C. 10505(a) exemption criteria.

Comments were filed by the Association of American Railroads (AAR) on behalf of itself and its member railroads, Mitsubishi Motor Sales of America, the American Automobile Manufacturers Association, and General Motors Corporation. All commenters support the proposed exemption.

The rail carrier exemption provision, 49 U.S.C. 10505(a), requires us to exempt "a person, class of persons, or a transaction or service" when we find: (1) That regulation is not necessary to carry out the rail transportation policy in 49 U.S.C. 10101a (RTP); and (2) either (a) that the transaction or service is of limited scope, or (b) that regulation is not needed to protect shippers from the abuse of market power.

We believe the exemption of used motor vehicles satisfies the section 10505(a) exemption criteria. We find that regulation here is not necessary to carry out the RTP, and that the exemption would be consistent with, and in furtherance of, the RTP. The comments affirm that effective and vigorous competition exists for the rail transportation of used vehicles. The exemption would further enhance this competition by providing railroads more flexibility to quote and change their prices in response to market demand and to offer immediate service to shippers based on those new prices. The ability to respond quickly and efficiently to the marketplace would thus allow railroads to become more effective competitors in response to shipper needs and other forms of transportation. The exemption would permit railroads to operate more efficiently by eliminating unnecessary administrative costs and paperwork burdens associated with tariff and contract summary filing for used motor vehicles.

The exemption would not bring about any public health or safety concerns, discourage fair wages or safe and suitable working conditions, result in predatory pricing or practices, or discourage energy conservation. The exemption would allow, to the maximum extent possible, competition to establish reasonable rates; minimize the need for Federal regulatory control; and ensure the continuation of a sound transportation system.

We find that regulation of the rail transportation of used motor vehicles (STCC 41–118) is not needed to protect shippers from the abuse of market power. We find that regulation is not needed to protect shippers from the abuse of market power. Indeed, some of the largest shippers of used motor vehicles have filed comments in support of the exemption. This transportation consists primarily of fleet sales resulting from manufacturers' "buy-back" programs from large rental fleets and from other vehicles being disposed of by rental companies. The traffic generally originates in major automobile rental markets and is typically transported in carload lots or multiple carload shipments to numerous geographically dispersed distribution centers throughout the country.

The transportation of used motor vehicles is a highly competitive market. AAR notes that before 1991, rail carriers played only a small role in the transportation of these commodities with the vast amount of traffic handled by motor carriers. Since 1991, rail traffic for used motor vehicles has expanded but still represents a small fraction of

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[1] The 1993 version of the Standard Transportation Commodity Code, Tariff 6001–U (effective January 1, 1993) defines STCC code 41–118 as "USED VEHICLES." It includes three subgroupings: STCC 41–118–20 is defined as "BUSES, MOTOR, PASSENGER, OR MOTOR COACHES, USED TITLED VEHICLES"; STCC 41–118–30 is defined as "MOTOR VEHICLES, AUTO, USED TITLED PASSENGER, SU [set up]"; and STCC 41–118–35 is defined as "MOTOR VEHICLES, AUTOMOBILE, USED TITLED VEHICLES, FREIGHT, SU, INCLUDING MOTOR VEHICLE TRACTORS, DRIVING TRUCKS FOR FREIGHT VEHICLES." Thus, the commodities classified under STCC 41–118 can be described as "used motor vehicles."

the market.[2] Motor carriers remain powerful competitors for this traffic. An exemption would enable the railroads to become more effective competitors for this traffic and thus give shippers additional options. There is also intense rail-to-rail and geographic competition because shippers have numerous options in selecting origin and destination points for used motor vehicle traffic and thus need not limit rail transportation to only one carrier.

Based upon these findings, we are exempting the rail transportation of used motor vehicles (STCC 41–118) from the provisions of 49 U.S.C. subtitle IV by adding this STCC code to the list of exempted commodities found at 49 CFR 1039.11. The exemption is subject to the exceptions contained in 49 CFR 1039.11(a), which generally relate to car hire and car service, and in 49 CFR 1039.11(b), which requires carriers to continue to comply with applicable accounting and reporting requirements.

Environmental and Energy Consideration

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We conclude that this action will not have a significant impact on a substantial number of small entities. The shippers of used motor vehicles are, by and large, major corporations.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: August 4, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Vernon A. Williams,

Acting Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, paragraph (a) is amended by adding to the chart, after STCC No. 39, STCC No. 41–118 (Used vehicles):

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
*	* * *	*
41 118	6001–U, eff. 1–1–93.	Used vehicles.

* * * * * *

[FR Doc. 93–20113 Filed 8–17–93; 8:45 am]

BILLING CODE 7035–01–P

[2] Mitsubishi states, however, that it uses rail for about 90% of its used vehicle traffic.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC05

Endangered and Threatened Wildlife and Plants: Coffin Cave Mold Beetle (Batrisodes texanus) and the Bone Cave Harvestman (Texella reyesi) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; technical corrections.

SUMMARY: Recently published taxonomic studies have revealed that two listed species, the Kretschmarr Cave mold beetle (*Texamaurops reddelli*) and the Bee Creek Cave harvestman (*Texella reddelli*), each comprise two species. The next republication of the List of Endangered and Threatened Wildlife will include two additional entries, the Coffin Cave mold beetle (*Batrisodes texanus*) and the Bone Cave harvestman (*Texella reyesi*), to ensure that recognition and protection under the Endangered Species Act (Act) is provided for species equivalent to the originally listed taxa. This rule describes the technical basis for these changes to the List.

EFFECTIVE DATE: September 17, 1993.

ADDRESSES: Lisa O'Donnell, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, 611 East 6th Street, room 407, Austin, Texas 78701.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, telephone: 512/482–5436.

SUPPLEMENTARY INFORMATION:

Background

A final rule listing five species of Texas karst invertebrates as endangered was published by the U.S. Fish and Wildlife Service (Service) on September 16, 1988 (53 FR 36029–36033). That final rule included the Kretschmarr Cave mold beetle (*Texamaurops reddelli* Barr and Steeves) and the Bee Creek Cave harvestman (*Texella reddelli* Goodnight and Goodnight). Recently published taxonomic revisions by Chandler (1992) and Ubick and Briggs (1992) present evidence that each of these species, as formerly recognized, actually comprises two species.

The final rule listing the Kretschmarr Cave mold beetle (*Texamaurops reddelli*) indicated that this species was known from Kretschmarr, Amber, Tooth, and Coffin caves in Travis and Williamson counties, Texas. Coffin Cave, Williamson County, was the northern-most locality recognized for that species. The Coffin Cave population was subsequently placed in the newly described species *Batrisodes texanus*, along with specimens from a few Williamson County localities to the south of Coffin Cave (Chandler 1992). The genera *Texamaurops* and *Batrisodes* are very similar, the key difference being a "pencil" of appressed setae present on the metatibiae in *Batrisodes*, but absent in *Texamaurops*. Detection of this character requires magnification of the appropriate appendages. All known localities of *Texamaurops reddelli* and *Batrisodes texanus* are within the recognized range of the Kretschmarr Cave mold beetle as it was originally listed, although additional localities have been discovered within that range. Both species continue to face the same general threats identified in the original listing. Because these two species together are equivalent to the originally listed Kretschmarr Cave mold beetle, both species will be included as endangered species in the next republication of the List of Endangered and Threatened Wildlife (50 CFR 17.11). *Texamaurops reddelli* will retain the common name of Kretschmarr Cave mold beetle, as in previous publications of the List, and the new entry for *Batrisodes texanus* will include the common name of "Coffin Cave mold beetle."

The final rule listing the Bee Creek Cave harvestman (*Texella reddelli*) indicated that this species was known from several caves, which are distributed about 22 miles (34 km) along the edge of the Edwards Plateau in Travis and Williamson counties, Texas. *Texella reyesi* was subsequently described to include some of the specimens formerly attributed to *Texella reddelli*, as well as specimens from several newly-discovered localities (Ubick and Briggs 1992). According to Ubick and Briggs (1992, p.208), "[t]he two species are clearly very closely related and, using the standards of genitalic distinctness applied to other

Texella species, may even be considered conspecific." Both of these species continue to face the same general threats identified in the original listing of the Bee Creek Cave harvestman. Their combined ranges, including newly-discovered localities, extend about 31 miles (50 km) along the edge of the Edwards Plateau in Travis and Williamson counties. Although the weak differentiation of the two species would justify the continued recognition of all of these populations under the single name recognized in the original listing, the Service prefers to follow the published revision in taxonomy and recognize *Texella reddelli* and *Texella reyesi* as equivalent to the originally-listed Bee Creek Cave harvestman. Both species will therefore be included as endangered species in the next republication of the List of Endangered and Threatened Wildlife (50 CFR 17.11). *Texella reddelli* will retain the common name of Bee Creek Cave harvestman, as in previous publications of the List, and the new entry for *Texella reyesi* will include the common name of "Bone Cave harvestman."

The Service has determined that this amendment to 50 CFR of taxonomic changes does not impact or change the status of the species covered under the current List of Threatened and Endangered Wildlife nor does it affect the types of activities that are permitted or prohibited. Since this final rule reflects actions already accomplished by the scientific community, this document is not a rule as contemplated by the Regulatory Flexibility Act (5 U.S.C 601) and Executive Order 12291. Therefore, as provided by 5 U.S.C. 553(b)(3)(B), the Service has determined that solicitation of public comment is unnecessary and serves no public interest.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Chandler, D.S. 1992. The Pselaphidae (Coleoptera) of Texas caves. Texas Mem. Mus., Speleol. Monogr. 3:241–253.

Ubick, D., and T.S. Briggs. 1992. The harvestman family Phalangodidae. 3. Revision of *Texella* Goodnight and Goodnight (Opiliones: Laniatores). Texas Mem. Mus., Speleol. Monogr. 3:155–240.

Author

The primary author of this final rule is Dr. Steven M. Chambers, Division of Endangered Species, U.S. Fish and Wildlife Service Regional Office, P.O. Box 1306, Albuquerque, N.M. 87103 (telephone: 505/766–3972).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

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

PART 17—[AMENDED]

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

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

§ 17.11 [Amended]

2. Amend § 17.11(h) in the entries for "Beetle, Kretschmarr Cave mold" under Insects and for "Harvestman, Bee Creek Cave" under Arachnids by revising the "When listed" column to read "327, 513".

3. Amend § 17.11(h) by adding the following entries, in alphabetical order under Insects and Arachnids, respectively, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
Insects							
•	•	•	•	•	•		•
Beetle, Coffin Cave mold.	*Batrisodes texanus* .	U.S.A. (TX)	NA	E	327,513	NA	NA
•	•	•	•	•	•		•
Arachnids							
•	•	•	•	•	•		•
Harvestman, Bone Cave.	*Texella reyesi*	U.S.A. (TX)	NA	E	327,513	NA	NA
•	•	•	•	•	•		•

Dated: July 27, 1993.
Richard N. Smith,
Acting Director.
[FR Doc. 93–19533 Filed 8–17–93; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920780–2180; I.D. 081293A]

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Turtle excluder device exemption.

SUMMARY: NMFS will allow 55-minute tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina through September 15, 1993. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-time limits are allowed in lieu of TEDs.

EFFECTIVE DATE: This rule is effective from August 16, 1993 through September 15, 1993.

ADDRESSES: Comments on the collection-of-information requirement in this action should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams; and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, National Sea Turtle Coordinator (301/713–2319) or Charles A. Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, (813/893–3366).

SUPPLEMENTARY INFORMATION:

Background

In consecutive 30-day notice actions (most recently published May 17, 1993 (58 FR 28793), June 16, 1993 (58 FR 33219) and July 19, 1993 (58 FR 38537)), NMFS allowed limited tow times as an alternative to the requirement to use TEDs by shrimp trawlers in a small area off the coast of North Carolina. This area seasonally exhibits high concentrations of brown algae, *Diclyopteris* spp., and a red alga, *Halymenia* sp. Shrimp live within the algae, which shrimpers harvest. Use of TEDs under these conditions is impractical because they clog or exclude a large portion of the algae. Because nesting season in the restricted area generally occurs from May 15 though August 15, previous tow-time limits have been 30 minutes. This action increases the tow-time limit to 55 minutes because the nesting season is essentially over. A 55-minute tow time allows fishermen to harvest shrimp efficiently and maintains adequate protection for sea turtles that still may be nesting in this area. NMFS will continue to monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-time limits are allowed in lieu of TEDs and to determine whether algal concentrations continue to make TED-use impracticable.

The Assistant Administrator for Fisheries, NOAA, (AA) has determined that immediate action is necessary to conserve sea turtles pursuant to the regulations at 50 CFR 227.72(e)(6). The AA has also determined that incidental takings of sea turtles during shrimp trawling are unauthorized unless these takings are consistent with the supplemental section 7 consultation and revised incidental take statement prepared by NMFS on July 2, 1993.

This 30-day action is also necessary while an interim final rule is processed. NMFS expects to issue, at the expiration of this action, an interim final rule continuing the exemption through November, 1993.

Recent Events

The North Carolina sea turtle stranding network reported that only three turtle strandings occurred in the restricted area during the previous exemption period. Two of those strandings were apparent deliberate mutilations: One turtle was shot at close range, and one turtle was hacked to pieces. Other mutilations have been reported outside of the restricted area and NMFS investigations have found no evidence related to shrimpers operating in the restricted area. In general, sea turtle strandings in the exemption area have been lower than average. However, sea turtle strandings in areas south of the restricted area have been higher than average.

On five observed trips on shrimping vessels during the last exemption period in the restricted area, NMFS observers recorded that all shrimpers were using TEDs and no turtles were caught. Algae concentrations have increased steadily in the past month and observers reported that algae repeatedly clogged TEDs. Observers report that the highest concentrations of algae start about one third of a mile (0.6 km) from shore. As a result, shrimpers tend to fish closer inshore where TEDs may be towed longer without clogging. At this time shrimpers appear to be opting for longer tow times with TEDs instead of shorter tow times without them.

North Carolina Department of Marine Fisheries (NCDMF) enforcement reports that shrimping effort in the restricted area has been moderate because inshore areas in the southern parts of North Carolina are being more heavily fished. Enforcement officials report that, in the restricted area, most shrimpers are using TEDs and the few shrimpers using the tow-time alternative were complying with the 30-minute tow-time limit.

NMFS has determined that the environmental conditions in the restricted area may render TED-use impracticable in the next month. While algae levels have been low this year, NMFS expects that the algae will continue to increase.

Sea Turtle Conservation Measures

The sea turtle conservation measures published at 58 FR 38537 (July 19, 1993) are extended here for another 30 days, although the tow-time limit of 30 minutes is increased to 55 minutes. The owner or operator of a shrimp trawler trawling in the North Carolina restricted area must register with the Director, Southeast Region, NMFS, by telephoning 813/893–3141. Information required for registering is described in the previous exemptions. Shrimp trawlers in the restricted area must restrict tow times to 55 minutes or less when tow times are used as a alternative to the requirement to use TEDs. Tow times are measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water.

Classification

The AA has determined that this action is necessary to provide relief from an impractical TED-use requirement, while providing adequate protection for listed sea turtles, and while NMFS processes an interim final rule extending this action through November 1993. This action is consistent with the Endangered Species Act (ESA) and other applicable law. This action does not require a regulatory impact analysis under E.O. 12291 because it is not a major rule. Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general

notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The environmental assessments prepared for this action are described in the TED exemption published at 58 FR 28793 (May 17, 1993).

This action contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, requests for registration to trawl in the North Carolina restricted area. This collection of information has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see **ADDRESSES**).

The AA, pursuant to section 553(b)(B) of the APA, finds there is good cause to extend this exemption on an immediate basis and that it is impracticable and contrary to the public interest to provide advance notice and opportunity for comment. Failure to implement temporary measures would result in fishermen not being able to catch shrimp as efficiently as possible in the North Carolina restricted area, while still protecting endangered and threatened sea turtles. Because this action relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective.

Dated: August 12, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, NOAA.

[FR Doc. 93–19958 Filed 8–13–93; 12:58 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 158
Wednesday, August 18, 1993

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 93–13]

Risk-Based Capital Guidelines: Collateralized Transactions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend the risk-based capital guidelines to lower the risk-weight from 20 percent to zero percent for securities lending and repurchase agreement transactions, as well as certain collateralized letters of credit. This proposal would modify the OCC's risk-based capital guidelines so that the risk-weight assigned to transactions collateralized with cash or government securities more accurately reflects the minimal operational risk and the near absence of credit risk. In addition, this proposal would eliminate the disparity in the risk-based capital treatment of collateralized transactions in international markets, enabling national banks to compete more effectively with foreign banks. The OCC also is considering whether there are other transactions for which banks maintain a positive collateral margin of either cash or government securities that it could prudently reassign to the zero percent risk-weight category.

DATES: Comments must be received on or before September 17, 1993.

ADDRESSES: Interested persons are invited to submit written comments to Docket Number [93–13], Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, Southwest, Washington, DC 20219. Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT:

Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070; Robert Hemming, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170; Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division, (202) 874–4460; or Elizabeth Milor, Financial Economist, Economic and Regulatory Policy Analysis (202) 874–5220; Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The OCC adopted its risk-based capital guidelines in 1989 to implement the International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Agreement). See 54 FR 4168 (January 27, 1989). These guidelines, developed in cooperation with the Federal Deposit Insurance Corporation and the Federal Reserve Board, provide minimum capital requirements that vary primarily on the basis of the credit risk profiles of the assets and off-balance sheet activities of banks.

Under the present U.S. risk-based capital guidelines, all transactions collateralized by cash or government securities issued by OECD [1] countries are risk-weighted at 20 percent.[2] However, some transactions collateralized with cash or near-cash assets expose banks to significantly less credit risk than other such transactions. The OCC believes that typical securities lending and repurchase agreement transactions, as well as certain collateralized letters of credit expose banks to insignificant credit risk. Accordingly, the OCC proposes to permit transactions collateralized by cash or government securities to qualify for the zero percent risk-weight category.

The OCC is proposing that only securities lending and repurchase agreement transactions, and certain collateralized letters of credit be included in the zero percent risk-weight category. Because the OCC believes that other collateralized transactions may have similar minimal risks, the OCC requests comment on whether these other collateralized transactions could be prudently assigned to the zero percent risk-weight category.

Discussion

In developing U.S. risk-based capital guidelines, the federal banking agencies initially proposed assigning transactions collateralized by cash or government securities to a 10 percent risk-weight category. See 53 FR 8550, 8553 (March 15, 1988). Under the Basle Agreement, signatory countries have some latitude in assigning risk-weights to claims collateralized by cash or OECD government securities. Specifically, paragraph 39 of the Basle Accord provides:

> In view of the varying practices among banks in different countries for taking collateral and different experiences of the stability of physical or financial collateral values, it has not been found possible to develop a basis for recognizing collateral generally in the weighting system. The more limited recognition of collateral will apply only to loans secured against cash or against securities issued by OECD central governments and specified multilateral development banks. These will attract the weight given to the collateral (i.e. a zero or a low weight).

When the federal banking agencies adopted the final risk-based capital guidelines, they eliminated the 10 percent risk-weight category in the interest of simplicity. See 54 FR 4168 (January 27, 1989). To limit the types of claims qualifying for the zero percent risk-weight category, the agencies assigned claims collateralized by cash and OECD central government

[1] OECD countries include countries that are full members of the Organization for Economic Cooperation and Development (OECD) plus countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow.

[2] Specifically, 12 CFR part 3, appendix A, section 3(a)(2) assigns a 20 percent risk weight for:

(1) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States's Government or its agencies, or the central government of an OECD country.

(2) That portion of assets collateralized by the current market value of securities issued or guaranteed by United States Government-sponsored agencies.

(3) That portion of assets collateralized by the current market value of securities issued by official multilateral lending institutions of regional development institutions in which the United States is a shareholder or contributing member.

(4) Assets collateralized by cash held in a segregated deposit account by the reporting national bank.

securities, including securities unconditionally guaranteed by the U.S. government, to the lowest non-zero risk-weight, which is 20 percent. See 54 FR at 4173–4174.

Recently, the OCC reexamined the capital treatment of certain collateralized transactions, including securities lending and repurchase agreement transactions, collateralized letters of credit, and other similar collateralized transactions. Although the collateral securing these transactions qualifies for the zero percent risk-weight, the current U.S. risk-based capital guidelines assign these transactions to the 20 percent risk-weight category, primarily because of concerns associated with operational risk.

As a result of the reexamination of these transactions, the OCC believes that appropriately collateralized securities lending and repurchase agreement transactions, as well as collateralized letters of credit that serve as financial guarantees, expose national banks to virtually no credit risk and minimal operational risk. The OCC is less certain about the level of risk exposure of banks engaged in other types of collateralized transactions, including some collateralized letters of credit and collateralized swap agreements. The OCC invites comment on the risk exposure of banks engaged in collateralized letters of credit not covered by this proposal, as well as collateralized swaps and any other similar transactions secured with cash or OECD government securities.

The Proposal

The OCC proposes to assign those securities lending and repurchase agreement transactions, as well as collateralized letters of credit that serve as financial guarantees, to the zero percent risk-weight category that satisfy the criteria described below.

(1) The bank's counterparty must maintain a positive collateral margin relative to the value of the bank's exposure to the underlying claim. If the counterparty fails to maintain the positive margin, the transaction would no longer qualify for the zero percent risk-weight category.

(2) If the bank's counterparty uses cash as collateral for the transaction, the cash as collateral must be on deposit in the "lending" bank.

(3) If the bank's counterparty uses government securities to collateralize the transaction, the securities must be fully secured under a perfected security interest. Typically, this will require that the securities be either held by the bank or by a third party acting on behalf of the bank.

Qualifying Transactions: Securities Lending Transactions, Repurchase Agreement Transactions, and Collateralized Letters of Credit

The OCC believes that securities lending, repurchase agreement transactions, and collateralized letters of credit that serve as financial guarantees expose a participating bank to minimal risks. A typical contract for each of these transactions is structured to conform with the collateral requirements of this proposal, insulating a lending bank from credit risk. The OCC believes that it would be prudent to assign the zero percent risk-weight to the transactions described below if the transactions are collateralized as outlined in this proposal.

A typical securities lending transaction involves the short-term loan of securities that are collateralized fully by cash or government securities. The bank lends its own securities, or those of a third party to broker/dealer, who contracts to repay the loan with identical securities when the loan matures. In addition to earning income from the pledged collateral, the security lender typically continues to receive any income from the lent securities while the loan is outstanding.

Repurchase agreements are similar to securities lending transactions and expose participating banks to similar risks. Although repurchase agreements are structured as a sale of securities with an agreement to repurchase the same securities on a specified date, the market views repurchase agreements as collateralized loans. On the day the transaction is initiated, securities are sold for cash; on the day the transaction is unwound, the transaction is reversed and the cash lender receives a fee in addition to the securities originally sold.

Collateralized reinsurance letters of credit are an example of the financial guarantees that the OCC believes would qualify for the zero percent risk-weight category. A bank issues a reinsurance letter of credit to back a claim on a reinsurance company once a claim is made. These letters of credit are short-term financial guarantees, paying only if the reinsurance company does not meet its financial obligations. The reinsurance company typically pledges collateral in the form of cash or government securities to the bank issuing the letter of credit.

A bank engaged in any of the transactions described above typically requires the counterparty to secure the transactions with collateral in the form of cash or government securities. If the bank also requires the counterparty to maintain collateral such that the value of the collateral exceeds that of the lent securities or the amount of the letter of credit, in principle, the bank is not exposed to counterparty credit risk.

Operational Risk of Collateralized Transactions

The OCC is concerned about a bank's exposure to operational risk when engaged in the collateralized transactions of this proposal. Operational risk is the risk of bank loss because of its failure to process a transaction properly. The failure may be caused by inadequate controls, a breakdown in communication between the parties involved in a transaction, a malfunction in the bank's computer system, or a natural catastrophe. Most transactions expose banks to operational risk. The OCC believes that the growth and maturation of the securities lending, repurchase agreement, and collateralized letter of credit markets has led to an overall reduction in the operational risk associated with transactions in these markets.

Although a bank cannot completely eliminate operational risk for a given transaction, banks can minimize the effect of some factors that contribute to operational risk. Banks cannot eliminate the operational risk caused by violent weather, earthquakes, and other natural disasters; nor can they be certain that their computer systems will always operate flawlessly. However, banks can ensure that their internal controls, back-up systems, and their communication with counterparties are well-designed. Experience in processing specific transactions will improve bank efficiency in those markets as banks refine their systems of risk management and communication.

As activity has expanded in the markets for securities lending and repurchase agreements, and the markets for financial guarantees, banks have established routine practices and more standardized contracts. The existence of more uniform contract terms, particularly with regard to the treatment of pledged collateral, reduces the operational risk exposure of a bank arising from a misunderstanding of contract terms between the bank and its various counterparties. With more experience processing transactions, banks are also able to improve their systems of internal controls related to collateralized financial guarantees and securities lending and repurchase agreement transactions.

The OCC believes that the operational risk of these transactions may be further reduced if the bank's counterparty

pledges and maintains collateral such that the value of the collateral exceeds that of the bank's exposure to the counterparty. In addition, the bank should ensure that it acquires and maintains sufficient control over the collateral.

Perfection of Interest

Collateralized transactions differ from other types of transactions in that the assets are guaranteed by a pledge of collateral, which represents a security interest. The degree of protection afforded by the security interest is dependent on the quality of the collateral and the legal effectiveness of the pledge. Under this proposed rule, the quality of the collateral is maintained by limiting the types of qualifying collateral to cash (both domestic and foreign currency) and OECD government securities. With respect to the legal effectiveness of the pledge, the OCC believes that safe and sound banking practice generally requires that a bank acquire and maintain sufficient control over the collateral to protect the interest of the bank. Consequently, this proposed rule would require that a bank perfect its security interest in the collateral in order for the transaction to qualify for the zero percent risk-weight category. This requirement is consistent with the collateral requirements for national bank lending limits and affiliate transactions. See 12 CFR 32.6(d); *Fitzpatrick* v. *Federal Deposit Insurance Corporation*, 765 F.2d 569, 573–574 (6th Cir. 1985).

Maintaining the Collateral

The OCC will assign to the zero percent risk-weight category only those transactions for which a bank's counterparty continuously maintains a positive collateral margin, such that the value of the collateral exceeds the value of the bank's exposure to the counterparty. The OCC would assign at least a 20 percent risk-weight to any portion of a claim that is not collateralized in accordance with the requirements of this proposal.

Banks should calculate the collateral margin, fully taking into account any change in the market value of the bank's exposure to a counterparty under a claim, in relation to the market value of the collateral held in support of that claim. If the market value of the counterparty's collateral held by the bank falls below 100 percent of the amount of the bank's exposure under the claim, then the transaction no longer qualifies for the zero risk-weight.

A bank acting as principal, or as agent for a collateralized transaction, may wish to reinvest the collateral supplied by the counterparty. If the bank chooses to reinvest the collateral in securities other than OECD government securities, the transaction would no longer qualify for the zero risk-weight category. Instead, the transaction would qualify for the risk-weight category associated with the newly purchased collateral. For example, if a counterparty deposited cash with the bank, the bank may choose to reinvest the cash in commercial paper. The OCC believes that, in this case, the transaction would qualify for the 100 percent risk-weight category associated with the commercial paper.

Under the positive margin requirement, the OCC believes that a bank's potential risk of loss is very limited. For a bank to experience a loss, the market value of pledged collateral would have to decline substantially relative to the exposure of a bank under the claim on the very same day that a counterparty defaults.

If any of the components of these collateralized transactions—securities, bank deposits, or financial guarantee—is denominated in foreign exchange, fluctuations in exchange rates also could cause changes in market value. A bank should ensure that its counterparty for any given transaction maintain a positive collateral margin with respect to fluctuations in both interest rates and foreign exchange rates on a daily basis.

For financial guarantees, banks should monitor the market value of the pledged collateral to ensure that the counterparty is maintaining a positive collateral margin. If the collateral is securities, changes in market interest rates and other economic factors could reduce or eliminate the positive collateral margin on any given day. For securities lending and repurchase agreements, changing market factors could cause changes in both the market value of securities lent and those held as collateral.

In a market with a normal amount of volatility, if the bank adjusts the positive collateral margin daily, it is insulated from the counterparty credit risk. However, if market conditions are highly volatile, the lending bank may not be entirely insulated from credit risk. If the collateral margin falls below 100 percent on the same day as a counterparty defaults, a lending bank could experience a loss. The loss the bank would experience would be limited to the shortfall of the market value of the collateral relative to the size of the credit exposure. The OCC believes that potential bank losses for the transactions covered by this proposal would be very limited. The OCC invites comment concerning potential bank losses for other transactions satisfying the collateral requirements of this proposal.

Bank Indemnification

The OCC has some specific concerns with regard to a bank that acts as agent in a securities lending transaction. The OCC is concerned that a bank would indemnify a third party against all credit risk arising from the transaction. Normally, an agent does not bear any risk of loss in a securities lending transaction, but acts only as a representative for the principal. However, in securities lending transactions, the bank may agree to indemnify its customer against loss. If the bank limits the indemnification to the loss that the customer could incur in a default—in the case of a shortfall in the market value of the securities held as collateral relative to the lent securities—the bank, as agent, is exposed to the same minimal credit risk as the customer.

This proposal clarifies that where a bank is acting as agent for a customer in a securities lending transaction, the transaction would qualify for the zero percent risk-weight provided that the bank's indemnification is limited. Under this proposal, any indemnification extended by a bank must be limited to the loss the customer would experience as a result of a difference arising between the market value of the lent securities and the market value of the collateral securing the loan.

The OCC is uncertain about other indemnification agreements in the current market place and invites comment describing these agreements. The OCC may disqualify from the zero percent risk-weight category any transaction where the bank indemnifies the third party for any additional credit risk.

Swap Agreements and Other Collateralized Transactions

The OCC is considering whether other collateralized transactions, including collateralized swap agreements, expose banks to the same minimal risk as transactions currently assigned to the zero percent risk-weight category. The OCC wishes to reassign to the zero percent risk-weight category all collateralized transactions that conform with the requirements of this proposal. Therefore, the OCC requests comment from banks that engage in other collateralized transactions that might prudently be reassigned to the zero percent risk-weight category. The OCC is particularly interested in market

practices for collateralized swap agreements and collateralized letters of credit.

A swap agreement is a contract between two counterparties to pay and receive, at set intervals, amounts determined by the differences between two interest rates or the values of two currencies. Banks may serve as intermediaries between two counterparties with offsetting financial needs, creating a matched swap agreement. Banks may also act as one of the counterparties in an unmatched swap agreement. For both matched and unmatched swaps, the bank may be exposed to the credit risk of its counterparties. However, if the bank's counterparty collateralizes the swap agreement with cash or government securities, the credit risk to the bank may be minimal.

To comply with the requirements of this proposal, the bank must ensure that the counterparty maintains a positive collateral margin relative to the credit exposure implied by the swap agreement. The bank's credit exposure is the market value of the swap agreement, which is the value of the expected net cash flows over the life of the contract. The value of the expected net cash flows is relatively easy to measure in the market for a basic swap agreement. However, a bank might have difficulty measuring the market value of swap agreements with unique contract terms—swap agreements based on underlying commodities not widely traded, infrequently used indices, or negotiated for unusual maturities. A bank could design a unique swap agreement to meet the specific needs of an individual client that would have less value to other market participants.

Under this proposal, a bank must daily verify the market value of its credit exposure, as well as the market value of the collateral securing the claim. The bank may find it difficult to verify this positive margin on a daily basis for swap contracts that are not widely traded. If the positive margin is difficult to verify, the bank may not be certain it is insulated from the counterparty credit risk. Therefore, the transaction would not qualify for the zero percent risk-weight category.

Transactions With Collateral Pledged by Banks

The OCC also is concerned about a bank issuing a letter of credit where a counterparty requests that the bank post collateral to secure their own letter of credit. The bank would be fully exposed to the counterparty, because the counterparty has a legal claim on bank assets. The OCC does not intend to include these collateralized letters of credit in the zero risk-weight category. Nor would the OCC include any other transaction where a bank pledges collateral to guarantee its own performance.

International Comparability of Capital Standards

In reexamining the capital treatment of transactions collateralized with cash and government securities, the OCC noted that most foreign supervisors subscribing to the Basle Agreement assign the zero percent risk-weight to transactions collateralized with cash or government securities. Reassigning these transactions to the zero percent risk-weight category under U.S. capital standards would eliminate the disparate capital treatment.

Issues for Specific Comment

The OCC invites comments on all aspects of this proposal. Additionally, the OCC is interested in comment on the following specific issues:

(1) Should additional requirements be established to ensure that only very low-risk transactions are assigned to the zero percent risk-weight category? For example, should the zero percent risk-weight be available only to institutions that have appropriate management and operating systems in place?

(2) Should the OCC establish a specific minimum positive margin required for collateralized transactions to qualify for the zero percent risk-weight for those credit exposures with market values that experience normal volatility? Should the OCC require that national banks maintain margins in excess of this minimum for those exposures with more volatile market values?

(3) For some securities lending transactions, banks indemnify their clients against losses that could occur if the market value of the lent security exceeds that of the collateral provided. Should the OCC permit transactions with indemnification agreements that cover additional losses to qualify for the zero percent risk-weight?

(4) At this time, the OCC believes that this proposal would apply only to securities lending transactions, repurchase agreements, and certain collateralized financial guarantees. The OCC invites comment as to whether, in the current market place, there are other collateralized transactions that expose banks to minimal risk that have contracts structured to meet the collateral requirements of this proposal. The OCC is specifically interested in comments concerning (a) bank participation in collateralized markets for swap agreements and (b) bank issued collateralized letters of credit other than financial guarantees.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The adoption of this proposed rule would benefit national banks by eliminating the capital requirement for certain collateralized transactions and by achieving competitive equality with other financial institutions both domestically and internationally. While the exact volume of collateralized transactions is unknown, the OCC believes that eliminating the capital requirements for these types of collateralized transactions should not significantly impact national banks, regardless of size.

Executive Order 12291

It has been determined that this document is not a major rule as defined in Executive Order 12291, and a regulatory impact analysis is not required. This proposed rule will eliminate the capital requirement for national banks for certain qualifying collateralized transactions. As a result, the proposed rule will reduce somewhat the cost of bank operations. Inasmuch as the exact volume of collateralized transactions is unknown, the OCC believes that eliminating the capital requirements for these types of collateralized transactions should not significantly impact national banks. Therefore, the effect of this proposed rule should not be material.

Authority and Issuance

For the reasons set out in the preamble, appendix A of title 12, chapter I, part 3 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

2. In appendix A, section 3 is amended by adding a new paragraph (a)(1)(viii) and (ix), revising paragraph (a)(2)(iv), removing (a)(2)(xii), and redesignating paragraph (a)(2)(xiii) as (a)(2)(xii) to read as follows:

Appendix A—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(1) * * *

(viii) That portion of assets collateralized by cash on deposit if:

(A) The bank holds the cash on deposit in a segregated deposit account; or

(B) The bank is acting as a customer's agent in a transaction involving the loan or sale of securities that is collateralized by cash delivered to the bank, and any obligation by the bank to indemnify the customer does not exceed the difference between the market value of the securities and the cash collateral received.

(ix) That portion of assets collateralized by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country, if:[9a]

(A) The bank has a perfected security interest in the collateral;

(B) The bank maintains a daily positive margin of collateral fully taking into account any change in the market value of the collateral held as security; and

(C) The transaction involves no more than minimal risk.

(2) * * *

(iv) That portion of assets collateralized by cash on deposit or by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country that do not qualify for the zero percent risk weight category.

* * * * *

Dated: May 13, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 93–19896 Filed 8–17–93; 8:45 am]

BILLING CODE 4810–33–M

[9a] Assets collateralized by securities issued or guaranteed by the United States Government or its agencies, or the central government of an OECD country include, but are not limited to, securities lending transactions, repurchase agreements, and collateralized letters of credit such as reinsurance letters of credit and other similar financial guarantees. However, the OCC may at its discretion require that certain collateralized transactions, such as other collateralized letters of credit and collateralized swap agreements, be risk-weighted at 20% if they involve more than minimal risk.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANM–8]

Proposed Modification of Transition Area, Tillamook, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Tillamook Transition Area to accommodate an amendment to the Non-directional Radio Beacon (NDB–A) approach to the Tillamook Municipal Airport.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–8, 1601 Lind Avenue SW., Renton, Washington 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 address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–8, 1601 Lind Avenue SW., Renton, Washington 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-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056 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. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Tillamook transition area to accommodate the NDB–A approach to the Tillamook Airport. This proposal would add controlled airspace to contain IFR operations during portions of the terminal operation and while transitioning between the terminal and en route environments. The coordinates for this airspace docket are based on North American Datum 83. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Designation of Transition Areas

* * * * *

ANM OR TA Tillamook, OR [Revised]

Tillamook Airport, OR
(lat. 45°25'07" N, long. 123°48'49" W)
Wilson NDB, OR
(lat. 45°29'05" N, long. 123°51'23" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Tillamook Airport, and within 2.5 miles each side to the 148° and 328° bearings of the Wilson NDB extending from the 7.4-mile airport radius to 7 miles northwest of the Wilson NDB.

* * * * *

Issued in Seattle, Washington, on August 3, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–19991 Filed 8–17–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–16–93]

RIN 1545–AR50

Recapture of LIFO Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that describe the events that trigger the recapture of LIFO benefits under section 1363(d) of the Internal Revenue Code of 1986 when a C corporation elects to become an S corporation or merges into an S corporation in a tax-free reorganization. The proposed regulations reflect changes made to the law by the Revenue Act of 1987 and affect corporations that use the last-in, first-out (LIFO) method of accounting.

DATES: Written comments must be received by October 18, 1993. A public hearing has been scheduled for October 25, 1993. Requests to speak at the hearing, along with outlines of oral comments, must be received by October 4, 1993. See the notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments and requests to speak at the public hearing, along with outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, (attn: CC:DOM:CORP:T:R (PS–16–93), room 5228), Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (PS–16–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224. The public hearing will be held in the Commissioner's Conference Room, Third Floor, room 3313, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Elissa J. Shendalman, (202) 622–3040 (not a toll-free call). Concerning the public hearing, Carol Savage, (202) 622–8452 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1363(d) of the Internal Revenue Code of 1986 (Code). Section 10227(a) of the Revenue Act of 1987 amended section 1363 by adding section 1363(d).

Explanation of Provisions

This document provides guidance on the applicability of section 1363(d) to inventory of a C corporation that elects to become an S corporation or merges into an S corporation in a tax-free reorganization.

The legislative history of section 1363(d) of the Code indicates that, in enacting section 1363(d), Congress was concerned that taxpayers using the LIFO method might avoid the built-in gain rules of section 1374. Whether goods are disposed of following a conversion from C to S corporation status depends upon the inventory method used by the taxpayer. Thus, a C corporation using the LIFO method of accounting will not be taxed on the built-in gain attributable to LIFO inventory to the extent it does not liquidate LIFO layers during the ten-year period following the conversion. Section 1363(d) addresses this problem by having the corporation add an amount equal to the difference between the value of its inventory on the day of its S corporation election using the FIFO method and the value using the LIFO method to the gross income of the corporation for the last taxable year that the corporation operated as a C corporation.

Under the proposed regulations, an S corporation that succeeds to LIFO inventory in a tax-free reorganization with a C corporation is also subject to the LIFO recapture provisions of section 1363(d) of the Code. If a corporation could avoid the LIFO recapture amount by merging with either a new or a preexisting S corporation, the reorganization provisions of the Code could be used to circumvent both sections 1363(d) and 1374.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing has been scheduled for October 25, 1993. See the notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these regulations is Elissa J. Shendalman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1363–2 is added to read as follows:

§ 1.1363–2 Recapture of LIFO benefits.

(a) *In general.* A corporation must include the LIFO recapture amount (as defined in section 1363(d)(3)) in its gross income—

(1) In its last taxable year as a C corporation if the corporation inventoried assets under the LIFO method for its last taxable year before its S corporation election becomes effective; or

(2) In its last taxable year of existence if the corporation inventoried assets under the LIFO method during its last taxable year before transfer of these assets to an S corporation in a transaction where the S corporation's basis in the asset is determined in whole or in part by reference to the basis of the asset (or any other property) in the hands of a C corporation.

(b) *Payment of tax.* Any increase in tax caused by including the LIFO recapture amount in the gross income of the corporation shall be payable in four equal installments. The corporation must pay the first installment of this payment by the due date of its return, determined without regard to extensions, for the last taxable year the corporation operated as a C corporation or its last year of existence, whichever is applicable. The three succeeding installments must be paid—

(1) In the case of a corporation described in paragraph (a)(1) of this section, on or before the due date for the corporation's returns (determined without regard to extensions) for the succeeding three years; and

(2) In the case of a corporation described in paragraph (a)(2) of this section, on or before the due date for the successor corporation's returns (determined without regard to extensions) for the succeeding three years.

(c) *Basis adjustments.* Appropriate adjustments to the basis of inventory are to be made to reflect any amount included in income under this section.

(d) *Effective dates.* (1) The provisions of paragraph (a)(1) of this section apply to S elections made after December 17, 1987. For an exception, see section 10227(b)(2) of the Revenue Act of 1987.

(2) The provisions of paragraph (a)(2) of this section apply to transfers made after August 18, 1993.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–19574 Filed 8–17–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[PS–16–93]

RIN 1545–AR50

Recapture of LIFO Benefits; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations that describe the events that trigger the recapture of LIFO benefits under section 1363 (d) of the Internal Revenue Code of 1986 when a C corporation elects to become an S corporation or merges into an S corporation in a tax-free reorganization.

DATES: The public hearing will be held on Monday, October 25, 1993, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Monday, October 4, 1993.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R, (PS–16–93), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1363(d) of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

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 also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, October 4, 1993, an outline of the 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 to 10 minutes for an oral presentation exclusive of the time consumed by 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 Service Building until 9:45 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 direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–19575 Filed 8–17–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E4010/P566; FRL–4638–6]

RIN No. 2070–AC18

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide glyphosate and its metabolite, aminomethylphosphonic acid, in or on the raw agricultural commodity celeriac, at 0.2 part per million (ppm). The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP1E4010/P566], must be received on or before September 17, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of

Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 1E4010 to EPA on behalf of the Agricultural Experiment Station of California. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) propose the establishment of a tolerance for residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine salt of glyphosate in or on the raw agricultural commodity celeriac, at 0.2 ppm.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. Several acute toxicology studies placing the technical-grade glyphosate in Toxicity Category III (oral and eye irritation) and Toxicity Category IV (dermal and eye irritation).

2. A chronic feeding study in dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a no-observed-effect-level (NOEL) of 500 mg/kg/day. No effects were observed.

3. An 18-month carcinogenicity study in mice dosed at levels of 0, 150, 750, and 4,500 mg/kg/day. A systemic NOEL of 5,000 ppm and lowest-observed-effect-level (LOEL) of 30,000 ppm were established. Effects included increased hepatocyte hypertrophy and necrosis, chronic interstitial nephritis in males; decrease body weight in both sexes; increase in relative and absolute weight of testes and ovaries; and proximal tubule epithelial basophilia and hypertrophy in females.

4. A 2-year chronic feeding/carcinogenicity study in rats dosed at 0, 100, 400, and 1,000 mg/kg/day with a NOEL of 400 mg/kg/day and a LOEL of 1,000 mg/kg/day. The test revealed decreased body weight and body weight gain in females, cataracts in males, decreased urinary pH in males, increased relative liver weight (to body) at 12 months, and increased absolute and relative liver weights (to brain) at 24 months in males. No carcinogenic effects were observed under the conditions of the study.

5. A three-generation reproduction study in rats dosed at 0, 3, 10, and 30 mg/kg/day with a parental and reproductive NOEL of 30 mg/kg/day (HDT) and a developmental NOEL of 10 mg/kg/day. There was an increased incidence of focal tubular dilation of the kidney of male F3b weanlings (pups) of rats fed 30 mg/kg/day.

6. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a maternal NOEL of 175 mg/kg/day based on increased incidences of soft stool, diarrhea, nasal discharge, and deaths at the 350 mg/kg/day dose level. No toxicologically significant signs of developmental toxicity were observed at any dose level.

7. A teratology study was performed in rats using dose levels of 0, 300, 1,000, and 3,500 mg/kg/day. A maternal and a developmental NOEL of 1,000 mg/kg/day was established. Maternal rats showed a 28-percent decrease in body weight gain. There was an increase in the number of litters and fetuses with unossified sternebrae and a decrease in fetal body weight at the 3,500- mg/kg/day dose.

8. A battery of the following mutagenicity tests were performed: gene mutation assay (Ames and mammalian test), negative; structural chromosomal aberration assay (cytogenic *in vivo*), negative; and other genotoxicity assays (rec-assay in *B. subtilis*), negative.

The Agency (Peer Review Committee) has classified glyphosate as Group E for carcinogenicity potential (evidence of noncarcinogenicity for humans), based on lack of convincing carcinogenicity evidence in adequate studies in two species. A detailed discussion of carcinogenicity evaluations for glyphosate is provided in a **Federal Register** notice of May 5, 1993 (58 FR 26725).

The Dietary Risk Evaluation System (DRES) chronic exposure analysis used a Reference Dose (RfD) of 2.0 mg/kg/body weight/day based on a NOEL of 175 mg/kg/bwt/day from the developmental toxicity study in rabbits and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) for the overall U.S. population from published and proposed uses of glyphosate utilizes 1 percent of the RfD. The proposed use on celeriac would contribute an additional 2×10^{-10} mg/kg/bwt/day to the TMRC, which would not raise the risk expressed as a percentage of the RfD. The TMRC from published uses of glyphosate for the subgroup most highly exposed, children 1 to 6 years old, utilizes 1 percent of the RfD. Though no consumption estimates for celeriac are available for this subgroup, it can be assumed that consumption is small and that this petition would not add appreciable risk to the existing risk.

The nature of the residue is adequately understood for the purpose of the proposed tolerance, and an adequate analytical method utilizing high-pressure liquid chromatography (HPLC) is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since celeriac is not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.364 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E4010/P566]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 5, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. By amending 180.364(a) in the table therein by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Celeriac	0.2
* * * * *	

* * * * *

[FR Doc. 93-19840 Filed 8-17-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300292; FRL-4632-7]

RIN No. 2070-AC18

Components of Semiochemical Dispensers; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of components of semiochemical dispensers, made of solid matrix polymeric materials (including the monomers, plasticizers, and other ingredients), when these dispensers are large enough to be removed from the site, as inert ingredients (carriers) in pesticide formulations applied to growing crops only. This regulation is proposed by the Agency on its own initiative.

DATES: Comments, identified by the document control number [OPP-300292], must be received on or before September 17, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of 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 will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: The Agency proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of components of semiochemical dispensers made of solid matrix polymeric materials (including the monomers, plasticizers, and other ingredients), when these dispensers are large enough to be removed from the site, as inert ingredients (carriers) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

I. Definitions

a. *Semiochemicals.* Chemicals that are emitted by plants or animals and modify the behavior of receptor organisms. These chemicals must be naturally occurring or substantially identical to naturally occurring semiochemicals.

b. *Semiochemical dispenser.* A single enclosed or semienclosed unit that releases semiochemical(s) into the surrounding atmosphere via volatilization and is applied in a manner to provide point-source distribution of the semiochemical(s) into the environment.

II. Background

The Agency has received requests from researchers and registrants of semiochemical pesticide dispensers for clearance of the inert components in these dispensers. Agency-approved semiochemical dispensers include, but are not limited to, twist ties, similar to those used to close plastic food- storage bags; tags, similar to those used in nurseries to mark and price plants by attachment to tree or vine limbs; pieces of rope impregnated with semiochemicals for placement between or within rows of field crops; and cups which contain semiochemicals and are attached to wooden stakes or nonedible portions of growing crops. These dispensers are applied as discreet point-source dispensers of semiochemicals

and are not applied in a broadcast manner. At present only a limited number of dispenser materials are exempted from the requirement of a tolerance. Semiochemicals are considered to be low-risk, low-exposure substances because they have a nontoxic mode of action, are host-specific, are not likely to negatively impact nontarget organisms, are volatile, and are nonpersistent in the environment. They are applied at rates less than 50 grams per acre or at rates less than peak naturally occurring background levels. A generic exemption for this low-risk, low-exposure group of substances will facilitate the use of semiochemicals by reducing regulatory burdens.

As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided to develop this generic exemption without additional information. This decision was based upon the minimal exposure expected from this use and the nature of the substances involved. Exposure will be limited to inadvertent physical contact during growing only. In actuality, EPA expects the chances of any measurable residues occurring in food to be extremely low. To ensure that this is the case, EPA has specified in the exemption that the design of the dispenser must be such as to preclude any contamination by its components of the raw agricultural commodity or processed foods/feeds derived from the commodity. Furthermore, solid matrix polymeric materials generally pose low risk to humans. Many of the components used in these dispensers have been approved for food-contact uses of far greater dietary significance.

The exemption is limited to components of semiochemical dispensers made of solid matrix polymeric materials (including the monomers, plasticizers, and other ingredients) that are large enough to be retrieved from the site and are applied as point-source distributors of semiochemicals only. For example, a 2-inch plastic twist tie applied at the rate of 400 twist ties per acre to the limbs of fruit trees would be large enough to be retrieved from this site while 2-millimeter plastic beads applied broadcast at the rate of 20,000 beads per acre would not. The exemption will not apply to components of semiochemical formulations applied in a broadcast manner either to a crop field plot or to individual plants.

EPA has found that, when such products are used in accordance with good agricultural practice, a tolerance is not necessary to protect the public health. A generic exemption for this low-risk, low-exposure group of substances will facilitate the use of semiochemicals which are a low-risk naturally occurring pesticide. These ingredients are useful. Therefore, EPA proposes that an exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300292]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 2, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1122 to subpart D, to read as follows:

§ 180.1122 Components of semiochemical dispensers; exemption from the requirement of a tolerance.

(a) Components of semiochemical dispensers made of solid matrix polymeric materials (including the monomers, plasticizers, and other ingredients), when these dispensers are large enough to be removed from the site, are exempted from the requirement of a tolerance when used as inert ingredients (carriers) in pesticide formulations applied to growing crops only. These dispensers shall conform to the following specifications:

(1) Exposure must be limited to inadvertent physical contact only. The design of the dispenser must be such as to preclude any contamination by its components of the raw agricultural commodity or processed foods/feeds derived from the commodity by virtue of its proximity to the RAC or as a result of its physical size.

(2) The dispensers must be applied as point-source distributors of semiochemicals only. This exemption does not apply to components of semiochemical formulations applied in a broadcast manner either to a crop field plot or to individual plants.

(b) A semiochemical dispenser is a single enclosed or semi-enclosed unit that releases semiochemical(s) into the surrounding atmosphere via volatilization and is applied in a manner to provide point-source distribution of the semiochemical(s) into the environment.

(c) Semiochemicals are chemicals that are emitted by plants or animals and modify the behavior of receptor organisms. These chemicals must be naturally occurring or substantially identical to naturally occurring semiochemicals.

[FR Doc. 93–19828 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 413, 414, 424, 431, and 447

[BPD–309–P]

RIN 0938–AB50

Medicare and Medicaid Programs; Payment for Clinical Diagnostic Laboratory Tests

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish in regulations methods for determining fee schedules applicable for outpatient clinical diagnostic laboratory tests and payment policy related to these fee schedules. It would implement in regulations the requirements of a number of laws, the most recent being the Omnibus Budget Reconciliation Act of 1990. This proposed rule would also allow certain adjustments or exceptions to the fee schedules as authorized by statute. It would limit payments under both Medicare and Medicaid. Since 1984, statutorily-imposed fee schedules have been implemented by instructions to HCFA regional offices, fiscal intermediaries, and carriers. This proposed rule would codify these existing policies in regulations.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 18, 1993.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–309–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

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SUPPLEMENTARY INFORMATION:

I. Background

A. General Background Before July 1, 1984

Before July 1, 1984, Medicare payments for diagnostic laboratory tests furnished by independent laboratories and physicians were made on a reasonable charge basis, subject to the annual Part B deductible of $75 and 20 percent coinsurance for which the beneficiary was responsible. Diagnostic laboratory tests performed by hospitals for their outpatients were also paid for under Part B of Medicare, but on the basis of reasonable costs (or charges if they were lower than costs). Payment on these bases, also, was subject to the Part B deductible and copayment. Diagnostic laboratory tests for inpatients of hospitals were paid for on the basis of Part A reasonable costs or under the prospective payment system if the beneficiary had Part A coverage. They were paid for on the basis of Part B reasonable costs if the beneficiary had only Part B coverage. The Part A deductible and Part B deductible and coinsurance applied, respectively. If the hospital accepted patient specimens from physicians or other laboratories in the community, the hospital was paid under Part B in the same manner as an independent laboratory.

Medicare Part B payments for tests furnished by physicians, independent laboratories, or hospital laboratories for non-hospital patients (that is, for patients that are neither inpatients nor outpatients of the hospital) could be made on a reasonable charge basis either directly to the laboratory or to the beneficiary on the basis of an itemized bill. Laboratories could bill the Medicare program and be paid directly for the tests only if they accepted assignment of benefits. By accepting assignment, the laboratories agreed to accept as the full payment for the service the amount that the Medicare carrier determined to be the reasonable charge. However, if a laboratory did not accept assignment, it could bill the beneficiary, and the beneficiary would be liable for any difference between the laboratory's fees and the amounts allowed as reasonable by the carrier.

The carrier determined the reasonable charge for a clinical diagnostic laboratory test using the reasonable charge rules under subpart E of 42 CFR part 405. In general, the reasonable charge for a laboratory test was the least of: (1) The actual charge billed for the test, (2) the customary charge for the test, (3) the prevailing charge in the locality for the test, or (4) the charge applicable to the carrier's own policy holders and subscribers for a comparable test under comparable circumstances. In addition, the law provides (see the fifth sentence following section 1842(b)(3)(L) of the Social Security Act) that reasonable charges for medical services, supplies, and equipment that do not vary significantly in quality from one supplier to another may not exceed the lowest charge levels at which such items and services are widely and consistently available in a locality. Twelve commonly performed laboratory tests were subject to this lowest-charge-level provision.

Other statutory provisions have been available to limit the amount of reasonable charges. For example, since 1972, section 1833(h) of the Social Security Act (the Act) has authorized payment of 100 percent of negotiated rates for diagnostic laboratory tests, that is, without beneficiary coinsurance payments. However, this provision has not been implemented. Additionally, the former section 1842(h) of the Act was added by section 918 of the Omnibus Reconciliation Act of 1980, Public Law 96–499, to limit payment, for tests performed by independent laboratories but billed by physicians, to cover the costs of specimen collection and handling plus the lower of the independent laboratory's reasonable charge or the independent laboratory's charge to the physician, subject to deductible and coinsurance payments. The collection and handling fee was not authorized for laboratories or for

physicians who performed their own tests. Further, if the bill from the physician did not indicate who performed the test, payment was limited to the carrier's estimate of the lowest available charge in the locality. (This provision was later repealed by section 2303(e) of the Deficit Reduction Act of 1984 (DEFRA '84), Public Law 98–369, effective for tests furnished on or after July 1, 1984.)

Under the Medicaid programs, the States have generally used their own payment methodologies for outpatient diagnostic laboratory tests. However, the Medicare limit on payment to physicians billing for tests performed by independent laboratories discussed above also applied to the Medicaid programs (see former section 1902(a)(43) of the Act, as it existed before being stricken by section 2303(g)(1)(B) of DEFRA '84).

B. Legislative History Beginning July 1984

On July 18, 1984, DEFRA '84 was signed into law. Section 2303 of DEFRA '84 established a new method for determining payment amounts for outpatient clinical diagnostic laboratory tests paid for under the Medicare and Medicaid programs.

Generally, section 2303 of DEFRA '84 amended section 1833(h) of the Act to require the establishment and application of fee schedules to payments for clinical diagnostic laboratory tests under Part B of the Medicare program. Additionally, section 2303 added section 1903(i)(7) to the Act to provide that Federal financial participation is not available to the extent that payments by States under Medicaid exceed the fee-schedule amounts established under Medicare. The statute required that the fee-schedule amounts be updated for the second and subsequent years by an updating factor equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average). The fee schedules for tests performed during the period beginning July 1, 1984, and ending on June 30, 1987, were to be established on a regional, statewide, or carrier service area (as the Secretary determined to be appropriate). For tests performed on or after July 1, 1987, the fee schedules were to be established on a nationwide basis.

Under the authority of the amendment, the fee schedules apply to payments for tests performed in a physician's office, in an independent laboratory, in a hospital laboratory (for patients other than inpatients), and in a rural health clinic for patients who receive no other services from the clinic. The fee schedules do not apply to tests performed in hospitals and skilled nursing facilities for inpatients. The fee schedules do not apply to facilities where laboratory tests are paid for under approved State or regional payment control programs. The fee schedule provisions apply, under the Medicare program, to tests performed on or after July 1, 1984, and, under Medicaid, for tests performed on or after July 1, 1984, and paid for through quarterly Federal financial participation payments made on or after October 1, 1984.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272, was signed into law. Section 9303 of COBRA established a national limitation amount on the fee-schedule method, revised the effective date for implementation of a national fee schedule to January 1, 1988, and made certain other modifications to the provisions of section 1833(h) of the Act.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509, was signed into law. Section 9339 of OBRA '86 added payment for travel allowances, further revised the effective date for implementation of a national fee schedule to January 1, 1990, and made certain other modifications to the provisions of section 1833(h) of the Act.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, was signed into law. Section 4064 provided for limitations on changes in fee schedules, reduced the fee schedules of certain automated and similar tests by 8.3 percent, revised the calculation of national limitation amounts, and made certain other modifications to the provisions of section 1833(h) of the Act.

On November 10, 1988, the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) was signed into law. Section 8421 amended section 1833(h) of the Act to provide special rules for payment to certain laboratories of travel fees to collect samples.

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239, was signed into law. Section 6111 of OBRA '89 amended section 1833(h) of the Act to reduce national limitation amounts, to strike the requirement for a national fee schedule, and to provide certain restrictions on payments to referring laboratories.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, was signed into law. Section 4154 of OBRA '90 amended section 1833(h) of the Act to limit annual adjustments in fee schedules for 1991, 1992, and 1993, to reduce national limitation amounts, and to make certain other modifications.

C. Program Implementation

Because of the limited timeframe for implementing the statutory provisions described and because, for the most part, the provisions are clear and nondiscretionary, we have implemented the basic fee-schedule program set forth in the provisions through instructions and memoranda issued to HCFA regional offices, fiscal intermediaries, and carriers.

To implement the provisions of DEFRA '84, in July 1984, HCFA issued the revised Medicare Intermediary Manual Instructions (Transmittal No. IM 84–1) and the Hospital Manual Instructions (Transmittal No. IM 84–2) and, in September 1984, HCFA issued the revised Carrier Manual Instructions (Transmittal No. IM 84–3). Section 1833(h)(2) of the Act, as added by section 2303(d) of DEFRA '84, required that the fee-schedule amounts be updated for the second and subsequent years by an updating factor equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average). We computed the initial annual change from the midpoint of the base year used to compute the initial fee schedules (CY 1983). We could have chosen a number of alternative annual periods to compute the Consumer Price Index (CPI) change (for example, January to January, June to June, or July to July for years beginning in 1983 or 1984). Since the fee schedule is based on charges for 1983 that were used to derive prevailing charges beginning July 1, 1984, we believed that 1983 was the appropriate base year from which to measure change. Also, since the prevailing charge is based on charges that were made throughout 1983, we believe that it was appropriate to determine a rough approximation of the average charge for 1983 from which we established updates. We assumed that prices increase during a normal year at a uniform rate each month. Prices, therefore, at the midpoint of the year, will be approximately the same as the average price for the entire year. The months of June and July lie on either side of the midpoint of the year. July was chosen because it was the first month of the laboratory fee schedule update.

Although section 2306 of DEFRA '84 changed the date for updating customary and prevailing charges from July 1 of each year to October 1, the change did not apply to laboratory fee schedules because section 1833(h)(2)

contained its own update schedule. Under that provision, tests performed on or after July 1, 1985, were updated by the percentage increase or decrease between the CPI for July 1983 and the CPI for July 1984.

Section 2303(h) of DEFRA '84 required that the Secretary simplify the procedures for the filing of claims and issuance of payments for clinical diagnostic laboratory tests. HCFA implemented simplified billing instructions in section 4030 of the Medicare Carrier Manual in October 1986 (Transmittal No. 1171) that reduce the amount of patient information necessary on a HCFA–1500 submitted by independent laboratories. These instructions were renumbered to become section 4021 of the Medicare Carrier Manual in April 1989 (Transmittal No. 1298).

To implement the provisions of COBRA, in June 1986, HCFA issued Hospital Manual Instructions and Intermediary Manual Instructions (Transmittal No. 483 and Transmittal No. 1279, respectively) and an Intermediary/Carrier Program Memorandum (No. 86–6). Section 9303(a) of COBRA amended the date for updating fee schedules. It required that the scheduled July 1, 1986, update be delayed until January 1, 1987, and specified that the January 1, 1987, update be adjusted by an 18-month increase or decrease in the CPI. We made concomitant changes in the CPI measurement periods. For tests performed on or after January 1, 1987, the fee schedule amounts were updated by the percentage increase or decrease in the CPI for the 18 month period from July 1984 to January 1986. For tests performed on or after January 1, 1988, the fee schedule amounts have been updated at the beginning of each calendar year (January 1) by the change in the CPI for the 12-month period from the January two years prior to the calendar year to the January of the immediately preceding calendar year. The applicable CPI updating factor has been published in HCFA's operating instructions before the beginning of each new fee-schedule year.

To implement the provisions of OBRA '86, in November 1986, we issued Intermediary Manual Instructions (Transmittal No. 1302); in December 1986, we issued Carrier Manual Instructions (Transmittal No. IM 86–6), and in February 1987, we issued Hospital Manual Instructions (Transmittal No. 502).

To implement the provisions of OBRA '87, in April 1988, we issued Intermediary Manual Instructions, Hospital Manual Instructions and Carrier Manual Instructions (Transmittal Nos. 1378, 535, and IM–88–2, respectively). Section 4064(b)(1) of OBRA '87 amended section 1833(h)(2) of the Act, beginning April 1, 1988, to reduce the fees for certain tests by 8.3 percent. We implemented this provision by Medicare Carrier Manual Instructions (Transmittal No. IM 88–2). The affected tests, listed below by the Current Procedural Terminology Fourth Edition (CPT–4) code, are those that before July 1, 1984, were subject to the lowest charge level (LCL) limits.

Automated Tests

80002–80019

Tests Subject to LCL Limits

82465	Cholesterol, Serum
85022	Complete Blood Count
85031	Complete Blood Count
85018	Hemoglobin
85014	Hematocrit
85610	Prothrombin Time
85650	Sedimentation Rate
85651	Sedimentation Rate
82947	Glucose
82948	Glucose
81000	Urinalysis
84550	Blood Uric Acid
84520	Blood Urea Nitrogen
85048	White Blood Cell Count

To implement the provisions of Public Law 100–647, in May 1989, we issued Carrier Manual Instructions (Transmittal No. 1308).

To implement the provisions of OBRA '89, in February 1990, we issued a Carrier Program Memorandum (Transmittal No. B–90–1); in March 1990, we issued a Carrier Program Memorandum (Transmittal No. B–90–3); and, in May 1990, we issued Carrier Manual Instructions (Transmittal No. 1347).

To implement the provisions of OBRA '90, in December 1990, we issued a Carrier Program Memorandum (Transmittal No. B–90–11).

II. Discussion of Provisions of the Regulations

A. General

This rule would amend 42 CFR chapter IV to implement in regulations the statutory provisions and HCFA payment policies regarding fee schedules for clinical diagnostic laboratory tests. Following is a discussion of the various provisions we propose to include in regulations.

B. Basic Payment Policy for Fee Schedules-General

1. Carrierwide Fee Schedules

Section 1833(h) of the Act requires that fee schedules "be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) * * *." We determined that establishment of the schedules on a carrierwide basis, not to exceed a statewide basis, was most appropriate. Accordingly, we implemented the fee schedule program on this basis in our program instructions and memoranda and are proposing to use this basis in our regulations. Charge data were already accumulated by carriers for their entire service area and, if a carrier serviced more than one State, the information was maintained separately by State. Therefore, the data necessary for developing fee schedules on this basis were readily accessible. Development of statewide schedules (where more than one carrier serves a State) or regional schedules would be more difficult since to do so would require merging data from carriers that, in some cases, had incompatible data systems. In the absence of compelling reasons to prefer either statewide or regional rates, we believe that the most administratively feasible basis was chosen.

2. "Lesser of" Provisions

Section 2303(a) of DEFRA '84 amended section 1833(a) of the Act to require that the amounts paid for laboratory tests under Part B be based on "the lesser of the amount determined under such fee schedule or the amount of the charges billed for the tests" or on the basis of negotiated rates. Section 9303(b) of COBRA amended sections 1833(a)(1)(D)(i) and (a)(2)(D)(i) and added section 1833(h)(4)(B) of the Act to add a national limitation amount to the list of "lesser of" requirements. Therefore, payment is based on the lowest of the fee schedule amount, the national limitation amount, or the actual charge.

3. Excluded and Included Tests

a. *General.* Generally, the clinical diagnostic laboratory tests paid for under the fee schedules are identified by codes 80002 through 89399 of the Current Procedural Terminology, Fourth Edition (CPT–4). (CPT–4 is revised annually, and we will make any necessary changes to update our lists of tests either paid or not paid for under the fee schedules through manual issuances.) Following are descriptions of those tests that are either included or excluded from the proposed fee-schedule provisions.

b. *Excluded tests.* Certain clinical diagnostic laboratory tests can be performed safely and effectively only by physicians and, therefore, are considered physician services. These tests listed below by CPT–4 code numbers, are not subject to the fee-

schedule provisions but are paid for as physician services.

80500–80502 Clinical pathology consultation
85095–85109 Codes dealing with bone marrow smears and biopsies
86077–86079 Blood bank services
88000–88125 and 88160–88199 Certain cytopathology services
88300–88399 Surgical pathology services

There are other codes in the 80000 series representing tests that are not clinical diagnostic laboratory tests. These include codes for procedures, services, blood products, and autotransfusions. Other tests primarily associated with the provision of blood products also are not considered clinical diagnostic tests. These tests include the various blood crossmatching techniques. We have identified the following codes as never subject to fee-schedule limitations:

85060
86012
86013
86016–86019
86024
86034
86068
86070
86100
86120
86128
86130
86265–86267
86455–86587
86595
89100–89105
89130–89141
89350
89360

The above listing is as complete as we are able to determine to date and is being used by our contractors in the current administration of the fee schedule program. We have given directions to them that, if they identify other tests that they believe are services or products not considered diagnostic tests, this assessment should be confirmed by the HCFA regional office before removal from fee-schedule limitations.

c. *Tests that may be included or excluded.* Tests identified by the following codes are not subject to fee-schedule limitations if they are submitted for payment on the same bill with charges for blood products:

86011
86014
86031–86033
86080
86082–86095
86105

The above codes can also represent tests serving a diagnostic purpose; if no blood product is provided and billed on the same claim, these codes are assumed to represent tests that are diagnostic in nature and, therefore, subject to the fee schedules.

d. *Included tests.* Tests for which the fee schedules apply under current program implementation include 12 diagnostic laboratory tests that had previously been subject to the lowest-charge-level (LCL) provision (see regulations at § 405.511(c) regarding calculating the lowest charge level). Because payment for the 12 tests is intended to be covered by the fee-schedule provisions, we no longer pay for the tests according to the LCL provision. These 12 tests are as follows:

1. Cholesterol, Blood Test
2. Complete Blood Count
3. Hemoglobin
4. Hematocrit
5. Prothrombin Time
6. Sedimentation Rate
7. Blood Sugar (Glucose)
8. Cytologic Study (Papanicolaou type)
9. Urinalysis
10. Blood Uric Acid
11. Blood Urea
12. Leukocyte Count

e. *Special circumstances.* The fee schedules have been applied by our contractors to all clinical diagnostic laboratory tests that are covered under Part B, with the following clarifications regarding special circumstances. Except as indicated below, we would include these clarifications in the regulations.

- Laboratory services performed by a participating skilled nursing facility (SNF) for its own inpatients (but not those tests performed for inpatients of the SNF by others) are payable on a cost basis. This is in accordance with section 1833(h)(1)(A) of the Act, which exempts from the fee-schedule requirements tests performed by a provider for an inpatient of the provider.
- In accordance with § 413.170, payment for outpatient maintenance dialysis treatments are made on the basis of prospective payment rates (also known as composite rates). These rates are intended to cover certain laboratory tests associated with the dialysis treatment. Therefore, additional payments for such laboratory tests are not made. However, laboratory tests furnished to dialysis patients where payment is not made on the basis of composite rates are payable in accordance with the fee schedules. (Section II. F. of this preamble contains a more detailed discussion of payment for dialysis services.)
- If hospitals are paid under alternative payment programs approved by HCFA (for example, under State cost control systems authorized under section 1886(c) of the Act), the normal Medicare payment principles are waived. If such a waiver covers payment for outpatient clinical diagnostic laboratory tests, payment for those tests in made in accordance with the particular program payment rules and not on the basis of the fee schedules. If the alternative payment programs does not control payment for laboratory tests that would otherwise be subject to the fee schedules, the fee schedules apply.
- In accordance with section 1833(a)(3) of the Act and regulations in part 405, subpart X, independent rural health clinics (RHCs) are paid on the basis of estimated allowable cost. At the beginning of the cost reporting period, an all-inclusive rate is determined and is subject to reconciliation at the end of the period based on reported and approved actual costs. Medicare pays 80 percent of the all-inclusive rate, subject to the deductible. The all-inclusive rates subject to final reconciliation include, as an incident to a physician's professional service, the costs of furnishing clinical diagnostic laboratory tests. Therefore, payment to RHCs for laboratory tests for patients of the RHC will not be made on the basis of the fee schedules. Rather, payment will continue to be made under the existing rules for RHCs.
- Payment to health maintenance organizations, competitive medical plans, and health care prepayment plans (see section 1833(a)(1)(A) of the Act) is made in accordance with section 1876 of the Act and part 417 of the regulations. Amounts paid under section 1876(a)(3) of the Act are in place of amounts that would otherwise be payable under section 1833(a) of the Act (which includes the provision for payment for laboratory tests on the basis of fee schedules). Therefore, laboratory tests for enrollees of these entities are not subject to the fee schedules. However, Medicare beneficiaries who are non-enrollees may also receive services from such organizations. In these cases, laboratory tests (for non-enrollees) are paid for on the basis of the fee schedules.
- In accordance with part 418, HCFA pays a predetermined payment amount for each of four categories of hospice care. The rates are intended as payment for all hospice care services provided. Additional payment for laboratory tests furnished as part of that care would be inappropriate. Therefore, the fee schedules do not apply to laboratory tests furnished by a hospice, either directly or under arrangements with another provider or supplier. However, the professional services of an attending physician not employed by (or providing services under arrangements with) the hospice are not covered by the

hospice payment rates (see §§ 418.24(d)(2)(iii) and 418.304(c)). Therefore, the professional services associated with a laboratory test furnished by this physician are payable under the physician fee schedule.

• Laboratory tests furnished to an inpatient of a participating hospital must be furnished by the hospital or by others under arrangements made with them by the hospital. These tests are payable under the prospective payment system or, with respect to services provided in hospitals or units excluded from the prospective payment system and with respect to services provided to inpatients eligible for payment for Part B services only, on a reasonable cost basis. This clarification does not require a change in Medicare Part B regulations.

4. Fee-Schedule Amounts

Section 1833(h)(2) of the Act, as added by section 2303(d) of DEFRA '84, required that, for the first year (that is, for tests performed on or after July 1, 1984, and before July 1, 1985), the fee schedules for payment of physicians and independent laboratories be established at 60 percent of the prevailing charge level. Also the fee schedules for payment of hospital outpatient laboratory tests were required to be established at 62 percent of the prevailing charge level.

As explained earlier, we have used carrierwide data to determine the prevailing charges. The carrierwide prevailing charges are the amounts set at the 75th percentile of the customary charges, weighted by frequency, made for similar services in each carrier's entire service area during calendar year (CY) 1983. If a carrier's service area includes more than one entire State (for example, Massachusetts Blue Shield services New Hampshire, Vermont, Maine, and Massachusetts), prevailing charges are separately calculated based on customary charges for each State. In several instances (for example, in the Kansas City and Washington, DC metropolitan areas), customary charges from portions of more than one State, but less than an entire State, make up a carrier service area.

The carrierwide fee-schedule amounts applicable for the first year are updated for the second year and subsequent years as explained in paragraph 5. following.

With regard to the 60 and 62 percent fee schedule amounts, the Conference Report (the report), which accompanied DEFRA '84 (H.R. Rep. No. 861, 98th Cong., 2d Sess. 1304 (1984)), explained the distinction between laboratory tests performed by hospitals for their own outpatients and tests performed for persons who are not patients of the hospital (see item 10.a of the report). The basis for the distinction is whether the hospital laboratory is "acting as an independent laboratory" (see item 10.c. of the report). We are proposing in regulations to limit the meaning of "outpatient laboratory tests" to those tests ordered as a result of the patient's visit to an outpatient department of the hospital. Tests ordered in settings other than in a hospital's outpatient department (for example, in the office of a physician's private practice or in another hospital's outpatient department) would be considered services provided to a non-hospital patient.

Section 9339(a) of OBRA '86 amended section 1833(h) of the Act to provide that, for tests performed on or after January 1, 1987, the 62 percent fee schedule must be used only for outpatient tests performed by qualified outpatient laboratories. Section 9339(a) added section 1833(h)(1)(D) of the Act, which defined "qualified hospital laboratory" as a hospital laboratory which provides some tests 24 hours a day in order to serve a hospital emergency room that is available to provide services 24 hours a day, seven days a week. Section 4064(c) of OBRA '87, as amended by section 411(g)(3) of The Medicare Catastrophic Coverage Act of 1988, Public Law 100–360, provides that beginning April 1, 1988, a qualified hospital laboratory is one that is located in a sole community hospital as defined by the Act.

The Joint Commission on Accreditation of Healthcare Organizations allows an emergency room to be classified as a 24-hour emergency room if physicians are physically present or available within 30 minutes through a medical staff call roster to handle emergencies 24 hours a day. We are adopting this standard to determine if an emergency room operates on a 24-hour basis. If the emergency room meets this standard 7 days a week and if the laboratory has laboratory technicians on duty or on call at all times to provide some testing for the emergency room, the laboratory would be considered qualified to have payment based on the 62 percent fee schedule for tests performed for its own outpatients.

5. Revision of Calculation Period for Annual Update Factor

We could have selected any of several alternative annual periods to compute the CPI change. Our initial choice of period was the historic data period for computing reasonable charges, that is, January to January. Subsequent to the initial fee schedule legislation for clinical diagnostic laboratory tests (DEFRA '84), section 4062(b) of OBRA '87 established fee schedules for durable medical equipment (DME) and provided for a similar updating methodology. However, the period used to calculate the updating factor for DME is the 12-month period ending with June of the preceding year. There is no reason to believe that, over the long run, annual changes in the CPI measured January to January are significantly different from those measured June to June. Therefore, for administrative simplicity, this rule would change the period used to calculate the annual update factor for clinical diagnostic laboratory tests to mirror the period used for DME. Since, as noted in (d) above, the update factor is specified through 1993, the revised calculation period would not be applied until January 1994.

6. Who May Be Paid

a. *Assigned claims.* Section 1833(h)(5)(A) of the Act, as added by section 2303(d) of DEFRA '84 and amended by section 6111(b) of OBRA '89 and further amended by section 4154(e)(1) of OBRA '90, requires that in the case of assigned claims or claims submitted under a provider agreement, payment be made only to the person or entity that performed or supervised the performance of the test with two exceptions as follows:

1. Payment may be made to another physician who shares his or her medical practice with the physician who performed or supervised the performance of the test.

2. Payment for a clinical diagnostic laboratory test performed by a laboratory at the request of another laboratory (not a physician) may be made to the referring laboratory in any of the following circumstances:

(a) The referring laboratory is in, or is part of, a rural hospital.

(b) The referring laboratory is wholly owned by the performing laboratory, the performing laboratory is wholly owned by the referring laboratory, or both laboratories are wholly owned by a third entity.

(c) Not more than 30 percent of the tests for which the referring laboratory, other than a laboratory described in paragraph (b) above, receives requests for testing during the year in which the test is performed are performed by another laboratory.

Section 9343(c) of OBRA '86 has created, in situations in which tests are ordered for a hospital outpatient, an additional exception to the rule that payment may be made only to the person or entity that performed or

supervised the performance of the test. Section 9343(c) of OBRA '86 amended section 1862(a)(14) of the Act to require that all payments for services furnished to hospital patients must be made to the hospital. Therefore, if a test is ordered for a hospital outpatient, payment must be made to the hospital rather than to the person or entity that performed or supervised the performance of the test.

The language of the statute and Conference Report accompanying DEFRA '84 suggests that the term "person", used in section 1833(h)(5) in reference to who may be paid, is meant to include only physicians. Therefore, we have implemented in instructions and are proposing to include in regulation that payment be made only to physicians or entities except as discussed above.

Under section 1833(h)(5)(C) of the Act, as added by section 2303(d) of DEFRA '84, for tests performed between July 1, 1984, and December 31, 1986, payment for clinical diagnostic laboratory tests performed by laboratories independent of a physician's office or rural health clinic could only be made on an assigned basis or to a provider of services with a provider agreement. For this purpose, a laboratory owned, leased, or otherwise maintained by a group of physicians who do not otherwise share a medical practice, is considered independent of a physician's office (see section 11. below). Between July 1, 1984, and December 31, 1986, assignment generally continued to be optional for physicians. However, assignment was, and continues to be, mandatory for physicians and physician groups that enrolled as "participating physicians" under provisions of section 1842(h) of the Act as added by section 2306(c) of DEFRA '84.

b. *Unassigned claims.* Under section 2303(d) of DEFRA '84, in the case of unassigned claims, payment was authorized to be made to the beneficiary on the basis of an itemized bill from the physician or entity (that is, a medical group) that performed or supervised the test. However, payment could no longer be made to the beneficiary on the basis of an unassigned claim from a laboratory. Under section 9303(b)(3) of COBRA, as clarified by section 4154(c)(1)(A) of OBRA '90, for services furnished on or after January 1, 1987, payment can no longer be made to the beneficiary on the basis of an unassigned claim from a physician.

Section 4085(b) of OBRA '87, as clarified by section 4154(c)(1)(B) of OBRA '90, amended section 1833(h)(5) by adding subparagraph (D), which provided that for tests performed on or after January 1, 1988, a person who knowingly, willfully, and on a repeated basis bills on an unassigned basis may be subject to sanctions in accordance with section 1842(j)(2) of the Act.

We are proposing no other changes in regulations regarding who may bill the program directly for laboratory services.

7. National Limitation Amounts.

Section 9303(b) of COBRA added section 1833(h)(4)(B) to the Act to require that a national limitation amount be established as a ceiling on payments under clinical diagnostic laboratory fee schedules. Initially, for services performed between July 1, 1986, and December 31, 1987, the national limitation amount for any test was set at 115 percent of the median of the fee schedules established for that test in the various carrier service areas. The national limitation amount is to be separately calculated for the 60 percent and 62 percent fee schedules. After December 31, 1987, and until a national fee schedule amount was established, the national limitation amount was to be calculated as 110 percent of the median of the fees established for the test.

Section 4064(b)(2) of OBRA '87 further amended section 1833(h) of the Act to require that the period for the initial national limitation amount (115 percent of the median of fees) would be extended to March 31, 1988, and that, after March 31, 1988, and until a national fee schedule amount was established, the national limitation amount was to be calculated as the median of the fee schedules established for the test.

Section 6111(a) of OBRA '89 further amended section 1833(h) of the Act to eliminate the establishment of nationwide fees and to require that, after December 31, 1989, the national limitation amount was to be calculated as 93 percent of the median of the fee schedules established for the test.

Section 4154(b) of OBRA '90 further amended section 1833(h) of the Act to require that, after December 31, 1990, the national limitation amount is to be calculated as 88 percent of the median of the fee schedules established for the test. We would include this provision in the regulations.

8. Payment Amounts

Sections 1833(a)(1)(D), 1833(a)(2)(D), and 1833(b)(3) of the Act require that, if payment is made on an assignment basis or under a provider agreement, or for tests required in connection with a second opinion required by a Peer Review Organization under section 1164(c)(2) of the Act or a third opinion, the payment is 100 percent of the lowest of the fee-schedule amount, the national limitation amount, or the actual charge. No beneficiary deductible or coinsurance is applicable.

9. Specimen Collection Fee

Section 1833(h)(3) of the Act, as added by section 2303(d) of DEFRA '84, permits payment of a nominal fee, in addition to the laboratory fee, for the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test is performed. We set this fee at $3. Section 1833(h)(3) of the Act is silent with respect to how the specimen fee is to be paid. We have chosen to apply the same conditions for payment and to calculate payment as we do for the laboratory tests. That is, the claim must be submitted under an assignment agreement or under a provider agreement, the payment would be 100 percent of the collection-fee amount, and the deductible and coinsurance would not apply. We are proposing to implement this payment methodology in the regulations. (Payment of an unassigned claim for collection performed by a physician prior to January 1, 1987, was paid at 80 percent of the collection-fee amount and was subject to any unmet deductible amount and coinsurance.)

The collection fee would be paid only to the physician or entity that actually extracts or supervises the extraction of the specimen from the patient except that, in the case of a specimen collection for a hospital outpatient, only the hospital may be paid.

In the case of a nursing facility where the patient is covered under the skilled nursing benefit, the costs of the skilled nursing necessary to perform specimen collection are paid for as Part A costs, and a separate payment is not made under part 414, subpart F. Additionally, in accordance with section 1833(h)(3) of the Act, only one collection fee is allowed for each patient encounter, regardless of the number of specimens drawn. That is, if a series of specimens is required to complete a single test (for example, glucose tolerance test), or if collecting more than one specimen to complete two or more tests, the collections would be treated as a single encounter. However, if separate kinds of specimens must be collected (for example, a venipuncture and a urinary catheterization), we consider there to have been multiple encounters, and a separate fee may be paid for each type of specimen. A fee would not be allowed in instances in which the cost of collecting the specimen is minimal, such as taking a throat culture, or a routine capillary puncture (for example.

as used for determining clotting or bleeding time).

In the case of dialysis patients, the costs of specimen collection are included in the prospective payment amount (that is, the composite rate) paid to facilities for dialysis treatment or the amounts paid to physicians under monthly capitation payments. Therefore, if the composite rate applies, a separate specimen collection fee generally is not payable.

Section 1842 of the Act was amended by section 2303(e) of DEFRA '84, which deleted the former subsection (h). That subsection had authorized the payment of a specimen collection and handling fee. At the same time, section 2303(d) of DEFRA '84 amended section 1833(h)(3) of the Act to authorize the payment of a specimen collection fee to cover the costs of collecting samples. Consequently, the statute no longer contains provisions authorizing handling costs. Therefore, we will no longer make payment for routine handling charges if a specimen is referred from one laboratory to another.

The $3 collection fee is payment for all costs of collecting the specimen with the exception of an additional amount that may be paid for travel expenses as discussed below.

10. Travel Allowance

Section 9339(c) of OBRA '86 amended section 1833(h)(3) of the Act to provide for the payment of a travel allowance to cover the transportation and personnel expenses for trained personnel to collect specimens from homebound patients or inpatients of facilities other than hospitals. Due to the variability in time, distance, and wage circumstances in different locales, we have chosen to implement this provision by allowing carriers and intermediaries substantial discretion in calculating travel allowances. We have provided general guidance through our manuals. In November 1986, we issued Intermediary Manual Instructions (Transmittal No. 1302) and, in December 1986, we issued Carrier Manual Instructions (Transmittal No. IM 86–6). Since more than one patient, including non-Medicare patients, could be served during any given trip, we are requiring that carriers assure proper proration of the allowance among all patients who receive any services during the trip. Since trained personnel perform the specimen collection at many facilities, it is unnecessary to send technicians from laboratories to collect specimens. Therefore, we propose that the travel allowance can be paid only if a specimen collection fee is also payable; that is, no travel allowance would be paid if a technician merely performs a messenger service to pick up a specimen drawn by other personnel.

The Office of the Inspector General has found that, under the currently implemented instructions, where travel fees are paid on a per mile basis, certain laboratories have claimed mileage far in excess of the minimum distance necessary for a technician to travel. Therefore, we propose to give the carrier the authority to review any claim (for instance, if the carrier determines the claim has unusually high charges for travel) and limit any travel allowance for specimen collection to the payment that would be made to the closest (to the collection site) laboratory that could provide the service.

Section 8421 to Public Law 100–647 amended section 1833(h)(3) of the Act to establish a special travel allowance for certain clinical laboratories based on the number of miles traveled and the personnel costs associated with the collection of each individual sample. We implemented the provision through detailed Carrier Manual instructions (Transmittal No. 1308). Since the provision was applicable only to services provided between April 1, 1989, and December 31, 1990, this rule would have no associated provision.

Once again, section 1833(h)(3) of the Act is silent with respect to how payment is to be made for the travel allowance. We have chosen to apply the same conditions for payment and to calculate payment as we do for laboratory tests and specimen collection fees. That is, the claim must be submitted under assignment or under a provider agreement, the payment would be 100 percent of the travel allowance amount, and the deductible and coinsurance would not apply. The travel allowance would be paid only to the physician or entity that actually draws or supervises the drawing of the specimen from the patient.

In the case of dialysis patients, the costs of travel to furnish services to home dialysis patients are included in the amount paid to physicians under monthly capitation payments. Therefore, if the composite rate applies, separate travel allowance generally is not payable.

11. Changes in the Definition of an Independent Laboratory

The definition of an independent laboratory that was in the regulations at § 493.2 until September 1, 1992, precluded a laboratory that was located in a hospital and that served the hospital's patients from being considered independent. A number of laboratories located in hospitals merely lease space from the hospitals and are neither owned nor supervised by the hospitals or their organized medical staffs. Nevertheless, under the above-mentioned definition of an independent laboratory, these laboratories were defined as hospital-based facilities. For payment purposes, we propose to define an independent laboratory as a facility maintained for the purpose of performing diagnostic laboratory tests that is independent of (that is, is not owned, controlled, managed or supervised by) a hospital, a hospital's organized medical staff, or an attending or consulting physician's office; or that is a facility owned, leased, maintained, or operated by or for a group of physicians if the group is not otherwise a shared medical practice. Thus, location of a laboratory would no longer be a factor in determining whether a laboratory is hospital-based or independent.

The proposed definition would require that, if laboratories maintained by physicians (or rural health clinics) for their own patients accept specimens on referral from other physicians (or rural health clinics), they meet the conditions for coverage of services of independent laboratories for tests performed on those specimens that are referred.

12. Distinction Between Physician's Office Laboratory and an Independent Laboratory

We also propose to strengthen the distinction between a physician's office laboratory and an independent laboratory by requiring that a laboratory that is a joint venture under any type of legal structure be considered an independent laboratory unless all the physicians involved share a common medical practice. We believe that such joint ventures are independent of attending physicians' offices. We consider tests performed by such laboratories to have been referred from one entity (that is, the attending physician's medical practice) to another entity (that is, the shared laboratory practice) that is independent of the attending physician's office and, therefore, only payable to the laboratory.

We have received a number of inquiries regarding our definition of a shared medical practice. We would define a shared medical practice as two or more physicians actually practicing medicine together under a legal entity that meets the requirements of a group practice as set forth in proposed § 411.351 in a separate proposed rule published on March 11, 1992 (57 FR 8588). Proposed § 411.351 defines "group practice" as follows:

"Group practice" means a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association that meets the following conditions:

(1) Each physician who is a member of the group furnishes substantially the full range of patient care services that the physician routinely furnishes including medical care, consultation, diagnosis, and treatment through the joint use of shared office space, facilities, equipment, and personnel.

(2) Substantially all of the patient care services of the physicians who are members of the group (that is, at least 85 percent of the aggregate services furnished by all physician members of the group practice) are furnished through the group and are billed in the name of the group and the amounts received are treated as receipts of the group. The group practice must attest in writing that it meets this 85 percent requirement.

(3) The practice expenses and income are distributed in accordance with methods previously determined by members of the group.

We invite comments on our proposed definition of shared medical practice.

C. Changes in Medicaid Requirements

Section 2303(g) of DEFRA '84 amended section 1903(i) of the Act to require that, effective October 1, 1984, quarterly Federal financial participation payments to States under the Medicaid program may not be made for amounts for clinical diagnostic laboratory tests that exceed the amounts that would be paid for such tests under Medicare. To implement this provision, we issued operational instructions to Medicaid State agencies regarding this requirement. In addition, Medicare carriers have furnished copies of applicable fee schedules to all Medicaid State agencies. We would include the limitations of section 1903(i) of the Act in this regulation.

State agencies have also been informed that section 2303(g) eliminated the former section 1902(a)(43) of the Act. That provision had been the sole authority for State Medicaid agencies to allow billing by physicians for clinical diagnostic laboratory tests that are not personally performed or supervised by the physician. Therefore, States may no longer allow this billing practice and must pay only the physician or entity that actually performs or supervises the performance of the test.

On March 14, 1990, we published a final rule with comment in the **Federal Register** (55 FR 9538) regarding laboratory requirements under both the Medicare and Medicaid programs. That rule removed, from the Medicare regulations, the requirement that, for a physician laboratory to be considered independent, it must process at least 100 specimens for other physicians during any calendar year. Through an oversight, this requirement was not removed from the Medicaid regulations. We are, therefore, proposing to revise § 431.54(d)(2), which concerns requirements for competitive bidding for the purchase of laboratory tests, by removing the reference to the 100 specimen requirement.

D. Exceptions and Adjustments

1. Wage Rate Adjustments

Section 1833(h)(4) of the Act permits the Secretary to provide for an adjustment to take into account, with respect to the wage portion of expenses of providing laboratory tests, the difference between regional or local area wage rates and the wage rates on which the fee schedules were based. We have chosen not to implement this adjustment at this time. First, the information available to us indicates that labor costs represent less than half of total costs of providing laboratory tests and are decreasing as a proportion of total costs due to advancing technology. Second, we have no data regarding the extent to which laboratory wages vary by area within a carrier service area. Third, unlike other Medicare services for which wage adjustments have been applied, laboratory tests can be, and frequently are, performed at sites unrelated to the patient's location. Wage adjustments could simply provide an incentive for services to be provided in high wage cost areas. Finally, it would be unwieldy to try to maintain an accurate representation of the decreasing effect of wages over time. For all of these reasons, we do not propose to make an adjustment at this time. However, we invite comments and quantitative data on this topic.

2. Emergency Laboratory Tests

Section 1833(h)(2)(B)(i) of the Act allows the Secretary to make adjustments or exceptions to the fee schedules to assure adequate payment for emergency laboratory tests needed for the provision of bona fide emergency services. We propose to allow this adjustment only for bona fide emergency tests performed outside of the hours that a laboratory customarily performs that type of test (this would include situations in which a laboratory technician must be called in during his or her off hours to perform an emergency test). For this purpose, we propose to establish, at § 414.366(c), a definition similar to the definition of bona fide emergency service in section 1861(v)(1)(K) of the Act, as amended by section 2318 of DEFRA '84. We recognize that hospital laboratories, in particular, frequently perform services on non-routine or "STAT" basis. We considered and rejected the concept of providing an adjustment to the fee schedule in every instance in which a test was performed "STAT." We believe that providing an adjustment in those instances would be extremely costly since it could encourage manipulation and since determining whether a test was performed under "STAT" conditions would be very subjective.

We are limiting the availability of this adjustment to laboratories other than hospital laboratories that are qualified to receive the 62 percent fee schedule. As discussed in section II.B.4. of this preamble, the increased costs of emergency testing by qualified hospital laboratories is made up through the two percent payment differential.

We are not proposing to detail in regulations the specific method of determining the amount of the adjustment. Instead, we are instructing the carriers to judge the reasonableness of additional charges on a case-by-case basis. Many carriers have been providing such adjustments under reasonable charge principles for many years.

We invite interested parties to submit data on the relative proportion of bona fide emergency laboratory test volume, costs, and charges to total laboratory test volume, costs, and charges in both the hospital outpatient and nonhospital environments.

3. Low-volume High-cost Tests

Section 1833(h)(2)(B)(ii) of the Act allows the Secretary to make adjustments or exceptions to the fee schedules to assure adequate payment of "certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality."

We are not proposing to implement this authority at this time. We invite comments on approaches to implementing this adjustment on a national basis.

4. Technological Changes

Section 1833(h)(2)(A)(i) of the Act also grants the Secretary discretion, in making annual updates to the fee-schedule amounts (based on the CPI), to make further adjustments considered

justified by technological changes. It should be recognized that such adjustments could be made not only to increase fee-schedule amounts if new high cost technologies are employed, but also to provide for reductions in existing fees if technology reduces costs through increased efficiency. We will investigate for future purposes the feasibility of making such adjustments by recalibrating charge limits based on the costs and relative values of tests in an efficient and economically operated clinical diagnostic laboratory. We are not proposing to implement this authority at this time. We invite comments and suggestions on alternative approaches to implementing this provision.

E. Dialysis Services

The Conference Report accompanying DEFRA '84 states that the fee schedule is not to apply to clinical laboratory tests that are paid for under the prospective payment rate for outpatient maintenance dialysis services (also known as the composite rate). In accordance with regulations at § 413.170, these services are payable only to dialysis facilities.

Clinical laboratory services furnished to dialysis patients that are not included under the composite rate system would be billed for and payable under the usual methods provided for in this proposed rule. We considered other billing and payment options for separately payable laboratory services furnished to patients of independent dialysis facilities. One option was to require the independent laboratory performing the services to look to the independent facility for payment, and the facility would, in turn, bill and be paid according to the fee schedule by its intermediary. This option would violate section 1833(h)(5) of the Act, which requires the laboratory actually performing the test to bill and be paid directly according to the fee schedule. The second option was to require the independent laboratory to bill and be paid directly according to the schedule by the intermediary that handles claims from the facility for its dialysis services. Independent laboratories, however, have always dealt with carriers, not intermediaries. We believe it would be cumbersome, inefficient, and costly to require independent laboratories to deal with intermediaries for services furnished for dialysis patients if those laboratories deal with carriers for all other services. Therefore, we rejected the second option in favor of having independent laboratories bill carriers under the same procedures that apply to all other laboratory services they furnish.

III. Summary of Regulation Changes

The following highlights those regulations that would be modified as a result of this rule.

- In § 405.501(a), regarding determination of reasonable charges, a cross-reference to the provisions in new part 414, subpart F of chapter IV, "Payment for Clinical Diagnostic Laboratory Tests," is added as an exception to the provision that Medicare pays no more for part B medical and other health services than the reasonable charge.
- In § 405.502(a), regarding criteria for determining reasonable charges, we have deleted reference to services billed by physicians but performed by an outside laboratory.
- In § 405.505, regarding determination of "locality", a parenthetical sentence is added to clarify that "locality" is different from determination of "area" as used to establish fee schedules for clinical diagnostic laboratory tests.
- In § 405.506, regarding charges higher than customary or prevailing charges or lowest charge levels, a cross-reference to § 414.366, "payments in addition to fee-schedule amounts," is added.
- § 405.511, regarding reasonable charges for medical services, supplies, and equipment, paragraph (a)(2), which applied the provisions of the section to certain laboratory services, is deleted.
- Section 405.511(c)(3), regarding lowest charge levels for laboratories, is deleted.
- Section 405.515, which contains requirements for payment for clinical laboratory services billed by physicians, is deleted.
- In § 405.556, regarding conditions for payment of charges for physician laboratory services, paragraph (c) is revised to clarify that payment for nonphysician laboratory services furnished to a provider patient is made in accordance with the payment provisions of part 414, subpart F.
- In § 413.170, regarding payment for outpatient maintenance dialysis, a cross-reference to the new section containing requirements for payment for clinical diagnostic laboratory tests (part 414, subpart F of chapter IV) is added.
- A new subpart F, "Payment for Clinical Diagnostic Laboratory Tests," is added to part 414 to establish the method of payment for outpatient clinical diagnostic laboratory tests and the payment of physician laboratory services. We also establish, for purposes of subpart F, definitions of "hospital," "independent laboratory," "non-hospital patients," "outpatient laboratory tests," "qualified hospital laboratory," and "shared medical practice."
- Section 424.55(b)(1), regarding assignment, is revised to specify that, in accepting assignment, the supplier agrees to accept as the full charge for clinical diagnostic laboratory tests the amount determined by the carrier in accordance with part 414, subpart F.
- In § 424.64, regarding to whom payment can be made on the basis of an unpaid bill after the beneficiary's death, paragraphs (c)(1) and (c)(2) are revised to clarify that the physician or supplier must agree to accept the payment amount determined by the carrier as the full payment.
- In § 431.54, which concerns requirements for competitive bidding or other arrangements under Medicaid, paragraph (d)(2) is revised by removing the requirement that, for a physician laboratory to be considered independent, it must process at least 100 specimens for other physicians during any calendar year
- Section 447.10, which concerns prohibition against reassignment of provider claims under Medicaid, is revised by deleting references to payment for laboratory services.
- Section 447.300, which sets forth the basis and scope of part 447, subpart D, "Payment Methods for Other Institutional and Noninstitutional Services," is revised to reflect the statutory authority for the subpart as we propose to revise it.
- Section 447.342, which concerns physician billing for clinical laboratory services, is revised to set forth the general rule that Federal financial participation is not available to the extent that any payment for a clinical diagnostic laboratory test exceeds the amount determined for the same service under Medicare in accordance with part 414, subpart F.
- Other technical changes (for example, correcting a cross reference in a case where the referenced section has been redesignated by another rule) and editorial changes (for example, improving punctuation or format) have been made.

V. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in——

- An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individua' industries, Federal, State, or local government agencies, or geographic regions; or

• 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 proposed rule, which applies to both the Medicare and Medicaid programs, would establish in regulations, methods for determining fee schedules applicable for outpatient clinical diagnostic laboratory tests and payment policy related to these fee schedules. It would implement in regulations the requirements of a number of laws, the most recent being OBRA '90. As discussed in detail in section I.C. of this preamble, these laws, starting with the DEFRA '84, have all been implemented by appropriate instructions and memoranda issued to HCFA regional offices, fiscal intermediaries, and carriers. To implement the provisions of OBRA '90, we issued a Carrier Program Memorandum in December 1990. Note that another statute, the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578, is expected to have a significant impact on laboratory costs and was the subject of separate rulemakings (57 FR 7002, 57 FR 7188, and 57 FR 7218). CLIA rules will have no effect on the payment methodology that is the subject of this rule, and there is no authority to increase fees to take into account cost increases caused by CLIA.

We are including, as a matter of general information, our estimate of the impact of the statutory provisions of OBRA '90. The impact of the previous statutory provisions cannot be reliably estimated in light of the changes made in subsequent legislation and subsequent industry behavioral response.

Section 6111(a) of OBRA '89 amended section 1833(h) of the Act to eliminate the establishment of nationwide fees and required that, after December 31, 1989, the national limitation amount was to be calculated as 93 percent of the median of the fee schedules established for the test. Section 4154(b) of OBRA '90 further amended section 1833(h) of the Act to require that, after December 31, 1990, the national limitation amount is to be calculated as 88 percent of the median of the fee schedule established for the test. This reduction would affect those providers in areas with local fees for tests above 88 percent of the median. At this time we do not know how many laboratories or tests would be affected, but this provision is specifically required by the statute.

Section 4154(a) of OBRA '90 also amended section 1833(h) of the Act to require that the annual adjustment in the fee schedules for each of the years 1991, 1992, and 1993 be 2 percent. Absent this amendment to the Act, the increase in the annual adjustment would have been 5.2 percent in 1991 and 5.7 percent in 1992 instead of the 2 percent mandated by the statute.

The savings estimate for OBRA '90 in the table below reflects the reduction to the national limitation amount and the constraint on the update factor for 1991, 1992, and 1993.

MEDICARE PROGRAM SAVINGS

[In millions of dollars] [1]

	Fiscal year—				
	1992	1993	1994	1995	1996
Reduction in national limitation amount: Section 4154(b) ..	$100	$110	$130	$140	$160
Constraint on update factor: Section 4154(a) ..	100	160	200	230	260
Total	200	270	330	370	420

[1] Rounded to the nearest $10 million.

Since Federal financial participation is not available to the extent that any payment for a clinical diagnostic test exceeds the amount determined for the same service in accordance with Medicare regulations, we believe States with fee schedules with rates that exceed the revised national limitation amount of 88 percent of the median would reduce fees to comply with the proposed regulations. We are not able to estimate the effect of the statutory changes on Medicaid expenditures because we do not have data concerning how many States would be affected and the magnitude of changes in payment in those States.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all providers and suppliers to be small entities. Individuals and States are not included in the definition of a small entity. In considering whether to prepare a regulatory flexibility analysis, we must determine whether this proposed rule would have a significant economic impact on those laboratories it would affect. The major impact on laboratory fee schedule increases and the reduction in the national cap on laboratory fee schedules is the result of the statute and would not be substantially altered by these proposals.

We are including discussion here of two of the discretionary decisions in this proposed rule. We are proposing to apply the same conditions of payment of specimen collection and travel allowance fees as for payment of laboratory tests. That is, claims for specimen collection and travel allowance services must be assigned and Medicare payment will be 100 percent of the fee. We believe this is the best interpretation of the statute. If assignment by the laboratory were not required, laboratories would be able to charge any amount for specimen collection or travel to make up for the reductions in payment of laboratory tests. Beneficiaries would bear the burden of the charges in excess of Medicare's payment.

If we chose to pay 80 percent of the approved amount instead of 100 percent, laboratories would be burdened with collecting small coinsurance amounts for specimen collection and travel. The cost of billing in some cases would exceed the amount billed. For 1991, we estimated a program cost of $29 million by paying 100 percent of specimen collection and travel claims rather than 80 percent. If we paid 80 percent of the approved amount and assignment was not mandatory, there would be a substantial cost shift from the Medicare program to beneficiaries. While we are not able to estimate the total effects on beneficiaries, payments for laboratory tests are reduced by several hundred million dollars each year. It can therefore be assumed that excess charges for specimen collection and travel would be used by laboratories to offset these decreases in Medicare payment. Charges for specimen collection and travel allowances exceeded allowed charges by $165 million in 1991. At a minimum, we would expect beneficiaries to bear a portion of this additional cost if we did not require assignment. However, the excess charges could be considerably more if laboratories and physicians increased their charges for specimen collection and travel in order to defray what they might consider to be inadequate payment for laboratory tests.

In addition, we are proposing to allow carriers to limit the allowance for travel

to collect specimens to no more than what would be paid to the closest laboratory that could perform the service. There would be no additional burden on laboratories since carriers would determine the distance of the closest appropriate laboratory to the patient. There would be a small savings to the Medicare program as a result of any limitations that carriers find appropriate on payment for travel.

Because the effects of this proposed rule are primarily associated with statutory requirements in section 1833(h) of the Act, we believe that this proposed rule would not meet RFA criteria. Therefore, the Secretary certifies that the regulation would not have a significant economic, impact on a substantial number of small entities. If, as a result of comments or new data, we determine that some small entities would be significantly affected, we will include a regulatory flexibility analysis in the final rule.

C. Small Rural Hospitals

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We do not believe there would be any significant changes in services provided by or payments made to small rural hospital as a result of this proposed rule. Therefore, we are not preparing a rural hospital impact statement because we have determined, and the Secretary certifies, that this proposed regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

VI. Other Required Information

A. Collection of Information

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

B. Response to Comments.

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

Lists of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

End-stage renal disease (ESRD), Health professions, Laboratories, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

As discussed in the preamble, we propose to amend 42 CFR chapter IV as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; and Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

A. Part 405, subpart E is amended as follows:

1. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1848, 1861 (b), (v), and (aa), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 13951(a), 1395m(b), 1395u (b) and (h), 1395w–4, 1395x (b), (v), and (aa), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. In § 405.501, paragraph (a) is revised to read as follows:

§ 405.501 Determination of reasonable charges.

(a) Except as specified in paragraph (b) and (c) of this section and in part 414, subpart F of this chapter regarding payment for clinical diagnostic laboratory tests, Medicare pays no more for Part B medical and other health services than the "reasonable charge" for such service (subject to any deductible and coinsurance amounts as specified in §§ 410.152 and 410.160 of this chapter). The reasonable charge is determined by the carriers.

* * * * *

3. In § 405.502, the introductory text of paragraph (a) is revised and paragraph (a)(8) is removed and reserved to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate payment to the various ways in which health services are furnished and billed. The criteria for determining what charges are reasonable include:

* * * * *

(8) [Reserved]

* * * * *

§ 405.505 [Amended]

4. Section 405.505 is amended by adding the following parenthetical sentence after the first sentence: "(Determination of 'locality' is different from the determination of 'area' used in § 415.358 to establish fee schedules for clinical diagnostic laboratory tests.)"

5. Section 405.506 is revised to read as follows:

§ 405.506 Charges higher than customary or prevailing charges or lowest charge levels.

A charge that exceeds the customary charge of the physician or other person who furnished the medical or other health service, or the prevailing charge in the locality, or an applicable lowest charge level, may be found to be reasonable only if there are unusual circumstances or if there are medical complications requiring additional time, effort, or expense that support an additional charge, and only if it is acceptable medical or medical service practice in the locality to make an extra charge in such cases. (Additional charges related to clinical diagnostic laboratory tests are addressed in § 414.366.)

§ 405.506 [Amended]

6. The authority citation following § 405.506 is removed.

7. In § 405.511, paragraph (a) is revised to read as follows and paragraph (c)(3) is removed:

§ 405.511 Reasonable charges for medical services, supplies, and equipment.

(a) *General rule.* A charge for any medical service, supply, or equipment (including equipment servicing) that in the judgment of HCFA generally does not vary significantly in quality from one supplier to another (and that is identified by a notice published in the Federal Register) is not considered reasonable if it exceeds any of the following:

(1) The customary charge of the supplier (see § 405.503).

(2) The prevailing charge in the locality (see § 405.504).

(3) The charge applicable for a comparable service and under comparable circumstances to the policyholders or subscribers of the carrier (see § 405.508).

(4) The lowest charge level at which the item or service is widely and consistently available in the locality (see paragraph (c) of this section). Allowance of additional charges exceeding the lowest charge level can be approved by the carrier on the basis of unusual circumstances or medical complications in accordance with § 405.506.

(5) The inflation-indexed charge, as determined under § 405.509, in the case of medical services, supplies, and equipment that are paid on a reasonable charge basis (excluding physicians' services).

* * * * *

§ 405.515 [Removed]

8. Section 405.515 is removed.

9. In § 405.556, paragraph (c) is revised to read as follows:

§ 405.556 Conditions for payment of charges: Physician laboratory services.

* * * * *

(c) *Independent laboratory services furnished to a provider patient.* Laboratory services furnished to a provider patient by an independent laboratory (as defined in § 414.352) are paid on a reasonable charge basis under this subpart only if they are physician laboratory services as described in paragraph (a) of this section. Payment for nonphysician services furnished to a hospital inpatient by an independent laboratory is made by the intermediary to the hospital in accordance with part 412 or 413 of this chapter, as applicable. Payment for nonphysician services furnished by an independent laboratory to a hospital outpatient or any other provider patient is made in accordance with part 414, subpart F of this chapter.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services

B. Part 413 subpart H is amended as follows:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.170 [Amended]

2. In § 413.170, paragraph (a)(1) is amended by adding the following parenthetical sentence at the end: "(Part 414, subpart F, of this chapter contains additional provisions pertaining to payment for laboratory services furnished in connection with outpatient maintenance dialysis.)"

C. Part 414 is amended as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

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

Authority: Secs. 1102, 1832, 1833, 1861, 1871, 1881, and 1903 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395x, 1395hh, 1395rr, and 1396b).

2. A new subpart F is added and subpart G is added and reserved to read as follows:

Subpart F—Payment for Clinical Diagnostic Laboratory Tests

Sec.

Subpart G—[Reserved]

Subpart F—Payment for Clinical Diagnostic Laboratory Tests

§ 414.350 Scope.

This subpart establishes that payment for clinical diagnostic laboratory tests is based on fee schedules. It contains provisions related to the following:

(a) Applicability of the provisions of this subpart.

(b) The calculation and use of fee shcedules as a basis for payment for clinical diagnostic laboratory tests.

(c) Limitations on the fee-schedule amount

(d) Payments in addition to the fee-schedule amount.

(e) How the amount of payment is determined for clinical diagnostic laboratory tests.

(f) Prohibition of billing on an unassigned basis.

(g) To whom payment is made.

§ 414.352 Definitions.

The following definitions apply to this subpart:

Hospital is an institution that meets the following conditions:

(a) Is primarily engaged in providing to inpatients, by or under the supervision of doctors of medicine or osteopathy, diagnostic and therapeutic services for the diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(b) Provides 24-hour nursing service furnished or supervised by a registered professional nurse and has a licensed practical nurse or registered professional nurse on duty at all times.

(c) Is licensed under State law, as applicable.

(d) Is not primarily engaged in providing skilled nursing care and related services for patients who require medical or nursing care.

Independent laboratory is a facility maintained for the purpose of performing diagnostic laboratory tests and that meets one of the following conditions:

(a) It is not owned, controlled, managed, or supervised by any of the following:

(1) A hospital (including nonparticipating hospitals eligible for payment for emergency services).

(2) A hospital's organized medical staff.

(3) An attending or consulting physician's office.

(b) It is owned, leased, maintained, or operated by or for a group of physicians and the group is not otherwise a shared medical practice as defined in this section. A physician's office laboratory, as otherwise defined in this section, that accepts specimens on referral for testing from other physicians or entities is considered an independent laboratory. A facility is not considered an independent laboratory if it is

maintained by a physician, group medical practice, skilled nursing facility, or rural health clinic to perform diagnostic laboratory tests exclusively for its own patients.

Non-hospital patients are patients in settings other than a hospital's inpatient or outpatient department.

Outpatient laboratory tests are clinical diagnostic tests ordered as a result of a patient's visit to an outpatient department of a hospital.

Physician's office laboratory is a facility that is maintained by a physician, group medical practice, or rural health clinic to perform laboratory tests exclusively for its own patients.

Qualified hospital laboratory is a hospital laboratory that meets all of the following conditions:

(a) Has staff on duty or on call 24 hours a day, 7 days a week, to perform clinical diagnostic tests to serve a hospital emergency room.

(b) Serves a hospital emergency room that has physicians physically present or available within 30 minutes through a medical call roster 24 hours a day, 7 days a week.

(c) Is in a hospital that meets the requirements for a sole community hospital specified at § 412.92 of this chapter.

Shared medical practice is two or more physicians actually practicing medicine together under a legal entity that meets the requirements for a group practice specified at § 411.351 of this chapter.

§ 414.354 Applicability.

(a) *General rule.* Except as specified in paragraphs (b) through (j) of this section, Medicare Part B pays for clinical diagnostic laboratory tests on the basis of fee schedules under this subpart. (The actual amount of payment for each test performed is determined as set forth in § 414.374.)

(b) *Exception: Tests furnished to Part B-only inpatients by a hospital or by others under arrangements.* For patients eligible for payment for Part B services only, payment is made on a cost basis, subject to the applicable Part B deductible and coinsurance, to a hospital for laboratory tests furnished to inpatients of that hospital by the hospital or by others under arrangements made by the hospital.

(c) *Exception: Tests performed by a SNF for its inpatients.* Laboratory tests performed by a participating SNF for its inpatients are payable on a cost basis, subject to the applicable Part B deductible and coinsurance.

(d) *Exception: Tests associated with dialysis.* No separate payment is made for laboratory tests for which payment is made as part of the dialysis prospective payment rate as explained in § 413.170. Payment for laboratory tests furnished to dialysis patients, if not made on the basis of prospective payment rates, is made in accordance with this subpart.

(e) *Exception: Hospitals paid under alternative payment programs.* If a hospital is paid under an alternative payment program approved by HCFA, the provisions of this section are waived with respect to payment for outpatient clinical diagnostic laboratory tests to the extent that the alternative payment program controls payment for those tests.

(f) *Exception: Tests in rural health clinics.* Laboratory tests furnished by rural health clinics to their own patients are paid for in accordance with subpart X of part 405 and not on the basis of fee-schedule amounts.

(g) *Exception: Tests by health maintenance organizations, competitive medical plans, and health care prepayment plans.* Laboratory tests furnished to enrollees of health maintenance organizations, competitive medical plans, and health care prepayment plans are paid for in accordance with part 417 of this chapter. Laboratory tests furnished to non-enrollees by such organizations or plans are paid for in accordance with this subpart.

(h) *Exception: Tests under hospice care.* Outpatient clinical diagnostic laboratory tests furnished as part of hospice care are paid for in accordance with part 418 of this chapter, subpart E.

(i) *Exception: Tests considered physician services.* Clinical diagnostic laboratory tests that can be performed safely and effectively only by physicians are considered physician services. These tests are not subject to the fee-schedule for laboratory tests. They are paid for as physician services.

(j) *Exception: Physician laboratory services.* A laboratory service that meets the payment conditions of § 405.556 (a) and (b) and that is furnished to a patient of a provider is a physician laboratory service and is payable under the physician fee schedule.

§ 414.358 Calculation of fee schedule amounts.

(a) *General rule.* Fee-schedule amounts for diagnostic laboratory tests performed on or after July 1, 1984, are based on carrierwide prevailing charge levels and are calculated on a carrierwide basis not to exceed a statewide basis using the methodology explained in paragraphs (b) through (h).

(b) *Calculation of fee-schedule amounts for tests performed during the year beginning July 1, 1984.* Fee-schedule amounts for diagnostic laboratory tests are set at 60 and 62 percent of the carrierwide prevailing charge levels, applicable as set forth in paragraph (i) of this section. (The carrierwide prevailing charge levels are the 75th percentile of customary charges made for the calendar year ending December 31, 1983, weighted by frequency. Customary charges are those made for similar services in each carrier's total service area within each State or in those carrier service areas that include portions of different States but not all of any one State.)

(c) *Calculation of fee-schedule amounts for tests performed during the 18-month period beginning July 1, 1985.* For diagnostic laboratory tests performed on or after July 1, 1985, and before January 1, 1987, fee-schedule amounts are calculated by increasing or decreasing the fee-schedule amounts determined under paragraph (b) of this section by the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average) from July 1983 to July 1984.

(d) *Calculation of fee-schedule amounts for tests performed during 1987.* For diagnostic laboratory tests performed during 1987, fee-schedule amounts are calculated by increasing or decreasing the fee-schedule amounts determined under paragraph (c) of this section by the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average) from July 1984 to January 1986.

(e) *Calculation of fee-schedule amounts for tests performed during 1988.* (1) No adjustment in the fee schedules is made to take into account any increase in the Consumer Price Index for 1988.

(2) For tests previously subject to the lowest charge levels, under § 405.502(a)(6), performed after March 31, 1988, the fee-schedule amounts otherwise established for 1988 are reduced by 8.3 percent. (The reduced fee schedule amounts serve as the base for 1989 and subsequent years for those tests.)

(f) *Calculation of fee-schedule amounts for tests performed on or after January 1, 1989.* Except as specified in paragraphs (g) and (h) of this section, for diagnostic laboratory tests performed on or after January 1, 1989, fee-schedule amounts are calculated by annually adjusting effective January 1 the fee-schedule amounts determined for the preceding year by the increase or decrease in the Consumer Price Index for All Urban Consumers (U.S. city

average) for the 12-month period ending January of the preceding year.

(g) *Calculation of fee-schedule amounts for tests performed in 1991, 1992, or 1993.* For diagnostic laboratory tests performed in 1991, 1992, or 1993, fee-schedule amounts are calculated by annually adjusting the fee-schedule amounts determined for the preceding year by 2 percent.

(h) *Period used to determine change in Consumer Price Index.* Effective January 1, 1994, the 12-month period used to determine the change in the Consumer Price Index for All Urban Consumers (U.S. city average) is the 12-month period ending June of the preceding year.

(i) *Applicability of the 60 and 62 percent fee-schedules.* (1) For diagnostic laboratory tests performed during the period July 1, 1984, through December 31, 1986, the 60-percent fee schedule is applicable to tests performed by physicians, independent laboratories, and hospital laboratories (for non-hospital patients), and the 62-percent fee schedule is applicable to outpatient laboratory tests performed by hospital laboratories for their outpatients.

(2) For diagnostic laboratory tests performed on or after January 1, 1987, the 60-percent fee schedule is applicable to tests performed by physicians, independent laboratories, and hospital laboratories (other than outpatient laboratory tests performed by qualified hospital laboratories for their outpatients), and the 62-percent fee schedule is applicable to tests performed by qualified hospital laboratories (as defined in § 414.352) for their outpatients.

§ 414.362 National limitation amounts.

For a clinical diagnostic laboratory test performed after December 31, 1990, the national limitation amount is 88 percent of the median of all the fee schedules established for that test for that laboratory setting.

§ 414.366 Payments in addition to fee-schedule amounts.

(a) *Payment for specimen collection.* A fee of $3 is paid for collection of specimens necessary for clinical diagnostic laboratory tests.

(1) One collection fee is allowed for each type of specimen drawn in a single encounter. If different types of specimens are drawn, a separate fee is allowed for each type. If a series of specimens is required to complete a single test, the series is considered a single encounter.

(2) In the case of a nursing facility patient, payment may be made only if no qualified personnel are available at the site to draw the specimen.

(3) Payment of a specimen collection fee is allowed for laboratory tests associated with maintenance dialysis treatment not paid for under prospective payment (composite) rates.

(4) Payment under paragraph (a)(1) is not allowed if the cost of collecting the specimen is minimal.

(b) *Payment for travel allowances.* Payment of a travel allowance is made if it is necessary for trained personnel to travel to the location of a homebound or nursing facility patient in order to collect a specimen.

(1) Payment is prorated by the number of patients served, both Medicare and non-Medicare and both patients from whom specimens are drawn and patients for whom specimens are only transported.

(2) Payment of a travel allowance is allowed for drawing specimens for laboratory tests associated with maintenance dialysis treatment not paid for under prospective payment (composite) rates.

(3) The local carrier processing the claim may review the claim for payment under this paragraph and limit that payment to the amount that would be paid to the closest (to the collection site) laboratory that could perform the service.

(c) *Payment for emergency laboratory tests.* For laboratories other than qualified laboratories, a payment in addition to amounts determined under paragraph (a) or (b) of this section or under § 414.358 or 414.362 is allowed for clinical diagnostic laboratory tests needed for the provision of bona fide emergency services if those services are performed outside the hours that a laboratory customarily performs them.

(1) *Definition of bona fide emergency services.* For purposes of paragraph (c) of this section, *bona fide emergency services* means services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of such severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(i) Placing the patient's health in serious jeopardy.

(ii) Serious impairment to bodily functions.

(iii) Serious dysfunction of any bodily organ or part.

(2) *Additional amount determined reasonable.* Payment is based on additional amounts deemed reasonable by the local carrier processing the Medicare claim. Approval of additional payment amounts is made on a case-by-case basis.

§ 414.370 Prohibition of billing on an unassigned basis.

Except for a test performed by a rural health clinic, a person or entity may not bill for a clinical diagnostic laboratory test other than on an assignment-related basis. A person or entity that knowingly and willfully and on a repeated basis bills for a clinical diagnostic laboratory test on an unassigned basis is subject to sanctions in accordance with section 1842(j)(2) of the Act.

§ 414.374 Amount of payment.

Except as specified in § 414.354 (b) through (j), and subject to the provisions of § 414.375 regarding to whom payment may be made, the amount of payment made on an assignment-related basis to providers (under a provider agreement), independent laboratories, and physicians is 100 percent of: the charges billed, the fee-scheduled amount as determined under § 414.358, or the national limitation amount as determined under § 414.362, whichever is least; plus, subject to the provisions of § 414.375 regarding to whom payment may be made, any additional amounts payable under § 414.366.

§ 414.375 To whom payment is made.

(a) *Payment for clinical diagnostic laboratory tests.* Subject to the provisions of section 1877 of the Act concerning limitations on certain physician referrals, payment for clinical diagnostic laboratory tests is made only to the physician or entity that performs or supervises the performance of the test, with the following exceptions:

(1) Payment may be made on an assignment-related basis (under § 424.55 or § 424.64) to a physician who has a shared medical practice with the physician who performed or supervised the performance of the test.

(2) Payment for a clinical diagnostic laboratory test performed at the request of an independent or hospital laboratory by another laboratory may be made on an assignment-related basis (under § 424.55 or § 424.64) to the referring laboratory in any of the following circumstances:

(i) The referring laboratory is in, or is part of, a rural hospital.

(ii) Either the referring laboratory is wholly owned by the performing laboratory, the performing laboratory is wholly owned by the referring laboratory, or both laboratories are wholly owned by a third entity.

(iii) Not more than 30 percent of the tests for which the referring laboratory, other than a laboratory described in paragraph (a)(2)(ii) of this section, receives requests for testing during the

year in which the test is performed are performed by another laboratory.

(3) Payment may be made in accordance with the requirements of § 424.66 to an entity that pays for clinical diagnostic laboratory tests under a health benefits plan.

(4) For tests performed for hospital outpatients, payment is made only to the hospital that ordered the test.

(b) *Payment of a specimen collection fee and related travel allowance.* Payment of a specimen collection fee and related travel allowance (if any) is made only to the physician or entity that collected or supervised the collection of the specimen, except as follows:

(1) Payment may be made on an assigned basis (under § 424.55 or § 425.64) to another physician who has a shared medical practice with the physician who collected or supervised the collection of the specimen.

(2) Payment may be made in accordance with the requirements of § 424.66 to an entity that pays for the collection of specimens under a health benefits plan.

(3) For specimens drawn for hospital outpatients, payment is made only to the hospital that ordered the specimen collection.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

Subpart D—To Whom Payment Is Ordinarily Made

D. Part 424, subpart D is amended as follows:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh and 1395ii).

2. In § 424.55, paragraph (b)(1) is revised to read as follows:

§ 424.55 Payment to the supplier.

* * * * *

(b) In accepting assignment, the supplier agrees to the following:

(1) To accept, as full charge for the service, the Medicare-approved amount, such as the reasonable charge, or the payment amount for clinical diagnostic laboratory tests subject to the fee schedule provisions of subpart F of part 414, as determined by the carrier or HCFA, as appropriate.

* * * * *

3. Section 424.64(c) is revised to read as follows:

§ 424.64 Payment after beneficiary's death: Bill has not been paid.

* * * * *

(c) *To whom payment is made.* In the situation described in paragraph (b) of this section, Medicare pays as follows:

(1) *Payment to the supplier.* Medicare pays the physician or other supplier if it does the following:

(i) Files a claim on a HCFA-prescribed form in accordance with the applicable requirements of this subpart.

(ii) Upon request from the carrier, submits evidence that the services for which it claims payment were, in fact, furnished.

(iii) Agrees in writing to accept the payment amount determined by the carrier as the full charge for the services.

(2) *Payment to a person who assumes the legal obligation to pay for the services.* If the physician or other supplier does not agree to accept the payment amount determined by the carrier as full charge for the service, Medicare pays any person who submits to the carrier all of the following:

(i) A statement indicating that he or she has assumed the legal obligation to pay for the services.

(ii) A claim on a HCFA-prescribed form in accordance with the requirements of this subpart. (If a claim had been submitted by or on behalf of the beneficiary before he or she died, submission of another claim form is not required; a written request by the person seeking payment meets the requirement for a claim.)

(iii) An itemized bill that identifies the claimant as the person whom the physician or other supplier holds responsible for payment. (If such an itemized bill had been submitted by or on behalf of the beneficiary before he or she died, submission of another itemized bill is not required.)

(iv) If the intermediary or carrier requests it, evidence that the services were actually furnished.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

E. Part 431 is amended as follows:

1. The authority citation for part 431 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart B—General Administrative Requirements

2. In § 431.54, the introductory texts of paragraphs (d) and (d)(2) are republished and paragraphs (d)(2)(i) and (d)(2)(ii) are revised to read as follows:

§ 431.54 Exceptions to certain State plan requirements.

* * * * *

(d) *Special procedures for purchase of medical devices and laboratory and X-ray tests.* The Medicaid agency may establish special procedures for the purchase of medical devices or laboratory and x-ray tests (as defined in § 440.30 of this chapter) through a competitive bidding process or otherwise, if the State assures in the certification required under § 431.51(d), and HCFA finds, as follows:

* * * * *

(2) Laboratory services are furnished through laboratories that meet the following requirements:

(i) They are independent laboratories, or inpatient or outpatient hospital laboratories that provide services for individuals who are not hospital patients, or physician laboratories.

(ii) They meet the requirements of part 482 or part 493 of this chapter.

* * * * *

PART 447—PAYMENTS FOR SERVICES

F. Part 447 is amended as follows:

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

Subpart A—Payments: General Provisions

2. In § 447.10, paragraph (a) is revised, paragraph (g)(1) is removed, and paragraphs (g)(2), (g)(3), and (g)(4) are renumbered as (g)(1), (g)(2), and (g)(3), respectively, to read as follows:

§ 447.10 Prohibition against reassignment of provider claims.

(a) *Basis and purpose.* This section implements section 1902(a)(32) of the Act, which prohibits State payments for Medicaid services to anyone other than a provider or recipient except in specified circumstances.

* * * * *

Subpart D—Payment Methods for Other Institutional and Noninstitutional Services

3. Section 447.300 is revised to read as follows:

§ 447.300 Basis and purpose.

In this subpart, §§ 447.302 through 447.334 and § 447.361 implement section 1902(a)(30) of the Act, which requires that payments be consistent with efficiency, economy, and quality of care. Section 447.342 implements section 1903(i)(7) of the Act, which specifies that FFP is not available for any payment for a clinical laboratory test to the extent the payment made by

the State exceeds the amount that would be paid for the test under Medicare. Section 447.371 implements section 1902(a)(13)(E) of the Act, which requires that the State plan provide for payment for rural health clinic services in accordance with regulations prescribed by the Secretary.

4. Section 447.342 is revised to read as follows:

§ 447.342 Payment for clinical diagnostic laboratory tests.

FFP is not available for any payment for a clinical diagnostic laboratory test to the extent that the payment exceeds the amount determined for the same service in accordance with Medicare regulations in part 414, subpart F of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program; 93.778, Medical Assistance Program)

Dated: March 18, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 20, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–19612 Filed 8–17–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7073]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472 (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The table published under the authority of § 67.4 is proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MARYLAND	
Deer Park (town) Garrett County	
Little Youghiogheny River:	
Approximately 170 feet downstream of downstream corporate limits	*2,438
At upstream corporate limits	*2,455
At confluence with Little Youghiogheny River	*2,443
At upstream corporate limits	*2,455
Maps available for inspection at the Town Hall, Deer Park, Maryland.	
Send comments to the Honorable Jack Hinebaugh, Mayor of the Town of Deer Park, Garrett County, Route 4, P.O. Box 655, Deer Park, Maryland 17052.	
NORTH CAROLINA	
Harrisburg (town), Cabarrus County	
Back Creek:	
Approximately 1.9 miles downstream of Robinson Church Road	*585
At downstream side of Caldwell Road	*608
Maps available for inspection at the Town Hall, Harrisburg, North Carolina.	
Send comments to the Honorable A. J. Blackwelder, Mayor of the Town of Harrisburg, Cabarrus County, P.O. Box 100, Harrisburg, North Carolina 28075.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Hawaii	Hawaii County, Unincorporated Areas.	Keopu Drainageway	Approximately 525 feet upstream of Hualalai Road.	*70	*60
			Approximately 1,110 feet upstream of Hualalai Road.	*110	*114
			Approximately 1,150 feet downstream of Hawaii Belt Road.	*137	*135
			Approximately 450 feet downstream of Hawaii Belt Road.	*203	*203
		Waiaha Drainageway	Just downstream of Kuakini Highway	*166	*164
			Just upstream of Kuakini Highway	*166	*170
			Just downstream of Hawaii Belt Road	*357	*357
		Waiaha Drainageway, Splitflow No. 2.	Approximately 600 feet upstream of Keaubou-Kailua Middle Road.	*254	*254
			Approximately 260 feet downstream of Hawaii Belt Road.	*304	*296
			Just downstream of Hawaii Belt Road	*310	*310
Maps are available for review at the Hawaii County Department of Public Works, Division of Engineering, 25 Aupuni Street, Hilo, Hawaii. Send comments to the Honorable Stephen Yamashiro, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.					
Illinois	Jacksonville (city), Morgan County.	Town Brook	Approximately 75 feet upstream of Clay Avenue.	*580	*579
			Approximately 650 feet upstream of Massey Lane.	None	*604
Maps available for inspection at the Jacksonville City Hall, Inspection Department, 200 West Douglas, Jacksonville, Illinois. Send comments to the Honorable Ron Tendick, Mayor of the City of Jacksonville, Morgan County, 200 West Douglas, Jacksonville, Illinois 62650.					
Louisiana	Concordia Parish, unincorporated areas.	Cross Bayou, Turtle Lake, and Black Bayou.	At confluence of Bayou Cocodrie	None	*51
			Approximately 150 feet upstream of U.S. Route 65.	None	*54
		Vidalia Canal	Approximately 1,000 feet upstream of confluence with Bayou Cocodrie.	None	*49
			At Union Pacific Railroad	None	*57
		Crooked Bayou	At confluence with Vidalia Canal	None	*54
			Approximately 1.8 miles upstream of confluence with Vidalia Canal.	None	*57
		Black River	At confluence with Red River	None	*60
			At confluence with Tensas River	None	*63
		Tensas River	At confluence with Black River	None	*63
			Approximately 0.63 mile upstream of confluence with Little Tensas River.	None	*63
Maps available for inspection at the Parish Courthouse, 4001 Carter Street, Vidalia, Louisiana. Send comments to Mr. Russell Wagoner, Concordia Parish President, 4001 Carter Street, room #1, Vidalia, Louisiana 71373.					
Maryland	Garrett County, unincorporated areas.	Little Youghiogheny River.	Approximately 700 feet upstream of the confluence with Youghiogheny River.	*2,367	*2,366
			Approximately 1 mile upstream of Boiling Spring Road.	None	*2,472
		Bradley Run	At the confluence with Little Yoghiogheny River.	*2,370	*2,371
			Approximately 25 feet downstream of Chessie System.	*2,370	*2,371
Maps available for inspection at the Planning and Zoning Office, 313 E. Adler Street, Oakland, Maryland. Send comments to Mr. Elwood Groves, Chairman of the Garrett County Board of Commissioners, 203 South 4th Street, Oakland, Maryland 21550.					
Maryland	Loch Lynn Heights (town) Garrett County.	Little Youghiogheny River.	At downstream corporate limits	*2,391	*2,390
			At upstream corporate limits	*2,392	*2,391

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town Hall, Mountain Lake Park, Maryland.					
Send comments to the Honorable Charles Tressler, Mayor of the Town of Loch Lynn Heights, Garrett County, 505 Shenandoah Avenue, Mountain Lake Park, Maryland 21550.					
Maryland	Mountain Lake Park (town), Garrett County.	Little Youghiogheny River.	Approximately 1,100 feet downstream of Chessie System.	*2,391	*2,390
			At State Route 135	*2,402	*2,403
Maps available for inspection at the Town Hall, Mountain Lake Park, Maryland.					
Send comments to the Honorable David Turney, Mayor of the Town of Mountain Lake Park, Garrett County, Welton Lane, P.O. Box 2182, Mountain Lake Park, Maryland 21550.					
Michigan	Baldwin (township), Iosco County.	Lake Huron/Tawas Bay.	Along Tawas Bay shoreline, around Tawas Point, and north along Lake Huron shoreline, to approximately 4,800 feet due east of intersection of Baldwin Resort Road and Tawas Beach Road.	None	*584
		Lake Huron	Shoreline along Lake Huron from approximately 0.9 mile northeast of intersection of Scott Road and Forest Street, to approximately 1,900 feet southwest of intersection of Scott Road and Forest Street.	None	*589
			Shoreline 1,500 feet east of intersection of Baldwin Resort Road and U.S. Route 23.	None	*587
			Shoreline at Point au Sable	None	*584
			Shoreline along Lake Huron from Tawas Point State Park to a point approximately 2.2 miles northeast along shoreline.	None	*584
		Shallow Flooding from Lake Huron.	Approximately 1,500 feet east of intersection of Baldwin Resort Road and U.S. Route 23.	None	#1
			Approximately 3,800 feet northeast of intersection of U.S. Route 23 and Birchcrest Drive, approximately 190 feet northwest of Lake Huron shoreline.	None	#2
		Tawas River	At confluence with Tawas Lake	None	*588
			At downstream corporate limits	None	*588
		Tawas Lake	Entire shoreline	None	*588
Maps available for inspection at Township Hall, 1119 Monument Road, Tawas City, Michigan.					
Send comments to The Honorable FLoyd M. Peters, Township Supervisor, Township of Baldwin, Township Hall, 1119 Monument Road, Tawas City, Michigan 48763.					
Michigan	East Tawas (city), Iosco County.	Tawas Bay	Shoreline from approximately 3,000 feet west of Newman Street to approximately 2,200 feet from west of Newman Street.	*584	*587
			Shoreline approximately 2,100 feet west of Newman Street to approximately 80 feet west of Newman Street.	*584	*585
			Shoreline from 400 feet west of Alice Street extended to approximately 2,600 feet east of Alice Street.	*584	*587
Maps available for inspection at the City Manager's Office, City Hall, 120 West Westover Street, East Tawas, Michigan.					
Send comments to the Honorable Robert C. Bolen, Mayor of the City of East Tawas, Iosco County, City Hall, 120 West Westover Street, East Tawas, Michigan 48730.					
Michigan	Tawas City (city), Iosco County.	Tawas Bay	From Town Line Road to a point approximately 3,200 feet north along Tawas Bay shoreline.	*584	*586
			Shoreline 200 feet south of intersection of Hale Street and Lake Street.	*584	*587
			Shoreline 650 feet north of intersection of Hale Street and Lake Street to the intersection of Fourth Avenue and Lake Street.	*584	*587
			Shoreline between intersection of Wheeler Street and Lake Street and corportate limits with East Tawas.	*584	*587
		Shallow flooding from Tawas Bay (Lake Huron).	Area along Tawas Bay shoreline from intersection of Fourth Avenue and Lake Street to a point approximately 1,000 feet southeast.	*584	#1

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Manager's Office, City Hall, 815 Lake Street, Tawas City, Michigan.					
Send comments to The Honorable James Lansky, Sr., Mayor of the City of Tawas City, City Hall, 815 Lake Street, Box 568, Tawas City, Michigan 48764-0568.					
Minnesota	Hendrum (city) Norman County.	Wild Rice River	At downstream corporate limits	*871	*869
			At upstream corporate limits	*871	*870
Maps available for inspection at the City Hall, Hendrum, Minnesota.					
Send comments to the Honorable John Leiseth, Mayor of the City of Hendrum, Norman Country, P.O. Box 44, Hendrum, Minnesota 56550.					
New York	New York (city) Bronx, Queens, Kings, New York, and Richmond Counties.	Sweet Brook	At confluence of Colon Tributary	None	*14
			Approximately 1,000 feet downstream of Delmar Avenue.	None	*95
		Eltingville Tributary	At confluence with Sweet Brook	None	*39
			From center of structure approximately 180 feet upstream of Wilson Avenue.	None	*52
		Arbutus Creek	At confluence with Arbutus Lake	*11	*10
			Approximately 780 feet upstream of Amboy Road.	None	*56
		Jansen Tributary	At confluence with Arbutus Creek	None	*25
			Approximately 1,340 feet upstream of confluence with Arbutus Creek.	None	*37
		Denise Tributary	At confluence with Arbutus Creek	None	*15
			Approximately 1,400 feet upstream of Jansen Stret.	None	*51
		Lemon Creek	Approximately 100 feet downstream of Amboy Road.	None	*13
			Approximately 350 feet upstream of Rossville Avenue.	None	*102
		Sandy Brook	Approximately 360 feet upstream of Richmond Parkway.	None	*42
			Approximately 1,100 feet upstream of Bloomingdale Road.	None	*85
Maps available for inspection at the New York Commission—Department of Environmental Protection, 59-17 Junction Boulevard, Elmhurst, New York.					
Send comments to the Honorable David Dinkins, Mayor of the City of New York, Bronx, Queens, Kings, New York, and Richmond Counties, Office of the Mayor, 52 Chambers Street, New York, New York 10007.					
North Carolina	Cabarrus County, unincorporated areas.	Adams Creek	At confluence with Dutch Buffalo Creek	None	*518
			Upstream side of State Route 73	None	*631
		Afton Run	Approximately 0.55 mile upstream of Coddle Creek.	605	*606
			At Dogwood Boulevard	None	*666
		Back Creek	Approximately 450 feet upstream of State Route 1158 (Pharr Mill Road).	540	*541
			Approximately 0.57 mile upstream of County Route 1173 (Caldwell Road).	None	*614
		Caldwell Creek	At confluence with Reedy Creek	541	*544
			Approximately 1.31 miles upstream of State Route 1135 (Morrison Road).	None	*625
		Clarke Creek	Upstream side of County Route 1448	None	*607
			Approximately 0.25 mile upstream of Harris Road.	None	*632
		Dutch Buffalo Creek	Approximately 0.19 mile downstream of State Route 200.	506	*507
			At upstream side of State Route 73	None	*525
		Fuda Creek	At confluence with Back Creek	None	*525
			Approximately 0.25 mile upstream of Picadilly Lane.	None	*676
		McKee Creek	At confluence with Reedy Creek	None	*577
			Approximately 0.85 mile upstream of Peach Orchard Road.	None	*603
		Reedy Creek	Approximately 0.26 mile upstream of confluence with Rocky River.	533	*534

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Reedy Creek Tributary #1..	Approximately 0.78 mile upstream of confluence of Reedy Creek Tributary #1..	None	*608
			At confluence with Reedy Creek	None	*602
			Upstream side of Plaza Road Extension	None	*622

Maps available for inspection at the Cabarrus County Government Center, 65 Church Street, Concord, North Carolina.

Send comments to Ms. Carolyn Carpenter, Chairperson of te Cabarrus County Commission, Government Center, 65 Church Street, Concord, North Carolina 28025.

North Carolina ..	Catawba County, unincorporated areas.	Jacob Fork	At confluence with Henry Fork	None	*821
			Approximately 250 feet upstream of S.R. 1116 bridge.	None	*916

Maps available for inspection at the Government Service Center, Planning and Development Office, 100–A Southwest Boulevard, Newton, North Carolina.

Send comments to Mr. J. Thomas Lundy, Catawba County Manager, P.O. Box 389, Newtown, North Carolina 28658.

North Carolina ..	Concord (city), Cabarrus County.	Afton Run	Approximately 300 feet downstream of County Route 1430.	*605	*610
			Upstream side of Interstate Route 85	None	*620

Maps available for inspection at City Hall, Concord, North Carolina.

Send comments to the Honorable Bernie A. Edwards, Mayor of the City of Concord, Cabarrus County, P.O. Box 308, Concord, North Carolina 28026.

North Carolina ..	Monroe, (city), Union County.	Stewarts Creek	Approximately 0.8 mile upstream of U.S. Route 601.	None	*529
			Approximately 80 feet upstream of Secondary Road 1514 (Rocky River Road).	None	*625

Maps available for inspection at the Monroe City Hall, 300 West Crowell Street, Monroe, North Carolina.

Send comments to the Honorable Lynn A. Keziah, Mayor of the City of Monroe, Union County, P.O. Box 69, Monroe, North Carolina 28111.

North Carolina ..	Union County, Unincorporated Areas.	Stewarts Creek	100 feet downstream of State Route 200	None	*495
			Approximately 80 feet upstream of Secondary Road 1514.	None	*625

Maps available for inspection at the Union County Manager's Office, 500 North Main Street, Monroe, North Carolina.

Send comments to Mr. John L. Munn, Union County Manager, P.O. Box 218, Monroe, North Carolina 28111–0218.

Ohio	Batavia (village), Clermont County.	East Fork Little Miami River.	Approximately 1.3 miles downstream of State Route 32.	None	*554
			Approximately 0.47 mile upstream of Norfolk and Western Railway.	*580	*576

Maps available for inspection at the Batavia Village Offices, 389 East Main Street, Batavia, Ohio.

Send comments to The Honorable Edmund Parrott, Mayor of the Village of Batavia, Clermont County, 389 East Main Street, Batavia, Ohio 45103.

Ohio	Clermont (county)	East Fork Little Miami River.	Approximately 0.2 mile upstream of confluence with Little Miami River.	*511	*512
			Approximately 2.4 miles upstream of State Route 222.	None	*601
		Stonelick Creek	At confluence with East Fork Little Miami River.	*538	*539
			Approximately 200 feet upstream of confluence with East Fork Little Miami River.	*538	*539

Maps available for inspection at the Building Inspection Office, 2400 Clermont Center Drive, 2nd Floor, Suite 202, Batavia, Ohio.

Send comments to Mr. Steven Wharton, Clermont County Administrator, 76 South Riverside Drive, Batavia, Ohio 45103.

Ohio	Milford (city), Clermont and Hamilton Counties.	East Fork Little Miami River.	Approximately 1,003 feet upstream of confluence with Little Miami River.	*511	*512
			Approximately 0.4 mile upstream of Interstate Route 275.	None	*518

Maps available for inspection at the City Hall, 29 High Street, Milford, Ohio.

Send comments to Mr. David Spinney, Manager of the City of Milford, Clermont and Hamilton Counties, 29 High Street, Milford, Ohio 45150.

Pennsylvania	Texas (township), Wayne County.	Lackawaxen River	Approximately 1,000 feet downstream of Park Street Bridge.	*927	*925

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.1 miles upstream of Bear Swamp Road Bridge (upstream corporate limit).	*1,076	*1,079

Maps available for inspection at the Texas Township Building, Bear Swamp Road, Honesdale, Pennsylvania.

Send comments to Mr. John McDonald, Chairman of the Township of Texas Board of Supervisors, Wayne County, Bear Swamp Road, Honesdale, Pennsylvania 18431.

South Carolina ..	Horry County, unincorporated areas.	Waccamaw River	Approximately 0.6 mile downstream of U.S. Route 501.	*9	*10
			Approximately 2.2 miles upstream of the confluence of Stanley Creek.	*16	*17

Maps available for inspection at the Horry County Building Inspection Department, 801 Main Street, Room 121, Burroughs Complex, Conway, South Carolina.

Send comments to Mr. Douglas E. Freeman, Horry County Administrator, 103 Elm Street, P.O. Box 1236, Conway, South Carolina 29526.

Texas	Denton County	Denton Creek (Above Grapevine Lane).	At U.S. Highway 377	*564	*564
			Just upstream of Interstate Highway 35 West	None	*582
			Approximately 1,000 feet upstream of the confluence of Trail Creek.	None	*597
			At F.M. 407	None	*610
			Approximately 2,400 feet upstream of Old Justin-Ponder Road.	None	*635
		Clear Creek	At the confluence with Elm Fork Trinity River	*537	*537
			Just upstream of F.M. 428	None	*560
			Just upstream of F.M. 2164	None	*588
			At Rector Road	None	*601
			Approximately 300 feet upstream of interstate Highway 35.	None	*620
		Little Elm Creek	At the confluence of Running Branch	*537	*537
			At the confluence of Mustang Creek	None	*547
			Just upstream of F.M. 1385	None	*556
			Approximately 5,000 feet downstream of Mobberly Road.	None	*566
			Just upstream of Mobberly Road	None	*571
		Pecan Creek (Above Little Elm Creek).	At the confluence with Little Elm Creek	None	*537
			Approximately 10,000 feet upstream of the confluence with Little Elm Creek.	None	*546
			Just upstream of F.M. 428	None	*561
			Approximately 5,000 feet upstream of F.M. 428.	None	*570
			Just upstream of Mustang Road	None	*575
		Mustang Creek	At the confluence with Little Elm Creek	None	*548
			Just upstream of F.M. 428	None	*560
			Just upstream of Mobberly Road	None	*574
		Doe Branch	Approximately 3,000 feet downstream of U.S. Highway 380.	*537	*537
			Just upstream of Fish Trap Road	None	*549
			Just upstream of Parvin Road	None	*567

Maps are available for review at Denton County Department of Public Works, Plats and Map Division, 110 West Hickory, Denton, Texas.

Send comments to The Honorable Jeff Mosley, Denton County Judge, 110 West Hickory, Denton, Texas 76201.

Washington	Okanogan County, unincorporated areas.	Methow River	At Mazama Creek Road	*2,102	*2,102
			Approximately 630 feet downstream of the confluence with Early Winters Creek.	*2,152	*2,151
			Approximately 7,500 feet upstream of the confluence with Early Winters Creek.	*2,201	*2,200
			Approximately 690 feet upstream of the confluence with Gate Creek.	*2,252	*2,250
			Approximately 2,380 feet upstream of the confluence with McGee Creek.	*2,299	*2,300
			At the confluence with Lost River	*2,351	*2,359

Maps are available for review at Okanogan County Office of Planning and Development, Administration Building, 237 Fourth North, 2nd Floor, Okanogan, Washington.

Send comments to The Honorable Ronald Weeks, Chairperson, Okanogan County Board of Commissioners, P.O. Box 791, Okanogan, Washington, 98840.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 5, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–19703 Filed 8–17–93; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–266; FCC No. 93–389]

Cable Television Act of 1992

AGENCY: Federal Comununications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commission has issued a Further Notice of Proposed Rulemaking seeking comment regarding the application of its rules implementing the rate regulation provisions of the Cable Act of 1992 to small cable television systems—that is, those systems that have 1,000 or fewer subscribers. This action is taken concurrently with the Commission's decision, published elsewhere in this issue of the **Federal Register**, to temporarily stay its rate regulation rules with respect to small cable systems until the Commission reconsiders the administrative burdens and costs of compliance with the rules on small cable systems. This action is necessary to supplement the record to facilitate the Commission's review of petitions for reconsideration focusing on the application of the rules to small cable systems. This action is intended to permit the Commission to make any necessary modifications to its rules consistent with the Cable Act's directive to reduce administrative burdens and costs of compliance for cable systems that have 1,000 or fewer subscribers.

DATES: Comments are due on or before August 31, 1993, and reply comments are due on or before September 10, 1993.

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

FOR FURTHER INFORMATION CONTACT: Richard K. Welch, Office of the General Counsel, 202–632–6990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Further Notice of Proposed Rulemaking segment of the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC No. 93–389, adopted August 10, 1993, and released August 10, 1993. A synopsis of the Memorandum Opinion and Order segment of this decision is published elsewhere in this issue of the **Federal Register**. The complete text of the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at 202–857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Further Notice of Proposed Rulemaking

In the Report and Order adopting our cable television rate regulation rules, we stated that we would apply our small system rules to systems with under 1,000 subscribers, regardless of whether the system is independent or owned by an MSO.[1] In so doing, we declined invitations by certain commenters to draw a distinction between small independently owned cable systems and those small systems that are affiliated with or controlled by large MSOs.[2] We noted that the language of the Cable Act does not distinguish between such systems, and that the problems faced by small systems serving smaller, often more rural communities occur whether or not the system is owned by an MSO. We thus declined to presume that large corporate ownership of a small system automatically would make compliance with our rate regulation rules and procedures less costly.[3]

Upon further reflection, we have decided to explore further whether any relief that we ultimately may provide to small cable systems should extend to all small systems or only to such systems that are not affiliated with or controlled by large MSOs.[4] In particular, we seek comment on whether we should establish a "subscriber cap" that, with respect to MSO owned small systems, would limit relief to those systems that are controlled by an MSO having less than a certain number of subscribers in the aggregate. This cap could be set, for example, at one million total subscribers for the MSO, or at some lower or higher figure. We seek comment on the need for such a cap generally, and, if such a cap is warranted, the specific number of aggregate subscribers that would serve as the demarcation point for small system relief for MSO-owned systems.

Our previous survey of industry data indicates that, for those small systems responding to the survey, approximately 83 percent are affiliated with an MSO.[5] Thus, for those small systems responding, approximately 17 percent represented independently owned systems. We are interested in gaining more information on the number of independently owned cable systems with fewer than 1,000 subscribers, the number that are affiliated with MSOs, and the size of the parent MSOs. Commenting parties are encouraged to provide detailed information on these issues.

We also solicit comment on the generic differences between independent small systems and those small systems affiliated with or owned by MSOs. Specifically, we seek comment on whether our rate regulation rules create disproportionate problems for small, independent systems that are not faced to the same degree by MSO-owned small systems. We particularly are interested in comments addressed to the issue of whether small systems owned by MSOs enjoy economies of scale and scope not available to independent small systems. In this regard, we seek comment on the types of cost advantages available to MSO-owned systems, including, for example, volume discounts for programming, favorable rates on debt acquisition, and discounts on equipment, maintenance and supplies. If such economies of scale and scope exist, at what point (*i.e.*, aggregate number of subscribers) do such economies warrant adoption of a subscriber cap for purposes of determining regulatory relief for small systems owned by MSOs? We also seek comment on any incentives that such a

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[1] *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92–266, FCC 93–177, at para. 464 (released May 3, 1993) ("*Report and Order*"), 58 FR 29736 (May 21, 1993).

[2] See, *e.g.*, NATOA Comments at 88 (small systems controlled by large MSOs have a variety of cost advantages, particularly access to programming discounts, and the ability to acquire debt at the favorable rates a large corporation can obtain); USTA Comments at 16–17 (larger MSOs are likely to have greater leverage with respect to local government and to have corporate resources that stand-alone small systems or those operated by smaller MSOs do not have); Northland Comments at 17–18 (large MSOs are likely to enjoy substantial programming volume discounts, discounts on maintenance and supplies, and are likely to be able to purchase debt at a more favorable rate than smaller MSOs).

[3] *Report and Order*, at para. 464.

[4] We note that our review of the distinct attributes of small, independently owned cable systems, as compared to those small systems affiliated with large MSOs, will be guided in part by our reconsideration of the rate regulation mechanism, and how it may apply uniquely to small systems. See, *e.g.*, petitions for reconsideration filed by Coalition of Small System Operators, Community Antenna Television Association, Inc.

[5] For purposes of the survey, an MSO was defined as a company with two or more systems.

cap might create, and conversely, whether the absence of such a subscriber cap could create incentives for the disaggregation of systems to place some systems within the cap. If disaggregation occurs, we also solicit comment on whether the Commission should consider such restructuring an evasion under Section 623(h).

Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally, 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1980).

Reason for action: This Further Notice of Proposed Rulemaking is issued to obtain comment on whether the Commission should distinguish between small independent cable television systems and those small systems affiliated with or owned by an MSO, for purposes of modifying the Commission's cable television rate regulation rules to reduce administrative burdens and cost of compliance for small cable systems.

Objectives: To modify existing rules to implement section 623(i) of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992.

Legal Basis: The proposed action is authorized under sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r) and 543.

Reporting, record keeping and other compliance requirements: The proposal under consideration in this Further Notice of Proposed Rulemaking may modify reporting and record keeping requirements for cable systems subject to the Commission's rate regulation rules with 1,000 or fewer subscribers.

Federal rules which overlap, duplicate or conflict with these rules: None.

Description, potential impact, and number of small entities involved: Any rules changes in this proceeding could affect cable systems with 1,000 or fewer subscribers, specifically such systems that are affiliated with or owned by an MSO. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any significant alternatives minimizing the impact on small entities consistent with stated objectives: The Further Notice of Proposed Rulemaking seeks comment on how to reduce administrative burdens and cost of compliance for cable systems subject to the Commission's rate regulation rules that have 1,000 or fewer subscribers.

Paperwork Reduction Act

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Comment Dates

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 31, 1993, and reply comments on or before September 10, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ordering Clauses

It is further Ordered; That, pursuant to sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 303(r), and 543, notice is hereby given of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this Further Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussion, and statement of issues.

It is further Ordered; That the Secretary shall send a copy of this Further Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–19890 Filed 8–13–93; 4:54 pm]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1805, 1839, and 1852

Proposed Changes to NASA FAR Supplement; More Efficient Use of Contracts for Federal Information Processing Resources

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: NASA has revised the NASA FAR Supplement to allow broader use of contracts for Federal Information Processing (FIP) resources. Under these changes, options or indefinite delivery/indefinite quantities on contracts for FIP resources that are in excess of the NASA contracting activity's ultimate requirements may be ordered for delivery to other NASA installations.

DATES: Comments on this proposed rule are due no later than October 18, 1993.

ADDRESSES: Comments should be addressed to Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

Tom O'Toole, Telephone: (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

NASA often acquires Federal Information Processing (FIP) resources through indefinite delivery/indefinite quantity (ID/IQ) contracts or through contracts with options for these deliverables. The quantities included in these contracts are the NASA contracting activity's best estimate of its requirements over the contract period of performance. In some cases, the actual requirements of the contracting activity by the end of the contract are less than the original estimates. As a result, these contracts occasionally have ordering capacities in excess of the contracting activity's ultimate requirements. Other NASA installations may have requirements for FIP resources that are satisfied by the products in this "excess ordering capacity", and orders are placed against this capacity for delivery to the other NASA installations. To expedite this process, NASA has developed procedures and a contract clause to authorize and effect these orders.

In short, the NASA policy is that the first priority of these contracts is to satisfy the anticipated requirements of the contracting activity. However, should the actual requirements of that installation be less than the maximum quantities/values specified in the contract, NASA may order the remaining available quantities/values to satisfy the requirements of other NASA installations. Orders are placed at the prices specified in the contract and delivered to another NASA installation. When appropriate, an equitable adjustment for transportation cost variances associated with delivery to the alternate delivery point may be negotiated.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–03–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This proposed rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1805, 1839, and 1852

Government procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1805, 1839, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1805—PUBLICIZING CONTRACT ACTIONS

2. Section 1805.207 is amended by adding paragraph (c) to read as follows:

1805.207 Preparation and transmittal of synopses.

* * * * *

(c) Each notice publicizing the procurement of FIP resources under an indefinite delivery/indefinite quantity contract or under a contract that includes options for additional quantities of such resources shall include options for additional quantities of such resources shall include the following:

The ____ (identify contracting activity) is the primary delivery point for the items described in this synopsis. However, NASA may order delivery to the following alternate locations: ____ (List other NASA installations and their locations).

PART 1839—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES

3. Section 1839.7003–4 is amended by adding paragraph (a)(6) as follows:

1839.7003–4 APR format.

(a) * * *

(6) When FIP resources are being acquired under an indefinite delivery/indefinite quantity contract or under a contract that includes options for additional quantities of such resources, include a statement in the APR similar to the following:

The ____ (identify contracting activity) is the primary requiring activity for the items described in this APR. However, to further the most efficient and economical agency-wide acquisition of these resources, the contract will allow delivery to other NASA installations having requirements for the same resources. The ____ (identify contracting activity) will have the sole authority to place orders under this contract and authorize delivery to the alternate delivery points.

4. Section 1839.7008 is added to read as follows:

1839.7008 NASA contract clause.

(a) The contracting officer shall insert the clause substantially as stated at 1852.239–70, Alternate Delivery Points, in solicitations and contracts for Federal Information Processing Resources when:

(1) An indefinite delivery/indefinite quantity contract will be used or when the contract will include options for additional quantities of such resources; and

(2) Delivery is F.O.B. destination to the contracting activity.

(b) When delivery is F.O.B. origin and Government bills of lading (GBL) are used, the contracting officer shall use the clause with its Alternate I.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 1852.239–70 is added to read as follows:

1852.239–70 Alternate delivery points.

As prescribed in 1839.7008(a), insert the following clause:

Alternate Delivery Points

(Date)

(a) The first priority of this contract is to satisfy the anticipated requirements of ____ (identify contracting activity). However, should the actual requirements of ____ (contracting activity) be less than the maximum quantities/values specified in Section B of this contract, ____ (contracting activity) may order the remaining available quantities/values to satisfy the requirements of other installations. The other installations at which delivery may be required are:

(List Installations and Their Locations)

(b) The prices of the deliverables in section B are F.O.B. destination ____ (contracting activity). If delivery to an alternate location is ordered, an equitable adjustment may be negotiated to recognize any variances in transportation costs associated with delivery to that alternate location.

(End of clause)

Alternate I

(Date)

As prescribed in 1839.7008(b), delete paragraph (b) and substitute the following:

(b) The prices of the deliverables in section B are F.O.B. origin with delivery to NASA via Government bill of lading (GBL). If delivery to an alternate location is ordered, the same delivery procedures will be used and no equitable adjustment to any price, term, or condition of this contract will be made as a result of such order.

(End of clause)

[FR Doc. 93–19809 Filed 8–17–93; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on a Petition To Delist the Grizzly Bear in the Northern Continental Divide Ecosystem, the Cabinet-Yaak Ecosystem, the Selkirk Ecosystem, and the North Cascades Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner requested that the Service delist the grizzly bear (*Ursus arctos horribilis*) populations in the Northern Continental Divide ecosystem, the Cabinet-Yaak ecosystem, the Selkirk ecosystem, and the North Cascades ecosystem. The Service finds that the petitioner did not provide substantial information to indicate that the requested action may be warranted for any of the four populations.

DATES: The finding announced in this notice was approved on August 10, 1993.

ADDRESSES: Questions and comments concerning this finding should be sent to Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the Service office at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen (see **ADDRESSES** above), telephone (406) 329–3223.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a 90-day finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted.

On December 11, 1992, a petition was received from James F. Rathbun dated December 8, 1992. The petitioner requested that the Fish and Wildlife Service (Service) delist the grizzly bear (*Ursus arctos horribilis*) populations in the Northern Continental Divide ecosystem, the Cabinet-Yaak ecosystem, the Selkirk ecosystem, and the North Cascades ecosystem.

The petitioner asserted that the species was not historically abundant in these four ecosystems and that the species should never have been listed in these ecosystems because there is no evidence that the populations were ever threatened or endangered. The petitioner did not provide any information to substantiate these assertions. Reliable historical information on grizzly bear numbers is not available. Recent studies of grizzly bear habitats and densities provide support that these ecosystems historically maintained a higher population number of grizzly bears than exists today. Threats identified in the final rule that listed the grizzly bear as a threatened species (41 FR 12382) showed that the grizzly bear in the lower 48 States was indeed a species that could become endangered in the foreseeable future. Furthermore, the Service recently published findings on two petitions, one for the North Cascades ecosystem (56 FR 33892) and one for the Cabinet-Yaak ecosystem (58 FR 8250), that indicated that reclassification of grizzly bears from threatened to endangered within each of these two ecosystems was warranted, but precluded by species with higher listing priorities.

The petitioner asserted that the above four ecosystems represent fringe areas that extend into the United States from Canada, and that grizzly bears in Canada are not threatened or endangered. The petitioner further asserted that these four grizzly bear populations are not distinct populations because they inhabit an ecosystem that is part of the larger (Canadian) ecosystem and because individual grizzly bears migrate across the U.S./Canadian border.

The Service disagreed that these United States ecosystems represent extensions of Canadian ecosystems. Historically, the range of the grizzly bear extended from Mexico throughout the United States west of the Mississippi River northward to Alaska. Today, the range of the grizzly bear is confined to less than 2 percent of its original area in the contiguous United States in distinct regions of Montana, Idaho, Wyoming, and Washington. Grizzly bear populations in the conterminous United States currently exist in ecosystems that represent the remaining fragments of the once extensive grizzly bear range throughout the southern portion of North America.

While grizzly bears are more abundant in Canada, there have been significant habitat modifications within Canada that are suspected to have caused declines or losses of grizzly bear populations in many areas.

The Service agreed that grizzly bears migrate across the U.S./Canadian border and that grizzly bears in the United States ecosystems are not separate from grizzly bears in adjacent Canadian ecosystems. However, such separation is not required for listing populations under the Act.

The petitioner also asserted that the Glacier National Park portion of the Northern Continental Divide ecosystem is, by itself, large enough to be a grizzly bear ecosystem. The petitioner did not provide any information to substantiate this assertion. The Service believes that Glacier National Park alone is not capable of sustaining a large enough population of grizzly bears to ensure long-term genetic viability and survival of the population and therefore does not constitute an adequate grizzly bear recovery zone.

In summary, the Service found that the petitioner did not supply substantial information to indicate that the petitioned action may be warranted in the Northern Continental Divide ecosystem, the Cabinet-Yaak ecosystem, the Selkirk ecosystem, or the North Cascades ecosystem. More detailed information regarding the above decisions may be obtained from the Service's Missoula office (see **ADDRESSES** above).

Author

This notice was prepared by Patricia Worthing at the Service's Ecological Services Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

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

Dated: August 10, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19901 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Notice of Finding on a Petition To Change the Status of the Grizzly Bear Populations in the Yellowstone Grizzly Bear Ecosystem and the Northern Continental Divide Ecosystem From Threatened to Recovered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioners requested that the grizzly bear (*Ursus arctos horribilis*) populations in the Yellowstone Grizzly Bear ecosystem and the Northern Continental Divide ecosystem be reclassified from threatened to recovered. The Fish and Wildlife Service finds that the petitioners did not provide substantial information to indicate that the petitioned action may be warranted for either population.

DATES: The finding announced in this notice was approved on August 10, 1993.

ADDRESSES: Questions and comments concerning this finding should be sent to Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the Fish and Wildlife Service office at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen (see **ADDRESSES** above), telephone (406) 329–3223.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a 90-day finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted.

On July 17, 1992, a petition was received from the Montanans for Multiple Use dated July 9, 1992. The petitioners requested that the Service reclassify the grizzly bear (*Ursus arctos horribilis*) populations in the Northern Continental Divide ecosystem and the Yellowstone Grizzly Bear ecosystem from threatened to recovered.

The petitioners asserted that various grizzly bear population estimates for the Northern Continental Divide ecosystem and the Yellowstone Grizzly Bear ecosystem meet the recovery criteria detailed in the draft revised Grizzly Bear Recovery Plan (Recovery Plan) (U.S. Fish and Wildlife Service 1992). The Service agrees that both grizzly populations meet some of the criteria necessary to warrant delisting; however, each population fails to meet certain criteria detailed in the Recovery Plan. The population in the Yellowstone Grizzly Bear ecosystem does not meet the criteria for distribution of family groups, and the Northern Continental Divide ecosystem does not meet the 6-year period required for recording population parameters. Further, prior to delisting, the Recovery Plan recommends completion of a conservation plan to ensure conservation of the population and its habitat after delisting. Such a conservation plan has not been completed for either the Yellowstone Grizzly Bear ecosystem or the Northern Continental Divide ecosystem.

At such time that any grizzly bear population meets all the recovery criteria established in the then current Grizzly Bear Recovery Plan, and when a conservation strategy is approved to ensure that the grizzly bear is adequately managed after delisting, delisting of the population will be pursued. If a population is delisted, the responsibility for its continued management will revert back to the State wildlife agency.

In summary, the Service found that the petitioners did not provide substantial scientific or commercial information to indicate that their petitioned action may be warranted in either the Northern Continental Divide ecosystem or the Yellowstone Grizzly Bear ecosystem. More detailed information regarding the above decisions may be obtained from the Service's Missoula office (see **ADDRESSES** above).

References Cited

U.S. Fish and Wildlife Service. 1992. Draft Revised Grizzly Bear Recovery Plan. Missoula, Montana. 200 pp.

Author

This notice was prepared by Anne Vandehey at the Service's Missoula office (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

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

Dated: August 10, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–19900 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Lake Erie Water Snake, Nerodia Sipedon Insularum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to determine threatened status for the Lake Erie water snake, *Nerodia sipedon insularum*, and thereby provide the species protection under the Endangered Species Act of 1973, as amended. This island subspecies was once abundant and widespread throughout the islands of Lake Erie and on the adjacent mainland. However, in the last 50 years, the population has dramatically declined due to habitat loss caused by rapid shoreline development and to active eradication by island residents. The snake population has been reduced on all islands and eliminated from at least one island where it once was abundant. The population is currently estimated to include only 1262 adults.

DATES: Comments from all interested parties must be received by November 16, 1993. Public hearing requests must be received by October 4, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Fort Snelling, Minnesota, 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Chief, Division of Endangered Species, at the above address (612–725–3276).

SUPPLEMENTARY INFORMATION:

Background

The Lake Erie water snake, *Nerodia sipedon insularum,* was formally recognized as a distinct subspecies in 1937 (Conant and Clay, 1937). The snake inhabits the limestone island archipelago of western Lake Erie (including Pelee, North Bass, Middle Bass, Rattlesnake, South Bass, Green, Kelleys, and Middle Islands), Point Pelee, Ontario and the mainland peninsula between Catawba and Marblehead, Ohio.

The Lake Erie water snake was once widespread and abundant on the islands, but the species has declined on all islands. The remaining population is currently estimated at 1262 adults (lower and upper bounds on the estimate are 523 to 4064 adults). As evidence of the dramatic population decline, it took King (1986) a month or more to capture the same number of snakes as Conant and Clay (1937) captured in a single day. King (1986) found snakes on 10 of 12 islands surveyed. He reported that snakes have been extirpated from at least one of these islands in the last 50 years.

The limestone islands of Lake Erie range in size from 1 acre to approximately 15 square miles. They are wooded, and the largest island has an inland marsh. The islands are largely platted for summer home development. The snakes are confined to the limestone slabs and crevices along the cliffs and rocky beaches of the shoreline and are directly affected by this development. Summer residents actively kill the snakes after mistakenly assuming they are poisonous.

—"The locals are unaware of its biological/zoological significance and methodically kill it as a 'midget moccasin'." (Davisson, *in litt.,* 1989).

—"Both habitat destruction, particularly shoreline development, and outright killing of these snakes is contributing to their demise." (King, *in litt.,* 1983).

The Lake Erie water snake is predominately uniform gray in color. It resembles the closely related *Nerodia sipedon sipedon* in scutellation, but the banded color pattern typical of the mainland form has been suppressed. Although there is variation in color pattern within the island subspecies, most of the population (94.7 percent of the adults and 83.8 percent of newborns) can be distinguished from the mainland subspecies (Conant and Clay 1963). In addition, King (1986) documented that the island subspecies has a larger adult body size, lower growth rate, and shorter tail than the mainland subspecies. Differences between subspecies may also exist in size of newborns, diet, and intensity of predation.

Both subspecies of snakes are strong swimmers and move freely between the islands and the mainland. The two subspecies often interbreed. As a result, the young of the island subspecies can range in color from limestone gray to fully banded. On the islands, the banded morph stands out against the limestone and is consumed more readily than the gray morph by visual predators such as gulls (Camin and Ehrlich 1958). As a result of this highly selective predation on banded individuals, the influence of interbreeding is reduced and the island population remains a distinct subspecies.

The snakes range in size from 15.5 cm snout-to-vent-length (SVL) to 110 cm SVL, with females averaging slightly larger than males (82.1 vs 62.5 cm SVL). Age classes are determined in part by size differences; young-of-the-year are less than 27 cm SVL, juveniles (snakes that are 1–3 years old) range from 27 cm to 59 cm and adults (snakes that are older than 3 years) range from 43 to 110 cm (King 1986).

During King's study, snakes were active throughout most of the frost free days of the year, roughly April to October. They fed primarily on fishes and amphibians. Males were more easily trapped early in the season than later primarily because they were actively looking for and courting females emerging from hibernation. Courtship and reproductive behavior occurred from May until early June. Females were more easily captured later in the season. There was some evidence that larger females were more likely to reproduce annually than smaller females. Litter size averaged 22.9 young (range 9–50 individuals). Newborns averaged 18.1 cm in length (12.5–21.0) and larger females produced more and larger young than small females. Females fed over a longer portion of the season and grew at a faster rate than males.

The Lake Erie water snake was recognized as a Category 2 candidate in the Service's September 18, 1985 (50 FR 37958) Vertebrate Wildlife Notice of Review. Category 2 comprises taxa for which there is some evidence of vulnerability, but for which the information necessary to list is lacking. It was again included in Category 2 on January 6, 1989 (54 FR 554), but given the research by King (1986), it should have been listed as Category 1 at that time. The Service concluded that enough information was available to propose listing of the species as threatened and changed its status to Category 1 in the November 21, 1991, Notice of Review (56 FR 225). Listing priority for this species is 6.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Lake Erie water snake, *Nerodia sipedon insularum,* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The population decline of Lake Erie water snakes has been caused by increased human activity on the islands. The islands are extensively platted for lake shore developments such as summer homes and marinas—projects that have accelerated in recent years and have resulted in significant habitat loss for the snakes.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Residents on the islands actively kill the snakes under the mistaken notion they are poisonous, which they are not (Davisson, *in litt.,* 1989; King, *in litt.,* 1983). Scientific reference collections of snake specimens exist in a variety of locations as a result of past research. More recent research on the snake has involved capture and release methods that do not impact the population (i.e., King 1986). There may be some collecting for hobby purposes but the main threat to the population is the direct eradication program carried on by island residents and habitat loss due to shoreline development (See previous section and background information).

C. *Disease or predation.* Not known to be a threat at this time.

D. *The inadequacy of existing regulatory mechanisms.* Most of the land where the Lake Erie water snakes are known to occur is privately owned and platted for development. Currently, the subspecies is not legally protected in the United States. It was listed as threatened by the State of Ohio (in accordance with chapter 119 of the Ohio Revised Code) and as endangered by the Society for the Study of Amphibians and Reptiles—Endangered and Threatened Amphibians and Reptiles of the United States; but neither listing results in legal protection from habitat

destruction or take. Although one island (West Sister Island) is part of the Ottawa National Wildlife Refuge, no snakes are known to occur on this protected land. The snake is currently protected on the Canadian islands under the Endangered Species Act R.S.O. 1980 (Regulation 287 of Revised Regulations of Ontario). Several areas on the islands (Fish Point, Lighthouse Point on Pelee Island, and all of Sister Island) have been designated Nature Preserves by the Ministry of Natural Resources, Canada.

E. *Other natural or manmade factors affecting its continued existence.* No additional threats have been identified.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Without the protection of the Act continued development of the islands will result in population decline and threat of extinction. Based on this evaluation, the preferred action is to list the Lake Erie water snake, *Nerodia sipedon insularum*, as threatened.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that such a designation would not be prudent for the Lake Erie water snake. This determination is based on the premise that the species is threatened by taking, and identification of critical habitat can be expected to increase the degree of this threat (50 CFR 424.12). As discussed under Factors A and B in the Summary of Factors Affecting the Species, the Lake Erie water snake is threatened by direct eradication programs by island residents (Davisson, *in litt.*, 1989; King, *in litt.*, 1983).

Publication of critical habitat descriptions and maps would make the Lake Erie water snake more vulnerable to eradication and increase enforcement problems. Protection of this species' habitat will be addressed through the conservation planning process pursuant to section 10(A)2(A) of the Act.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Fort Snelling, Minnesota, 55111–4056.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Camin, J.H. and P.R. Ehrlich. 1958. Natural selection in water snakes (*Natrix sipedon* L.) on islands in Lake Erie. Evolution 12:504–511.

Conant, R. and W.M. Clay. 1937. A new subspecies of water snake from islands in

Lake Erie. Occ. Pap. Mus. Zool., Univ. Michigan 346:1–15.
Conant, R. and W.M. Clay. 1963. A reassessment of the taxonomic status of the Lake Erie water snake. Herpetologica 19:179–184.
King, R.B. 1986. Population ecology of the Lake Erie water snake. Copeia 1986:757–772.

Authors

The primary authors of this proposed rule are Jan L. Eldridge and Kate Winsor of the Service's Regional Office in the Federal Building, Fort Snelling, Minnesota, 55111–4056 (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Reptiles, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•		•	•
REPTILES	.....	.....	.....		.....	.....	.....
•	•	•	•	•		•	•
Lake Erie water snake.	*Nerodia sipedon insularum.*	U.S.A. (OH); Canada (ONT).	NA	T	.....	N/A	N/A
•	•	•	•	•		•	•

Dated: July 27, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19454 Filed 8–17–93; 8:45 am]
BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Northern Copperbelly Water Snake, Nerodia erythrogaster neglecta

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine threatened status for the northern copperbelly water snake (*Nerodia erythrogaster neglecta* Conant) and thereby provide the species protection under the Endangered Species Act of 1973, as amended (Act). Historic records and recent studies indicate that this animal has declined significantly, especially in the northern two-thirds of its range, and now persists in various scattered, isolated pockets where habitat is still suitable. The population is estimated to include only 1,530 adults rangewide with 368 breeding pairs. The northern copperbelly water snake has been most adversely affected by the loss of continuous tracts of swamp-forest habitat. Critical habitat is not being proposed.

DATES: Comments from all interested parties must be received by October 18, 1993. Public hearing requests must be received by October 4, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Chief, Division of Endangered Species (see **ADDRESSES** section), 612/725–3276, FTS 725–3276.

SUPPLEMENTARY INFORMATION:

Background

The northern copperbelly water snake, (*Nerodia erythrogaster neglecta* Conant, was formally recognized as a distinct subspecies in 1949 (Conant 1949). The Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife * * *" (§ 4.(15)). Therefore, although taxonomically recognized as a subspecies, *Nerodia erythrogaster neglecta* will be referred to as a "species" through the remainder of this proposal. This legal, as opposed to biological, use of the term "species" should not be understood to mean that this proposal covers the entire species *Nerodia erythrogaster*. This proposal covers only the subspecies *Nerodia erythrogaster neglecta*.

The key field identification feature of the northern copperbelly water snake is its coloration. The snake has a solid dark (usually black) back with a bright orange-red venter, which is visible from a lateral view. Compared to similar species, the head and eyes of the northern copperbelly water snake are proportionally larger (Clay 1936, 1938; Conant 1938; 1951; Minton 1972). Snakes found in the northern portion of their range are, on average, larger than snakes from the southern portion of their range (Conant 1938, 1949, 1951; Minton 1972; Sellers 1991).

Schmidt (1953) describes the historic range of the northern copperbelly water snake as "south central Michigan and northwestern Ohio, southwestward through Indiana to extreme southeastern Illinois and adjacent Kentucky." The snake's range may have once included portions of Tennessee, Wisconsin, Pennsylvania, and West Virginia. Today, the northern copperbelly water

snake as "south central Michigan and northwestern Ohio, southwestward through Indiana to extreme southeastern Illinois and adjacent Kentucky." The snake's range may have once included portions of Tennessee, Wisconsin, Pennsylvania, and West Virginia. Today, the northern copperbelly water snake occurs in the lower Ohio River Valley and lower Wabash River Valley in extreme southwestern Indiana and adjacent Illinois and Kentucky, and in southern Michigan, northeastern Indiana, and northwestern Ohio. Historic records and recent studies indicate that this animal has declined significantly, especially in Michigan, Ohio, and the northern two-thirds of Indiana, and now persists only in various scattered, isolated pockets where habitat is still suitable. The population is estimated at 1,530 adults rangewide with 368 breeding pairs (Sellers 1991).

The northern copperbelly water snake migrates seasonally throughout its habitat. The habitat consists of lowland swamps or other warm, quiet waters. Wooded corridors are also necessary for migratory access to wooded lakes, streams, or other permanent waters. Upland slopes above floodstage line with underground hibernation sites below the frost line must also be accessible. When habitat is restricted in size or interrupted with impermeable barriers, such as roads or cleared areas, northern copperbelly water snake populations will decline or disappear (see Factor A). In order to sustain a viable population of northern copperbelly water snakes (about 50 individuals with 12 breeding pairs), 500–600 acres of continuous swamp-forest habitat is needed. Sellers (1991) describes the habitat as willow-buttonbush or cypress swamps adjacent to wooded cover for access to permanent wetlands and to wooded upland hibernation sites above floodstage.

The northern copperbelly water snake emerges from its upland hibernation sites in early springs, migrates to wetland areas through wooded corridors, and can often be seen basking near shallow wetland edges in woodlands. When the woodland swamps begin to dry in later spring, the snakes disperse and move the through wooded corridors or along waterways to permanent waters, it they are available. If permanent waters are not accessible, the snakes will remain around shallow swamps or move throughout the surrounding woodlands. Summer activities usually center around wooded and permanent water bodies, brushy ditches, and lowland wet woods. Snakes become difficult to find in mid-summer and early fall as they are active mainly in the terrestrial, brushy part of habitat (Conant 1951) and move to hibernation sites during this period.

Northern copperbelly water snakes hibernate in deep cavities in wooded uplands above the floodstage line and ponding areas. If upland sites are unavailable, the snakes will use bottomlands. However upland hibernation sites are essential to the survival of viable populations of the snake. A mid-winter flood, coupled with freezing temperatures, could be lethal to snakes if floodplain and riverbank areas were the only hibernation sites available. Bottomland hibernation sites have been identified as felled tree root networks (Lodato 1985), dense brushpiles, fieldstone piles, and perhaps beaver and muskrat lodges.

This species is know to form small groups (colonies) in the spring and fall. Colonies of snakes have been observed swimming, feeding, courting, and resting together (Contant 1938; Martin 1982, pers. comm. *in* Sellers 1991). Courtship and mating occur in April, May, and June. The northern copperbelly water snake has a longer gestation period than other natricine snakes sharing its range. Their average litter size is also smaller, average 18 per litter (Schmidt and Davis 1941). Young snakes are born in the fall near or in the hibernation site and may not become active until the following spring.

The northern copperbelly water snake was recognized as a category 2 candidate in the Service's December 30, 1982 (50 FR 47251), January 6, 1989 (50 FR 544), and November 21, 1991 (50 FR 56225) Notice of Review. Listing priority for this species is 6. Category 2 species warrant concern but conclusive information necessary for listing is lacking. As a result of a status survey prepared by Sellers (1991), the Service concluded that enough information was available to support the need for protection of the species under the Act. On November 12, 1991, the Service reassigned this species to Category 1.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the northern copperbelly water snake (*Nerodia erythrogaster neglecta*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat loss and fragmentation is the primary factor threatening the continued existence of the northern copperbelly water snake. The loss and fragmentation of continuous tracts (500–600 acres) of this species' swamp-forest habitat prevents a population's access to the seasonally used parts of its habitat that are required to sustain a viable population over time. The northern copperbelly water snake can adapt to certain limited disturbances such as artificial pond construction or selective timber harvesting. However, severe habitat loss and fragmentation has forced this species to use less suitable habitat and has led to the eventual decline and extirpation of once-viable populations.

Specific threats that have led to the extirpation of northern copperbelly water snake populations include clearcutting woodlots, brush and land clearance, widescale draining of wetlands, habitat constriction by surrounding development, wetland succession, and road construction. For example, in the late 1940's, northern copperbelly water snakes were extirpated from a site in Eaton County, Michigan, by dredging and ditching. A site in Hardin County, Ohio and a site in Williams County, Ohio were cleared and drained in the early 1950's, extirpating the northern copperbelly water snake from these areas. One Michigan site is bisected by a road that is scheduled for upgrading. The site is considered to be a significant location for the northern copperbelly water snake and habitat will be destroyed or degraded by the proposed project. In addition to habitat loss, snakes attempting to cross the upgraded road may be injured or killed by vehicles. Discussions are underway between the State and county to modify the plans to minimize damage to the snakes and habitat.

Another modification to the northern copperbelly water snake's habitat is the widespread use of insecticides and other chemicals that impact the aquatic food chain upon which the snake is dependent for food (Minton 1972).

In addition to the above threats, northern copperbelly water snakes in the lower Ohio River Valley and lower Wabash River Valley face habitat loss and fragmentation caused by surface mining, oil exploration and extraction, river dams that cause flooding of shallow wetlands and wooded areas,

timber clearcutting, row crop expansion, and stream channelization and dredging. In Indiana, a coal mining company is expanding its surface mining operation and northern copperbelly water snake habitat will be destroyed or degraded by the expansion.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

During the first 30 years after its discovery, many northern copperbelly water snakes were collected as specimens for museums. Although museums have abandoned this practice, amateur collectors continue to take snakes (Sellers 1991). The species is collected fairly regularly because of its rarity, its large size and its unique coloration, and its value in the pet trade. For example, an international commercial dealer reportedly offered $260 to an amateur collector for a breeding pair of northern copperbelly water snakes. One youth camp in the northern part of the snake's range encourages the capture of reptiles, including northern copperbelly water snakes, as part of their camp activities. The methods used to capture the snakes often injures them and the participants may attempt to take the snakes home with them. On one occasion, the Ohio Department of Natural Resources was called by the Toledo Zoo to investigate an attempt by several campers from this camp to sell a number of northern copperbelly water snakes (Seller 1991).

C. Disease or Predation

During migration the snakes are vulnerable to predation, especially when their migration routes are interrupted by cleared areas such as roads, mowed areas, and farmlands. The ability to migrate safely throughout its home range is a limiting factor in the life history of the northern copperbelly water snake.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms are not sufficient to reduce losses of the northern copperbelly water snake. Section 404 of the Clean Water Act regulates placement of fill material in the waters of the United States. This should have provided significant oversight on a wide variety of activities that would have prevented the destruction and fragmentation of this species' wetland habitat. Michigan, Ohio, and Indiana confer full legal protection to the northern copperbelly water snake. However, Illinois and Kentucky offer no legal protection to the snake. The Endangered Species Act offers additional possibilities for protection through section 6 (cooperation between the states and the Service), through section 7 (interagency cooperation), and through section 9 (prohibited acts).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Weather extremes such as drought, flooding, and mild winters may influence the population of the northern copperbelly water snake as it affects the snake's access to and use of upland hibernation sites with deep cavities, ability to estivate for prolonged periods, and access to and use of wood corridors from swamps to permanently-wet ponds, lakes, and streams.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the northern copperbelly water snake, *Nerodia erythrogaster neglecta*, as a threatened species. A threatened species, as defined under section 3(19) of the Act, is a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Critical habitat is not being proposed at this time for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. This determination is based on the premise that such a designation would not be beneficial to the species (50 CFR 424.12). As discussed under Factor B in the Summary of Factors Affecting the Species, the northern copperbelly water snake would become vulnerable to collectors who would be drawn to the known populations by the publication of critical habitat maps and other specific location information. Critical habitat designation would not provide additional protection over that afforded through the normal recovery process and through section 7 consultation.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with

otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Schmidt, K. P. 1953. A checklist of North American amphibians and reptiles. Am. Soc. of Ichthy. and Herp. Chicago, VIII, 280 pp.

Schmidt, K. P. and D. D. Davis. 1941. Field book of snakes of the United States and Canada. New York: G. P. Putnam's Sons. 365 pp.

Sellers, M. A., Jr. 1991. Final report of the rangewide status survey of the northern copperbelly water snake *Nerodia erythrogaster neglecta*, Conant. Report to the U.S. Fish and Wildlife Service. 33 pp.

Author: The primary author of this proposed rule is Kate Winsor of the Service's Regional Office in the Bishop Henry Whipple Federal Building, Fort Snelling, Minnesota 55111–4056.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under *Reptiles*, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
REPTILES							
*	*	*	*	*	*	*	*
Northern copperbelly water snake.	*Nerodia erythrogaster neglecta.*	U.S.A. (MI, OH, IL, IN, KY).	Entire	T	.....	NA	NA
*	*	*	*	*	*	*	*

Dated: July 26, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19455 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 158
Wednesday, August 18, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Burnt Cabin Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover fire-killed timber is exempted from appeals under provisions of 36 CFR 217.4(a)(11).

SUMMARY: In August 1992, 80 acres of National Forest timber in the Beaver Ridge area were killed or damaged by the Cabin Complex of wild fires. Immediately following the fire, the Powell District Ranger, Clearwater National Forest, proposed a salvage timber sale project to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis that was categorically excluded from documentation in the Burnt Cabin Decision Memo, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration of sawtimber and the subsequent loss of value.

EFFECTIVE DATE: Effective on August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret J. Gorski, District Ranger; Powell Ranger District, Clearwater National Forest; Lolo, MT 59847. Telephone (208) 942–3113.

SUPPLEMENTARY INFORMATION: Lightning-caused wildfires in August of 1992 killed approximately 80 acres of timber in the Beaver Ridge area. Immediately following the fire, the Powell District Ranger proposed the salvage harvest of the fire-killed timber. The fire-killed timber is located within lands designated as suitable for timber management and assigned to Management Areas E1 and A6 (Clearwater Forest Plan, 1987). This proposal was designed to meet the following needs:

(a) Salvage dead timber while it still has maximum value as a wood product;

(b) Reduce the wildfire hazard by reducing fuel loading;

(c) Reforest timber stands that are understocked through site preparation, planting and natural regeneration;

(d) Salvage merchantable timber products and contribute to a continuous supply of timber by recovering sawtimber before it deteriorates in value.

An interdisciplinary team was convened, and scoping began in September of 1992. The District Ranger determined that the proposed action should be categorically excluded from documentation in an environmental assessment or environmental impact statement. Including the no action alternative, three alternatives were analyzed. The selected alternative would salvage 250 MBF of timber from 34 acres. Approximately 750 feet of temporary road construction will be required to access one cutting unit.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to recover merchantable sawtimber before it deteriorates, loses value, and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal.

Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exists to exempt such decisions from review under this part.

Based on the information presented in the Decision Memo and the project file for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 11, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–19795 Filed 8–17–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Drop Creek Blowdown Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: On October 16, 1991, unusually strong winds in localized areas across the Rexford Ranger District, Kootenai National Forest, produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through the Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of wildfire.

EFFECTIVE DATE: Effective on August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon; Rexford District Ranger; Kootenai National Forest; 1299 HWY. 93 North; Eureka, MT 59917. Telephone: 406–296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 5 acres of timber in the Drop Creek area. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, August 1987). In the winter of 1991, the Rexford District Ranger proposed salvage of wind-damaged timber in the Drop Creek area. The proposal is designed to meet the following needs:

(1) Recover dead and dying timber before it loses it commercial value;

(2) Rehabilitate the affected timber stands; and

(3) Reduce the potential for wildfire by reducing fuel loading.

An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative will salvage approximately 40 MBF of dead and damaged timber from approximately 5 acres. All savage areas are accessible from existing roads; no road construction or reconstruction will occur.

The salvage sale and accompanying work is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations, and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decision related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the Drop Creek Blowdown Salvage Decision Memo and project file, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under.36 CFR part 217.

Dated: August 11, 1993.

Christopher D. Risbrudt,

Deputy Region Forester Northern Region.

[FR Doc. 93–19934 Filed 8–17–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee will be convened at 8:30 a.m. and adjourn at 5:00 p.m. on Thursday, September 9, 1993, in the auditorium of the Augusta Civic Center, Community Drive, Augusta, ME 04330. The purpose of the meeting is to provide an orientation for new members and to receive briefings on hate crimes, migrant and immigrant workers, and equal educational opportunity for racial and language-minority students.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Barney Berube, 207–287–5876, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 9, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–19910 Filed 8–17–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 930538–3138]

National Voluntary Laboratory Accreditation Program (NVLAP)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of change—NVLAP Commercial Products Testing Program.

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology (NIST), announces expansion of the scope of laboratory accreditation for the Commercial Products Testing Program (CPL) to include Wood Based Products (WBP) for laboratories that test wood based products. Laboratory accreditation for testing laboratories for wood based products is responsive to the request made by the American Plywood Association (APA) and subsequently supported by the National Particleboard Association (NPA), and U.S. Department of Housing and Urban Development (HUD). The request letters indicated the importance of international acceptance and reciprocity as important factors in laboratory arrangements. The effect of the change is to meet the purpose of the program for commercial products laboratory testing accreditation and to foster international trade.

EFFECTIVE DATE: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology (NIST), Building 411, A124, Gaithersburg, MD 20899; or telephone (301) 975–4016, FAX (301) 926–2884.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 15 CFR 7.18 "Adding to an established LAP", NVLAP announces the expansion of the CPL program to include Wood-Based Products (WBP). The Commercial Products Testing Program (CPL) was established in 1984 at the request of the International Coalition for Procurement Standards (ICPS). The purpose of the program was to develop a list of accredited laboratories so that purchasing contracts prepared by purchasing officials could specify that vendors supply products and materials tested by an accredited laboratory. The ICPS request identified a number of standards and test methods for paints and related coatings, paper and paper products, and mattresses for initial inclusion in the program. The scope of the CPL program established in 1984 was defined as those products important to the purchasing community listed in "Selected ASTM Standards for the Purchasing Community" Second Edition, 1990, published by the American Society for Testing and Materials (ASTM). The program initially included paint and related materials, paper and paper products, and mattresses. Other products could be added in response to written requests, either as listed in the ASTM Book, or for test methods in standards other than ASTM (48 FR 45448–45453, dated October 5, 1983). The last expansion of the CPL program for plumbing products was announced in the **Federal Register** (55 FR 51458–51459 dated December 14, 1990).

The test methods listed below are presented under category headings for convenience.

General—Wood Products

To avoid duplication in the list of test methods within each category, the General—Wood Products listing represents those methods which would appear under more than one category. Several test methods which did not fit specifically into any of the other categories are also listed here.

Notation:

AITC designates American Institute of Timber Construction

ANSI designates American National Standards Institute

ASTM designates American Society for Testing and Materials

ASTM D906—Strength Properties of Adhesives in Plywood Type Construction in Shear by Tension Loading
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 11–20: Static Bending
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 28–33: Tensile Strength Perpendicular to Surface
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 126–127: Moisture Content and Specific Gravity
ASTM D2718—Structural Panels in Planar Shear (Rolling Shear)
ASTM D2719—Structural Panels in Shear Through-the-Thickness, Method C: Two-Rail Shear
ASTM D3043—Structural Panels in Flexure, Method C: Pure Moment
ASTM D4442—Direct Moisture Content Measurement of Wood and Wood-Base Materials, Method A: Primary Oven-Drying
ASTM D4442—Direct Moisture Content Measurement of Wood and Wood-Base Materials, Method B: Secondary Oven-Drying
ASTM E72—Strength Tests of Panels for Building Construction, Racking Load: Evaluation of Sheathing Materials on a Standard Wood Frame
ASTM E72—Strength Tests of Panels for Building Construction, Racking Load: Evaluation of Sheathing Materials (Wet) on a Standard Wood Frame
ASTM E564—Static Load Test for Shear Resistance of Framed Walls for Buildings
ASTM E695—Measuring Relative Resistance of Wall, Floor, and Roof Construction to Impact Loading
AFG–01–84—Adhesives for Field-Gluing Plywood to Wood Framing—Sec. 3.1: Shear Strength (APA)
AFG–01–84—Adhesives for Field Gluing Plywood to Wood Framing—Sec. 3.2: Durability (APA)

Fire Tests

ASTM E84—Surface Burning Characteristics of Building Materials
ASTM E906—Heat and Visible Smoke Release Rates for Materials and Products
ASTM E1354—Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter

Particleboard and medium-density fiberboard

Formaldehyde

ASTM E1333—Determining Formaldehyde Levels From Wood Products Under Defined Test Conditions Using a Large Chamber
FTM 1–83—Small Scale Test Method for Determining Formaldehyde Emissions from Wood Products: Two Hour Desiccator Test
EN 120:92—Wood-Based Panels—Determination of Formaldehyde Content, Extraction Method Called the Perforator Method. CEN, European Committee for Standardization. Brussels, Belgium. (English)

Physical/Mechanical Properties

ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 61–67: Direct Screw Withdrawal
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 68–73: Hardness
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 118–124: Accelerated Aging
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 100–106: Water Absorption and Thickness Swelling
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials—Part A, Sec. 107–110: Linear Variation with Change in Moisture Content
ANSI/A208.1—Wood Particleboard, Section 3.4.4: Concentrated Load

Structural-Use Panels

ASTM D3044—Shear Modulus of Plywood
ASTM D3500—Structural Panels in Tension, Method B: Tensile Strength of Large Specimens
ASTM D3501—Testing Plywood in Compression, Method B: Compression Test for Large Specimens
ASTM E661—Performance of Wood and Wood-Based Floor and Roof Sheathing Under Concentric Static and Impact Loads.
PS–1—Construction and Industrial Plywood—Sec. 4.5.2: Vacuum-Pressure
PS–1—Construction and Industrial Plywood—Sec. 4.5.3: Boiling
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.1: Performance Under Concentrated Static and Impact Loads
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.2: Performance under Uniform Loads
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.4: Fastener-Holding Performance, Lateral Loads, Direct Withdrawal Loads
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.7: Linear Expansion and Thickness Swell Measured from Oven Dry to Vacuum-Pressure Soak
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.8: Linear Expansion and Thickness Swell Measured after Wetting on One Side
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.9: Linear and Thickness Expansion Measured by Exposure to Relative Humidity
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.17: Moisture Cycle for Quality Assurance (Single Cycle Test)
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.18: Moisture Cycle for Delamination and Strength Retention (Six-Cycle Test)
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.19: Bond Durability Associated with Knots and Knotholes
PS–2—Wood-Based Structural-Use Panels—Sec. 6.4.20: Radial Probe Test

Hardwood Plywood

HP–1—Interim Voluntary Standard for Hardwood and Decorative Plywood—Sec. 4.3: Dry Shear
HP–1—Interim Voluntary Standard for Hardwood and Decorative Plywood—Sec. 4.4: Cyclic-Boil Shear Test
HP–1—Interim Voluntary Standard for Hardwood and Decorative Plywood—Sec. 4.6: Three-Cycle Soak Test
ASTM E96—Water Vapor Transmission of Materials

Structural Composite Lumber, Glulam, I–Joists

ASTM D143—Small Clear Specimens of Timber, Sec. 47–54: Static Bending
ASTM D143—Small Clear Specimens of Timber, Sec. 100–104: Tension Parallel to Grain
ASTM D143—Small Clear Specimens of Timber, Sec. 90–94: Shear Parallel to Grain
ASTM D198—Static Tests of Timbers in Structural Sizes, Sec. 4–11: Flexure
ASTM D198—Static Tests of Timbers in Structural Sizes, Sec. 28–35: Tension Parallel to grain
ASTM D905—Strength Properties of Adhesive Bonds in Shear by Compression Loading
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials, Part A—Sec. 21–27: Tensile Strength Parallel to Surface
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials, Part A—Sec. 81–86: Shear Strength in the Plane of the Board
ASTM D1037—Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials, Part A—Sec. 87–90: Glue-Line Shear (Block Type)
ASTM D1101—Integrity of Glue Joints in Structural Laminated Wood Products for Exterior Use
ASTM D1761—Mechanical Fasteners in Wood—Sec. 1–11: Nail, Staple, or Screw Withdrawal Test
ASTM D2395—Specific Gravity of Wood and Wood-Base Materials—Method A: Volume by Measurement
ASTM D2559—Adhesives for Structural Laminated Wood Products for Use Under Exterior (Wet Use) Exposure Conditions: Resistance to Shear by Compression Loading
ASTM D2559—Adhesives for Structural Laminated Wood Products for Use Under Exterior (Wet Use) Exposure Conditions: Resistance to Delamination During Accelerated Exposure
ASTM D4688—Evaluating Structural Adhesives for Fingerjointing Lumbers
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T106: Strip Tension Test for End Joints (Used in Lamination Repair)
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T107: Shear Test
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T110: Cyclic Delamination Test
AITC D200—Inspection Manual for Structural Glued Laminated Timber—T114: Bending Test for End Joints
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T116: Modulus of Elasticity of E-Rated Lumber by Static Loading

AITC 200—Inspection Manual for Structural Glued Laminated Timber—T119: Full Size End Joint Tension Test
AITC 200—Inspection Manual for Structural Glued Laminated Timber—T123: Sampling, Testing, and Data Analysis to Determine Tensile Properties of Lumber

Sandwich Constructions

ASTM C273—Shear Properties in Flatwise Plane of Flat Sandwich Constructions or Sandwich Cores
ASTM C297—Tensile Strength of Flat Sandwich Constructions in Flatwise Plane
ASTM C365—Flatwise Compressive Strength of Sandwich Cores
ASTM C393—Flexural Properties of Flat Sandwich Constructions
ASTM C480—Flexure-Creep of Sandwich Constructions
ASTM C481—Laboratory Aging of Sandwich Constructions
ASTM D1183—Resistance of Adhesive to Cyclic Laboratory Aging Conditions

Dated: August 12, 1993.

Arati Prabhaker,

Director.

[FR Doc. 93–19986 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Issuance of Modification 1 to Permit No. 825 to the Columbia River Inter-Tribal Fish Commission and issuance of Permit No. 850 to the Washington Department of Fisheries.

On March 23, 1993 (58 FR 17383), the Columbia River Inter-Tribal Fish Commission (CRITFC) was issued Permit 825, under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife (50 CFR parts 217–227), authorizing two of the five projects proposed in their application. On June 9, 1993 (58 FR 33434), an Amendment authorizing the remaining three projects proposed in their application was issued. Notice is hereby given that on August 3, 1993 as authorized by the provisions of the ESA, NMFS issued Modification 1 to Permit 825. The Modification authorizes the CRITFC to hold cryopreserved gametes at the Washington State University.

On September 22, 1992 (57 FR 43706) notice was published that an application had been filed by the Washington Department of Fisheries (WDF) to take adult listed Snake River fall chinook salmon (*Ocorhynchus tvshawytscha*) for the purposes of scientific research, as authorized by the ESA and the NMFS regulations governing listed fish and wildlife. On April 29, 1993, (58 FR 25971) notice was given that the WDF had revised their application. Notice is hereby given that on August 11, 1993 as authorized by the provisions of the ESA, NMFS issued Permit 850 for the above taking subject to the conditions set forth in the permit.

Issuance of this Modification and Permit, as required by the ESA, was based on the finding that such documents: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of the Modification; (3) are consistent with the purposes and policies set forth in section 2 of the ESA. This Modification and Permit were also issued in accordance with and are subject to parts 217–227 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, Permits and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: August 11, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 93–19793 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

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

ACTION: Notice of receipt of application for an incidental take permit (P211H).

Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has applied in due form for a permit to incidentally take endangered or threatened species, as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR Part 217–227).

ODFW requests authorization to continue operations of seven Oregon propagation and stocking programs, including: (1) Wallowa Hatchery; (2) Round Butte Hatchery; (3) Oak Springs Hatchery; (4) Roaring River Hatchery; (5) Big Creek Hatchery; (6) Clatsop County Economic Development Council Fisheries Project; and (7) the Salmon Trout Enhancement Program. ODFW requests this authorization for a duration of five years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503/230–5400).

Dated: August 13, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 93–19959 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

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

ACTION: Issuance of scientific research permit No. 870.

SUMMARY: On June 4, 1993, notice was published in the **Federal Register** (58 FR 31693) that a request for a scientific research permit to take marine mammals had been submitted by Dr. Bruce R. Mate, Hatfield Marine Science Center, Oregon State University, Newport, OR 97365–5296. This request was for a 5-year permit to place satellite-linked radio tags on a total of 150 bottlenose dolphins (*Tursiops truncatus*). Up to 10,000 additional bottlenose dolphins may be harassed during the capture operations during the first year of the research. Activities during 1993 would occur principally in Matagorda Bay, Texas, the Gulf of

Mexico, and off the eastern coast of Texas. Subsequent years' activities would occur in Sarasota Bay, Florida, in the North Atlantic, off California, and around Hawaii.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices.

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, Room 7324, Silver Spring, MD 20910 (301/713–2289);
Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200);
Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893–3141);
Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150); and
Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 11, 1993, as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), NMFS issued the requested permit for the above activities subject to special conditions set forth therein.

Dated: August 11, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–19937 Filed 8–17–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Number: Personal Information Questionnaire, NAVMC 10064, OMB Number 0703–0012.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 30 minutes.

Responses per Respondent: 1.

Number of Respondents: 16,700.

Annual Burden Hours: 8,350.

Annual Responses: 16,700.

Needs and Uses: The Personal Information Questionnaire is used as a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for service as a commissioned officer.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: August 12, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19880 Filed 8–17–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: Defense FAR Supplement (DFARS) part 232, Contract Financing, and part 252, Solicitation Provisions and Contract Clauses.

Type of Request: Expedited processing; approval date requested: 30 days after publication in the Federal Register.

Average Burden per Response: 1 hour.

Responses per Respondent: 1.

Number of Respondents: 800.

Annual Burden Hours: 800.

Annual Responses: 800.

Needs and uses: This requirement provides for the collection of information from contractors who are awarded incrementally funded, fixed-price DoD contracts where the contract is funded with research and development funds; where Congress has incrementally appropriated program funds; or where funds are made available on an incremental basis for either base services or hazardous/toxic waste remediation contracts and the head of the contracting activity has approved the use of incremental funding. The information collection requires these contractors to notify the Government when the work under the contract will, within ninety days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will be used to determine what course of action the Government will take (e.g. allot additional funds for continued performance, terminate the contract, terminate certain contract line items).

Affected Public: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia, 22202–4302.

Dated: August 12, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19879 Filed 8–17–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Performance Review Boards List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Mr. Charles A. Hawkins

Air Force Materiel Command

Brig Gen Francis C. Gideon, Jr.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–19938 Filed 8–17–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Open Meeting of Army Science Board

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 Committee: Army Science Board (ASB).

Date of Meeting: 9 September 1993.

Time of Meeting: 1400–1600 (2 hours).

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's C3I Issue Group members will meet with their sponsor (DISC4) to discuss the status of two sponsor-initiated studies. 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. 93–19921 Filed 8–17–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Education Goals Panel; Public Hearing

AGENCY: National Education Goals Panel: Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the date and location of a forthcoming public hearing sponsored by the National Education Goals Panel. This notice also describes the functions of the Panel.

DATES: September 7, 1993 from 2 p.m. to 5:30 p.m.

ADDRESSES: Minnesota State Capitol, St. Paul, Minnesota, room 15, Ground Floor. The Northwest entrance to the Capitol is handicap accessible.

FOR FURTHER INFORMATION CONTACT: Emily Wurtz, 1850 M Street, NW., suite 270, Washington, DC 20036. Telephone: (202) 632–0952. Those needing assistance for people with disabilities should call Capitol Information at (612) 296–2739. Individuals who use a telecommunications device for the deaf (TDD) may call (612) 296–0075.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the six National Education Goals set in 1990.

The hearing is open to the public. The agenda includes time for expert testimony and public comment on how best to develop criteria to review and approve voluntary world-class education standards. Minnesota Governor Arne H. Carlson, Honeywell Chief Executive Officer James Renier, and Director for Education and Human Resources at the American Association for the Advancement of Science Shirley Malcom will introduce the event and will be followed by prepared testimony from the public and an "open-mike" question and answer session. To reserve time to speak, please contact Leona Schutz in Governor Carlson's office at 612–296–8983. Written testimony may also be submitted at the hearing or sent directly to: Emily Wurtz, National Education Goals Panel, 1850 M Street, NW., suite 270, Washington, DC 20036.

Dated: August 12, 1993.

Ann V. Bailey,

Committee Management Officer, U.S. Department of Education.

[FR Doc. 93–19940 Filed 8–17–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Cooperative Agreement to Virginia Polytechnic Institute and State University

AGENCY Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) it is making a financial assistance award under Cooperative Agreement Number DE–FC01–89CE15971 to Virginia Polytechnic Institute and State University continuing an activity presently being funded by the Department of Energy for which competition for support would have a significant adverse effect on continuity or completion of the activity. The first budget period of a three year project period will fund administration, development and implementation of Energy Related Inventions Program workshops and Innovative Concepts Program Fair. Funding in the amount of $510,934 is to be provided for the first budget period by this cooperative agreement. The Government's three year estimate for the total project is $2,237,000.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR–322.2, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The objectives of the proposed agreement, in which Virginia Polytechnic Institute and State University and the Department Energy will work cooperatively to develop and implement the Energy Related Invention Program educational programs and the Innovatiive Concepts Program Fair, are to manage Commercialization Planning Workshops, National Innovation Workshops, and the Innovative Concepts Fair and to undertake related initiatives involving commercialization, curriculum development, training, demonstration, and evaluation. The term of the proposed cooperative agreement shall be three years from the effective date of the award.

Issued in Washington, DC, on August 12, 1993.

Carol M. Rueter,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–19981 Filed 8–17–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–465–000, et al.]

Florida Power & Light Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 10, 1993.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Co.

[Docket No. ER93–465–000]

Take notice that on July 26, 1993, Florida Power & Light Company (FPL) tendered for filing revisions to its March 19, 1993 filing in this proceeding in response to the May 18, 1993 Deficiency Letter from the Director, Division of Applications. FPL's amended filing contains the following: (i) Transmission Service Tariff Nos. 1, 2 and 3; (ii) amendments to each of FPL's Agreements to Provide Specified Transmission Service; (iii) an Amendment to the Agreement to Provide Coordination Transmission Service and Additional Transmission Service Between FPL and the Utility Board of the City of Key West, Florida (Key West) (Coordination Transmission Agreement); (iv) a revised Wholesale Electric Service Tariffs for partial requirements and full requirements service; (v) revised Attachments A and B to the Aggregate Billing Partial Requirements Service Agreement Between FPL and Seminole Electric Cooperative, Inc. (ABPRSA); (vi)

amendments to the Service Schedule in each of FPL's interchange contracts; (vii) cost support information; and (viii) prepared direct testimony of FPL witnesses describing the items above.

FPL's filing also includes additional information, in the form of Period I and Period II cost support data, testimony and an explanation of its amended filing. FPL states that the amended filing is in accordance with section 35 of the Commission's regulations.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. PSI Energy, Inc.

[Docket No. ER93–840–000]

Take notice that on August 2, 1993, PSI Energy, Inc. (PSI) tendered for filing the Third Supplemental Agreement, dated June 1, 1993, to the Interim Schedule Power Agreement, as amended (1989 Agreement), dated May 24, 1989, between PSI Energy, Inc., (PSI), and Wabash Valley Power Association, Inc. (Wabash Valley). Such 1989 Agreement has been designed as PSI's Rate Schedule FERC No. 241.

The Third Supplemental Agreement modifies various sections of the 1989 Agreement. The changes are due primarily to the expiration of the initial term of the 1989 Agreement which terminated on July 31, 1992.

Copies of the filing were served on Wabash Valley Power Association, Inc. and the Indiana Utility Regulatory Commission.

The parties have requested an effective date of October 1, 1993.

Comment date: August 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER93–694–000]

Take notice that on August 2, 1993, Southern California Edison Company (Edison) tendered for filing additional information which was requested by Commission Staff in Docket No. ER93–694–000.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. National Electric Associates Partnership

[Docket No. ER90–168–113]

Take notice that on July 26, 1993, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990 order in this proceeding. 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

5. Arizona Public Service Co.

[Docket No. ER93–841–000]

Take notice that on August 2, 1993, Arizona Public Service Company (ASP) tendered for filing the proposed Power Sale Agreement between APS and Portland General Electric Company (PGE).

The agreement proposes that APS will make available to PGE, when pre-scheduled by PGE, up to 100 MW of firm power and energy commencing on October 1, 1993 and ending April 30, 1996, during the months of October, November, December, January, February, March and April. The rate for sales under the agreement contains a Capacity Charge component and an Energy Charge component. Additionally, there are provisions for daily energy cost floors and ceilings as well as a minimum load factor requirement.

A copy of this filing has been served on PGE, the Arizona Corporation Commission and the Oregon Public Utility Commission.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Energy, Inc.

[Docket No. ER93–826–000]

Take notice that on July 29, 1993, Midwest Energy, Inc. (Midwest) tendered for filing a Notice of Cancellation of the following rate schedules:

Rate Schedule
1 CKP and Sunflower Electric
2 CKP and Kansas City Power & Light
3 CKP and Kansas Power and Light
4 CKP and City of Oakley
5 CKP and City of Colby

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER93–838–000]

Take notice that on August 2, 1993, Public Service Company of Colorado tendered for filing amendments to its FERC Electric Service Rate Schedule, FERC No. 51. Under the proposed amendment Public Service is seeking to revise the scheduling of Western Area Power Administration Preference Power deliveries to Intermountain Rural Electric Association, Inc This amendment will have no impact on the rates for service under this agreement.

Public Service requests an effective date of October 1, 1993 for the proposed amendment.

Copies of the filing were served upon Intermountain Rural Electric Association, Inc, and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corp

[Docket No. ER93–823–000]

Take notice that on July 29, 1993, Allegheny Power Service Corporation (Allegheny) tendered for filing on behalf of Monangahela Power Company a notice of cancellation of FERC rate schedule No. 47.

Comment date: August 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corp

[Docket No. ER93–837–000]

Take notice that on July 30, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Burlington Electric Department (BED) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93–313–000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its July 26, 1993 filing of the proposed Service Agreement with O&R, Niagara Mohawk requests an effective date for this Service Agreement of July 26, 1993, the date of filing with FERC.

A copy of this filing has been served upon BED and the New York State Public Service Commission.

Comment date: August 24, 1993, 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 a 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 the 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19941 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2458 and 2572]

Great Northern Paper, Inc; Intent To Hold Scoping Meetings and Site Visit

August 12, 1993.

The Federal Energy Regulatory Commission (FERC) published on April 20, 1993, in the **Federal Register** a notice of intent to prepare an Environmental Impact Statement (EIS) for the Penobscot Mills and Ripogenus Projects (Nos. 2458 and 2527), Maine. The projects consist of the Ripogenus, Millinocket Lake Storage, North Twin, Millinocket, Dolby, and East Millinocket developments situated on the West Branch of the Penobscot River in Penobscot and Piscataquis counties, Maine. FERC will conduct project site visits on Monday, August 23 and Tuesday, August 24, and two scoping meetings on Wednesday, August 25, 1993, in Millinocket, Maine.

All interested individuals are invited to attend the site visits. Trip participants will meet at the Atrium Motel in Millinocket at 8 a.m. on August 23 and 24, and vans will be available to take them to the site. Please make reservations for the site visits by calling VERSAR at 401–964–9200 before August 17, 1993.

All interested individuals, organization representatives and agencies with environmental expertise and concerns are invited to attend the scoping meetings on August 25. The purpose of the meetings is to obtain agency and public comment on environmental issues that should be addressed in the EIS. Scoping will consist of a morning meeting, from 9 a.m. to 12 noon at the Atrium Motel, for government agencies to voice their concerns and recommendations; and an evening meeting, from 7 to 10 p.m. at Stern High School in Millinocket which for the public to express their concerns and recommendations.

Objectives

To focus discussion, a preliminary EIS scoping document outlining subject areas to be addressed at the meetings will be distributed by mail to parties on the FERC service and mailing lists. Copies of the preliminary scoping document will also be available at the meetings.

During the meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) determine the relative depth of analysis for issues to be addressed; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) will become part of the formal record of the Commission proceedings on the Penobscot Mills and Ripogenus projects. Individuals presenting statements will be asked to identify themselves for the record.

Participants at the public meetings are asked to limit comments to five minutes to allow everyone an opportunity to speak.

Persons choosing not to speak, but having views on the issues or information relevant to the issues, may submit written statements at the meetings for inclusion in the public record. Written scoping comments may also be filed until September 1, 1993, with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All correspondence should clearly show one or both of the following captions on the first page:

Penobscot Mills Project No. 2458, Maine
Ripogenus Project No. 2527, Maine

All those formally recognized by the Commission as intervenors in the Penobscot Mills and Ripogenus projects are asked to refrain from discussing the merits of the project with the staff or its contractor outside of announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing written comments or documents with the Commission, to serve a copy of the written comments or documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Edward R. Meyer at (202) 219–2781.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19950 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST93–3953–000 through ST93–4495–000]

Panhandle Eastern Pipe Line Co; Self-Implementing Transactions

August 12, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), Section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any intestate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–3953	Panhandle Eastern Pipe Line Co.	Quanex Corp	06–01–93	G–S	3,500	N	I	05–01–93	04–30–98
ST93–3954	Panhandle Eastern Pipe Line Co.	Clinton Gas Transmission, Inc.	06–01–93	G–S	50,000	N	I	05–01–93	04–30–98
ST93–3955	Panhandle Eastern Pipe Line Co.	Anchor Glass Container Corp.	06–01–93	G–S	3,800	N	F	05–01–93	04–30–94
ST93–3956	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales.	06–01–93	G–S	500	N	F	05–01–93	03–31–94
ST93–3957	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	06–01–93	G–ST	3,952	N	F	05–01–93	03–31–98
ST93–3958	Sabine Pipe Line Co	Tauber Oil Co	06–01–93	G–S	50,000	N	I	05–21–93	Indef.
ST93–3959	Sabine Pipe Line Co	Kerr-McGee Corp	06–01–93	G–S	12,934	N	I	05–01–93	Indef.
ST93–3960	Sabine Pipe Line Co	Samedan Oil Corp	06–01–93	G–S	3,921	N	I	05–01–93	Indef.
ST93–3961	Transtexas Pipeline	Tennessee Gas Pipeline Co.	06–01–93	C	5,000	N	I	05–12–93	Indef.
ST93–3962	Valero Transmission, L.P.	Texas Gas Transmission Corp.	06–01–93	C	6,000	N	I	05–12–93	Indef.
ST93–3963	Tennessee Gas Pipeline Co.	O & R Energy Inc	06–01–93	G–S	300,000	N	I	05–01–93	Indef.
ST93–3964	Panhandle Eastern Pipe Line Co.	Quantum Chemical Corp.	06–01–93	G–S	15,000	N	I	05–01–93	03–31–98
ST93–3965	Panhandle Eastern Pipe Line Co.	AGF Direct Gas Sales, Inc.	06–01–93	G–S	1,000	N	I	05–01–93	04–30–98
ST93–3966	Panhandle Eastern Pipe Line Co.	Dunn Co	06–01–93	G–S	250	N	I	05–01–93	04–30–98
ST93–3967	Panhandle Eastern Pipe Line Co.	Tristar Gas Co	06–01–93	G–S	15,000	N	I	05–01–93	03–31–03
ST93–3968	Southern Natural Gs Co.	Texican Natural Gas	06–01–93	G–S	10,000	N	I	05–01–93	Indef.
ST93–3969	Southern Natural Gs Co.	Louisiana Municipal Natural Gas.	06–01–93	G–S	25,000	N	I	05–01–93	Indef.
ST93–3970	Southern Natural Gs Co.	Chevron USA, Inc	06–01–93	G–S	30,000	N	I	05–01–93	Indef.
ST93–3971	Colorado Interstate Gas Co.	Transwestern Pipeline Co.	06–02–93	G–S	50,000	N	I	04–29–93	Indef.
ST93–3972	Colorado Interstate Gas Co.	Montana Power Co	06–02–93	B	20,000	N	I	04–25–93	Indef.
ST93–3973	Colorado Interstate Gas Co.	Coastal Oil & Gas Corp.	06–02–93	G–S	40,000	A	I	04–15–93	Indef.
ST93–3974	Colorado Interstate Gas Co.	Synder Oil Corp	06–02–93	G–S	41,800	N	F	05–11–93	05–01–08
ST93–3975	Colorado Interstate Gas Co.	Coastal Oil & Gas Corp.	06–02–93	G–S	54,000	A	F	05–01–93	04–30–94
ST93–3976	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	06–02–93	G–S	13,000	N	I	05–01–93	Indef.
ST93–3977	Colorado Interstate Gas Co.	Enron Gas Marketing, Inc.	06–02–93	G–S	100,000	N	I	05–15–93	Indef.
ST93–3978	Channel Industries Gas Co.	Seagull Marketing Services.	06–02–93	G–I	50,000	N	I	05–04–93	Indef.
ST93–3979	Midcon Texas Pipeline Corp.	Natural Gas P/L Co. of America.	06–02–93	C	40,000	N	I	05–01–93	Indef.
ST93–3980	Arkla Energy Resources Co.	Tristar Gas Marketing Co.	06–02–93	G–S	50,000	N	I	05–20–93	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST93–3981	Transcontinental Gas P/L Corp.	Stellar Gas Co	06–02–93	G–S	1,900,000	N	I	05–24–93	Indef.
ST93–3982	Valero Interstate Trans. Co.	Valero Transmission, L.P.	06–03–93	B	5,000	Y	I	06–01–93	Indef.
ST93–3983	K N Energy, Inc	Panhandle Eastern Pipe Line Co.	06–03–93	G	14,000	N	I	05–08–93	Indef.
ST93–3984	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	06–03–93	G–S	200,000	N	I	05–07–93	Indef.
ST93–3985	Tennessee Gas Pipeline Co.	Louis Dreyfus Energy Corp.	06–03–93	G–S	100,000	N	I	05–14–93	Indef.
ST93–3986	Northern Border Pipeline Co.	Renaissance Energy Ltd.	06–03–93	G–S	50,000	Y	I	06–01–93	01–14–94
ST93–3987	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	06–03–93	B	255	Y	F	06–01–93	Indef.
ST93–3988	Arkla Energy Resources Co.	Polaris Pipeline Corp .	06–03–93	G–S	5,000	N	I	06–02–93	Indef.
ST93–3989	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	06–03–93	B	200	Y	F	06–01–93	Indef.
ST93–3990	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	06–03–93	B	125	Y	F	06–01–93	Indef.
ST93–3991	Arkla Energy Resources Co.	Dold Foods, Inc	06–03–93	G–S	200	N	I	06–01–93	Indef.
ST93–3992	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	06–03–93	G–S	50,000	N	I	05–20–93	Indef.
ST93–3993	Transcontinental Gas P/L Corp.	TXG Gas Marketing Co.	06–03–93	G–S	200,000	N	I	05–19–93	Indef.
ST93–3994	Natural Gas P/L Co. of America.	Olympic Fuels Co	06–03–93	G–S	20,000	N	I	05–22–93	Indef.
ST93–3995	Tennessee Gas Pipeline Co.	Riverside Pipeline Co .	06–04–93	B	11,745	N	I	05–08–93	Indef.
ST93–3996	Natural Gas P/L Co. of America.	Arkla Energy Marketing Co.	06–04–93	G–S	100,000	N	I	05–18–93	Indef.
ST93–3997	Natural Gas P/L Co. of America.	DGS Trading Inc	06–04–93	G–S	75,000	N	I	05–22–93	Indef.
ST93–3998	Trailblazer Pipeline Co	Coastal Oil & Gas Corp.	06–04–93	G–S	353,000	N	I	06–01–93	Indef.
ST93–3999	Channel Industries Gas Co.	Highland Energy Corp	06–04–93	G–I	10,000	N	I	05–08–93	Indef.
ST93–4000	Transamerican Natural Gas Corp.	Natural Gas Pipeline Co. of America.	06–04–93	C	50,000	N	I	04–29–93	Indef.
ST93–4001	CNG Transmission Corp.	City of Richmond	06–04–93	B	10,000	N	I	05–01–93	Indef.
ST93–4002	CNG Transmission Corp.	Baltimore Gas and Electric.	06–04–93	B	20,000	N	I	05–01–93	Indef.
ST93–4003	Trunkline Gas Co	Enron Gas Marketing, Inc.	06–04–93	G–S	100,000	N	I	05–25–93	Indef.
ST93–4004	Trunkline Gas Co	Triumph Natural Gas, Inc.	06–04–93	G–S	20,000	N	I	05–26–93	Indef.
ST93–4005	Trunkline Gas Co	Yuma Gas Corp	06–04–93	G–S	50,000	N	I	05–27–93	Indef.
ST93–4006	Trunkline Gas Co	Premier Gas Co	06–04–93	G–S	50,000	N	I	05–13–93	Indef.
ST93–4007	ANR Pipeline Co	Cincinnati Gas & Electric.	06–07–93	B	100,000	N	I	05–06–93	Indef.
ST93–4008	ANR Pipeline Co	Arco Natural Gas Marketing, Inc.	06–07–93	G–S	100,000	N	I	05–15–93	Indef.
ST93–4009	ANR Pipeline Co	Anadarko Trading Co .	06–07–93	G–S	25,000	N	F	05–07–93	Indef.
ST93–4010	ANR Pipeline Co	Jackson Pipeline Co ..	06–07–93	B	16,000	N	I	05–07–93	Indef.
ST93–4011	ANR Pipeline Co	Orbit Gas Co	06–07–93	B	3,000	N	I	05–06–93	Indef.
ST93–4012	ANR Pipeline Co	Pennzoil Gas Marketing Co.	06–07–93	G–S	10,000	N	I	05–08–93	Indef.
ST93–4013	Kern River Gas Transmission Co.	Valero Gas Marketing, L.P.	06–07–93	G–S	100,000	N	I	05–08–93	Indef.
ST93–4014	Tennessee Gas Pipeline Co.	Texas-Ohio Gas, Inc ..	06–07–93	G–S	75,000	N	I	05–08–93	Indef.
ST93–4015	Tennessee Gas Pipeline Co.	ELF Exploration, Inc ..	06–07–93	G–S	50,000	N	I	05–08–93	Indef.
ST93–4016	Trailblazer Pipeline Co	DGS Trading Inc	06–07–93	G–S	77,250	N	I	05–01–93	Indef.
ST93–4018	Canyon Creek Compression Co.	Columbia Gas Transmission Corp.	06–07–93	G	10,000	N	I	05–15–93	Indef.
ST93–4019	High Island Offshore System.	United Gas Pipe Line Co.	06–07–93	K	207,500	N	I	05–05–93	Indef.
ST93–4020	Transcontinental Gas P/L Corp.	Appalachian Gas Sales.	06–07–93	G–S	30,000	N	I	05–19–93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–4021	Transcontinental Gas P/L Corp.	CNG Producing Co	06–07–93	G–S	400,000	N	I	05–28–93	Indef.
ST93–4022	Questar Pipeline Co ...	Mountain Fuel Supply Co.	06–07–93	B	46,000	Y	I	05–08–93	Indef.
ST93–4023	Great Lakes Gas Transmission LP.	ANR Pipeline Co	06–07–93	G	110,000	N	I	05–10–93	10–31–93
ST93–4024	Panhandle Eastern Pipe Line Co.	Associated Natural Gas Co.	06–08–93	G–S	5,825	N	I	05–01–93	04–30–94
ST93–4025	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	06–08–93	G–S	52,600	N	F	05–01–93	04–30–97
ST93–4026	Tennessee Gas Pipeline Co.	Pennzoil Gas Marketing Co.	06–08–93	G–S	60,000	N	I	05–14–93	Indef.
ST93–4027	Mojave Pipeline Co	El Paso Natural Gas Co.	06–08–93	G–S	400,000	N	I	05–22–93	05–21–94
ST93–4028	Enogex Inc	Natural Gas Pipeline Co.	06–08–93	C	50,000	N	I	05–27–93	Indef.
ST93–4029	Colorado Interstate Gas Co.	Grand Valley Gas Co .	06–08–93	G–S	10,000	N	I	05–18–93	Indef.
ST93–4030	Colorado Interstate Gas Co.	Rangeline Corp	06–08–93	G–S	10,000	N	I	05–26–93	Indef.
ST93–4031	Colorado Interstate Gas Co.	Associated Interstate Pipeline Co.	06–08–93	G–S	10,000	N	I	05–18–93	Indef.
ST93–4032	Iroquois Gas Trans. System, L.P.	Louis Dreyfus Energy Corp.	06–09–93	G–S	100,000	N	I	05–21–93	Indef.
ST93–4033	Exxon Gas System, Inc.	Southeastern Marketing Co.	06–09–93	C	30,300	N	I	05–07–93	Indef.
ST93–4034	ANR Pipeline Co	United Gas Pipe Line Co.	06–09–93	G	100	N	F	05–10–93	Indef.
ST93–4035	Northwest Pipeline Corp.	Westcoast Resources, Inc.	06–09–93	G–S	25,643	N	F	06–01–93	Indef.
ST93–4036	Columbia Gulf Transmission Co.	Brooklyn Interstate Nat. Gas Corp.	06–09–93	G–S	50,000	N	I	05–26–93	Indef.
ST93–4037	Columbia Gulf Transmission Co.	Transcontinental Gas Pipe Line Corp.	06–09–93	G	60,000	N	I	06–01–93	Indef.
ST93–4038	Columbia Gulf Transmission Co.	United Gas Services Co.	06–09–93	G–S	200,000	N	I	05–20–93	Indef.
ST93–4039	Columbia Gulf Transmission Co.	Vesta Energy Co	06–09–93	G–S	20,000	N	I	05–29–93	Indef.
ST93–4040	Columbia Gulf Transmission Co.	Tauber Oil Co	06–09–93	G–S	50,000	N	I	06–01–93	Indef.
ST93–4041	Columbia Gulf Transmission Co.	Sonat Marketing Co ...	06–09–93	G–S	20,000	N	I	06–01–93	Indef.
ST93–4042	Columbia Gulf Transmission Co.	Enron Gas Marketing, Inc.	06–09–93	G–S	130,000	N	I	05–19–93	Indef.
ST93–4043	Columbia Gulf Transmission Co.	Direct Gas Supply Corp.	06–09–93	G–S	25,000	N	I	06–01–93	Indef.
ST93–4044	Columbia Gulf Transmission Co.	Coastal Gas Marketing Co.	06–09–93	G–S	100,000	N	I	05–26–93	Indef.
ST93–4045	Black Marlin Pipeline Co.	Union Carbide Chem. & Plastics Co.	06–09–93	G–S	10,000	N	I	05–28–93	Indef.
ST93–4046	Black Marlin Pipeline Co.	Sonat Marketing Co ...	06–09–93	G–S	5,000	N	I	05–11–93	Indef.
ST93–4047	Black Marlin Pipeline Co.	Amoco Gas Co	06–09–93	G–S	80,000	N	I	05–27–93	Indef.
ST93–4048	Louisiana Intrastate Gas Corp.	ANR Pipeline Co., et al.	06–09–93	C	30,000	N	I	06–01–93	02–01–96
ST93–4049	Delhi Gas Pipeline Corp.	Texas Eastern Trans. Co., et al.	06–07–93	C	30,300	N	I	05–07–93	Indef.
ST93–4050	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06–09–93	G–S	2,600	N	F	05–01–93	03–31–96
ST93–4051	Panhandle Eastern Pipe Line Co.	Illinois Power Co	06–09–93	G–S	75,900	N	F	05–01–93	04–30–96
ST93–4052	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	06–09–93	G–S	3,000	N	F	05–01–93	03–31–94
ST93–4053	Panhandle Eastern Pipe Line Co.	Northern Indiana Public Service Co.	06–09–93	G–S	40,391	N	F	05–01–93	03–31–98
ST93–4054	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	06–09–93	G–S	7,904	N	F	05–01–93	03–31–98
ST93–4055	Panhandle Eastern Pipe Line Co.	Union Electric Co	06–09–93	G–S	35,000	N	F	05–01–93	10–31–95
ST93–4056	United Gas Pipe Line Co.	Sonat Marketing Co ...	06–10–93	G–S	26,200	N	I	06–03–93	10–01–93

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST93–4057	United Gas Pipe Line Co.	Union Pacific Fuels, Inc.	06–10–93	G–S	60,000	N	I	06–03–93	10–01–93
ST93–4058	United Gas Pipe Line Co.	Excel Gas Marketing, Inc.	06–10–93	G–S	102,704	N	I	06–02–93	09–30–93
ST93–4059	United Gas Pipe Line Co.	Red River Gas Co	06–10–93	G–S	1,048	N	I	05–27–93	09–24–93
ST93–4060	United Gas Pipe Line Co.	Louis Dreyfus Energy Corp.	06–10–93	G–S	104,800	N	I	05–27–93	09–24–93
ST93–4061	Williston Basin Inter. P/L Co.	Prairielands Energy Marketing, Inc.	06–10–93	G–S	249,719	A	I	05–11–93	09–30–94
ST93–4062	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America.	06–10–93	C	10,000	N	I	05–14–93	Indef.
ST93–4063	Valero Transmission, L.P.	Transcontinental Gas Pipeline Co.	06–10–93	C	5,500	N	I	05–14–93	Indef.
ST93–4064	Valero Transmission, L.P.	United Gas Pipeline Co.	06–10–93	C	3,000	N	I	05–21–93	Indef.
ST93–4065	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	06–10–93	C	8,500	N	I	05–19–93	Indef.
ST93–4066	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	06–10–93	C	4,000	N	I	05–13–93	Indef.
ST93–4067	Valero Transmission, L.P.	Texas Gas Transmission Co.	06–10–93	C	20,000	N	I	05–18–93	Indef.
ST93–4068	Northern Natural Gas Co.	Excel Gas Marketing, Inc.	06–10–93	G–S	20,000	N	F/I	04–01–93	Indef.
ST93–4069	Northern Natural Gas Co.	Energy Development Corp.	06–10–93	G–S	75,000	N	F/I	04–01–93	Indef.
ST93–4070	Northern Natural Gas Co.	Kimball Energy Corp ..	06–10–93	G–S	40,000	N	F/I	04–30–93	Indef.
ST93–4071	Northern Natural Gas Co.	Minnegasco	06–10–93	G–S	125,000	N	F/I	03–01–93	03–31–08
ST93–4072	Northern Natural Gas Co.	Transok Gas Co	06–10–93	G–S	25,000	N	F/I	11–01–92	Indef.
ST93–4073	Panhandle Eastern Pipe Line Co.	Northern Indiana Public Service Co.	06–10–93	G–S	5,049	N	F	05–01–93	03–31–95
ST93–4074	Panhandle Eastern Pipe Line Co.	Western Resources, Inc.	06–10–93	G–S	10,049	N	F	05–01–93	03–31–95
ST93–4075	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	06–10–93	G–S	9,979	N	F	05–01–93	04–30–97
ST93–4076	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06–10–93	G–S	4,474	N	F	05–01–93	03–31–96
ST93–4077	Panhandle Eastern Pipe Line Co.	Union Electric Co	06–10–93	G–S	59,742	N	F	05–01–93	03–31–95
ST93–4078	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	06–10–93	G–S	9,764	N	F	05–01–93	03–31–95
ST93–4079	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06–10–93	G–S	664	N	I	05–01–93	03–31–96
ST93–4080	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06–10–93	G–S	1,709	N	F	05–01–93	03–31–96
ST93–4081	National Fuel Gas Supply Corp.	Continental Energy Marketing, Inc.	06–10–93	G–S	50,000	N	I	05–01–93	03–31–13
ST93–4082	Lone Star Gas Co	El Paso Natural Gas Co., et al.	06–10–93	C	20,000	N	I	05–13–93	Indef.
ST93–4083	Natural Gas P/L Co of America.	Gas Energy Development Co.	06–10–93	G–S	20,000	N	I	06–04–93	Indef.
ST93–4084	Natural Gas P/L Co of America.	Panhandle Trading Co	06–10–93	G–S	100,000	N	I	06–03–93	Indef.
ST93–4085	Delhi Gas Pipeline Corp.	United Gas Pipe Line Co., et al.	06–11–93	C	7,500	N	I	05–14–93	06–01–93
ST93–4086	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co., et al.	06–11–93	C	15,500	N	I	05–12–93	Indef.
ST93–4087	Williston Basin Line Inter. P/L Co.	Cenex	06–11–93	G–S	8,173	N	I	05–13–93	12–31–93
ST93–4088	Tejas Gas Corp	Mississippi River Trans. Co.	06–11–93	C	500	N	I	04–01–93	Indef.
ST93–4089	Tennessee Gas Pipeline Co.	Southern Gas Co., Inc	06–11–93	G–S	32,000	N	I	05–15–93	Indef.
ST93–4090	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	06–11–93	G–S	51,550	N	I	05–14–93	Indef.
ST93–4091	Northern Natural Gas Co.	ONG Western, Inc	06–11–93	B	25,000	N	I	05–12–93	Indef.
ST93–4092	Northern Natural Gas Co.	Midland Marketing Corp.	06–11–93	G–S	200,000	N	I	05–01–93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–4093	Northern Natural Gas Co.	Tristar Gas Co	06–11–93	G–S	50,000	N	I	05–08–93	Indef.
ST93–4094	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	06–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4095	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	06–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4096	Transwestern Pipeline Co.	Chevron USA Production Co.	06–11–93	G–S	6,116	N	F	06–02–93	06–30–93
ST93–4097	Transwestern Pipeline Co.	American Hunter Exploration.	06–11–93	G–S	5,000	N	F	06–01–93	06–30–93
ST93–4098	Transwestern Pipeline Co.	American Hunter Exploration.	06–11–93	G–S	20,000	N	F	06–01–93	06–30–93
ST93–4099	Transwestern Pipeline Co.	Chevron USA Production Co.	06–11–93	G–S	11,066	N	F	06–01–93	06–30–93
ST93–4100	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	6–11–93	G–S	10,300	N	F	06–01–93	06–30–93
ST93–4101	Transwestern Pipeline Co.	Enron Gas Processing Co.	6–11–93	G–S	5,300	A	F	06–01–93	06–30–93
ST93–4102	Transwestern Pipeline Co.	Enron Gas Processing Co.	6–11–93	G–S	5,361	A	F	06–01–93	06–30–93
ST93–4103	Transwestern Pipeline Co.	Bridgegas USA, Inc ...	6–11–93	G–S	10,000	N	F	06–01–93	06–30–93
ST93–4104	Transwestern Pipeline Co.	Enron Gas Marketing, Co.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4105	Transwestern Pipeline Co.	Enron Gas Processing Co.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4106	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6–11–93	G–S	4,000	A	F	06–01–93	06–30–93
ST93–4107	Transwestern Pipeline Co.	Texaco Gas Marketing, Inc.	6–11–93	G–S	10,788	N	F	06–01–93	06–30–93
ST93–4108	Transwestern Pipeline Co.	Tristar Gas Co	6–11–93	G–S	10,000	N	F	06–01–93	06–30–93
ST93–4109	Transwestern Pipeline Co.	Equitable Resources Marketing Co.	6–11–93	G–S	3,000	N	F	06–01–93	06–30–93
ST93–4110	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4111	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4112	Transwestern Pipeline Co.	Yates Petroleum Corp	6–11–93	G–S	20,000	N	F	06–01–93	06–30–93
ST93–4113	Transwestern Pipeline Co.	Richardson Products Co.	6–11–93	G–S	5,000	N	F	06–01–93	06–30–93
ST93–4114	Transwestern Pipeline Co.	Richardson Products Co.	6–11–93	G–S	10,000	N	F	06–01–93	06–30–93
ST93–4115	Transwestern Pipeline Co.	Phillips Petroleum Co .	6–11–93	G–S	100,788	N	I	05–13–93	Indef.
ST93–4116	Transwestern Pipeline Co.	New Mexico Natural Gas, Inc.	6–11–93	G–S	2,000	N	I	05–21–93	Indef.
ST93–4117	Transwestern Pipeline Co.	Enron Gas Processing Co.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4118	Transwestern Pipeline Co.	Enron Gas Processing Co.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4119	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4120	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4121	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4122	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	6–11–93	G–S	5,000	A	F	06–01–93	06–30–93
ST93–4123	Columbia Gas Transmission Corp.	Enron Gas Marketing, Inc.	6–11–93	G–S	300,000	Y	I	05–26–93	Indef.
ST93–4124	Columbia Gas Transmission Corp.	Domino Sugar Corp ...	6–11–93	G–S	20,000	Y	I	05–26–93	Indef.
ST93–4125	Columbia Gas Transmission Corp.	Engelhard Corp	6–11–93	G–S	2,500	Y	I	05–26–93	Indef.
ST93–4126	Natural Gas P/L Co. of America.	Harvest Energy Co	6–11–93	G–S	3,000	N	I	06–02–93	Indef.
ST93–4127	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	6–11–93	G–S	20,000	N	F	06–01–93	06–30–93
ST93–4128	Natural Gas P/L Co. of America.	Seagull Marketing Services, Inc.	6–11–93	G–S	16,000	N	I	06–01–93	Indef.

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ST93–4129	Louisiana Intrastate Gas Corp.	Columbia Gulf Trans. Co., et al.	6–14–93	C	60,000	N	I	06–04–93	Indef.
ST93–4130	Northern Natural Gas. Co.	Minnegasco, Div. of Arkla, Inc.	6–14–93	B	178,006	N	I	05–04–93	Indef.
ST93–4131	Northern Natural Gas. Co.	Midwest Gas, Div. of Midwest Power.	6–14–93	B	194,400	N	F	04–01–93	Indef.
ST93–4132	Panhandle Eastern Pipe Line Co.	Wellsville Fire Brick Co.	6–14–93	G–S	2,500	N	I	05–01–93	03–31–98
ST93–4133	Panhandle Eastern Pipe Line Co.	Columbia Gas Transmission Corp.	6–14–93	G	350	N	I	05–01–93	Indef.
ST93–4134	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co	6–14–93	G–S	500	Y	I	05–01–93	Indef.
ST93–4135	Panhandle Eastern Pipe Line Co.	Tylex, Inc	6–14–93	G–S	1,500	N	F	05–01–93	03–31–96
ST93–4136	Panhandle Eastern Pipe Line Co.	Colorado Interstate Gas Co.	6–14–93	G	1,000	N	I	05–01–93	04–30–93
ST93–4137	Panhandle Eastern Pipe Line Co.	North American Refractories Co.	6–14–93	G–S	1,800	N	I	05–01–93	03–31–98
ST93–4138	Midwestern Gas Transmission Co.	DGS Trading	6–14–93	C	10,000	N	I	04–23–93	Indef.
ST93–4139	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	150,000	N	I	04–23–93	Indef.
ST93–4140	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	15,000	N	I	05–19–93	Indef.
ST93–4141	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	50,000	N	I	05–12–93	Indef.
ST93–4142	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	15,000	N	I	05–20–93	Indef.
ST93–4143	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	200,000	N		05–01–93	Indef.
ST93–4144	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	50,000	N	I	05–20–93	Indef.
ST93–4145	Transok, Inc	ANR Pipeline Co., et al.	6–14–93	C	20,000	N	I	05–20–93	Indef.
ST93–4146	Questar Pipeline Co	Western Gas Resources, Inc.	6–14–93	G–S	20,000	N	I	06–01–93	Indef.
ST93–4148	Columbia Gas Transmission Corp.	City of Richmond	6–14–93	G–S	40,000	Y	I	05–20–93	Indef.
ST93–4149	Columbia Gas Transmission Corp.	Midcon Marketing Corp.	6–14–93	G–S	300,000	Y	I	06–01–93	Indef.
ST93–4150	Texas Gas Transmission Corp.	Energy Transportation Man., Inc.	06–14–93	G-S	12,000	N	I	06–01–93	Indef.
ST93–4151	Texas Gas Transmission Corp.	Columbia Gas Development Corp.	06–14–93	G–S	56,000	N	I	06–05–93	Indef.
ST93–4152	Natural Gas P/L Co. of America.	North Canadian Marketing Corp.	06–14–93	G–S	150,000	N	I	03–01–92	Indef.
ST93–4153	Natural Gas P/L Co. of America.	North Canadian Marketing Corp.	06–14–93	G–S	150,000	N	I	03–01–92	Indef.
ST93–4154	Natural Gas P/L Co. of America.	Amoco Energy Trading Corp.	06–14–93	G–S	400,000	N	I	06–13–88	Indef.
ST93–4155	Northern Natural Gas Co.	City of Harbors	06–14–93	G–S	1,400	N	F	05–01–93	Indef.
ST93–4156	Northern Natural Gas Co.	Sheehan's Gas Co	06–14–93	G–S	669	N	F	06–01–93	Indef.
ST93–4157	Paiute Pipeline Co	WP Natural Gas Co	06–15–93	G–S	17,908	N	F	02–28–93	Indef.
ST93–4158	Paiute Pipeline Co	Premier Services Corp	06–15–93	G–S	850	N	F	02–28–93	Indef.
ST93–4159	Paiute Pipeline Co	Eagle-Pitcher Minerals, Inc.	06–15–93	G–S	1,680	N	F	02–28–93	Indef.
ST93–4160	Paiute Pipeline Co	Gold Fields Operating Co.	06–15–93	G–S	1,100	N	F	02–28–93	Indef.
ST93–4161	Paiute Pipeline Co	Cyanco Co	06–15–93	G–S	2,000	N	F	02–28–93	Indef.
ST93–4162	Paiute Pipeline Co	United Engine & Machine Co.	06–15–93	G–S	250	N	F	02–28–93	Indef.
ST93–4163	Paiute Pipeline Co	Harvey's Report Hotel/Casino.	06–15–93	G–S	380	N	F	02–28–93	Indef.
ST93–4164	Paiute Pipeline Co	Southwest Gas Corp	06–15–93	G–S	11,148	N	F	02–28–93	Indef.
ST93–4165	Paiute Pipeline Co	Caesars Tahoe	06–15–93	G–S	300	N	F	02–28–93	Indef.
ST93–4166	Paiute Pipeline Co	Harrah's Club	06–15–93	G–S	500	N	F	02–28–93	Indef.
ST93–4167	Paiute Pipeline Co	Wimar Tahoe Corp	06–15–93	G–S	225	N	F	02–28–93	Indef.
ST93–4168	Paiute Pipeline Co	Sierra Pacific Power Co.	06–15–93	G–S	105,774	N	F	02–28–93	Indef.
ST93–4169	Paiute Pipeline Co	Southwest Gas Corp	06–15–93	G–S	87,692	A	F	02–28–93	Indef.

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ST93–4170	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	06–15–93	C	50,000	N	I	06–01–93	Indef.
ST93–4171	Northern Natural Gas Co.	Anadarko Trading Co .	06–15–93	G–S	50,000	N	I	05–14–93	Indef.
ST93–4172	Northern Natural Gas Co.	Interstate Power Co ...	06–15–93	G–S	36,270	N	I	04–01–93	Indef.
ST93–4173	Northern Natural Gas Co.	Iowa Electric Light and Power Co.	06–15–93	G–S	69,028	N	I	04–15–93	Indef.
ST93–4174	Northern Natural Gas Co.	Louis Dreyfus Energy Corp.	06–15–93	G–S	8,500	N	I	05–15–93	12–13–93
ST93–4175	Oasis Pipe Line Co	Natural Gas Pipeline Co. of America.	06–16–93	C	100,000	N	I	05–21–93	Indef.
ST93–4176	Oasis Pipe Line Co	Northern Natural Gas Co.	06–16–93	C	50,000	N	I	05–21–93	Indef.
ST93–4177	Houston Pipe Line Co	Tennessee Gas Pipeline Co.	06–16–93	C	50,000	N	I	05–20–93	Indef.
ST93–4178	Houston Pipe Line Co	Phillips Gas Pipeline Co.	06–16–93	C	25,000	N	I	05–27–93	Indef.
ST93–4179	Oasis Pipe Line Co	El Paso Natural Gas Co.	06–16–93	C	50,000	N	I	05–18–93	Indef.
ST93–4180	Oasis Pipe Line Co	Transwestern Pipeline Co.	06–16–93	C	100,000	N	I	05–01–93	Indef.
ST93–4181	Houston Pipe Line Co	Northern Natural Gas Co.	06–16–93	C	50,000	N	I	05–02–93	Indef.
ST93–4182	Houston Pipe Line Co	Black Marlin Pipeline Co.	06–16–93	C	17,500	N	I	05–22–93	Indef
ST93–4183	Houston Pipe Line Co	United Gas Pipe Line Co.	06–16–93	C	25,000	N	I	05–29–93	Indef
ST93–4184	Houston Pipe Line Co	Sabine Pipeline Co	06–16–93	C	50,000	N	I	05–01–93	Indef
ST93–4185	Houston Pipe Line Co	Sabine Pipeline Co	06–16–93	C	20,000	N	I	05–06–93	Indef
ST93–4186	Houston Pipe Line Co	Transcontinental Gas P/L Corp.	06–16–93	C	20,000	N	I	05–27–93	Indef
ST93–4187	Houston Pipe Line Co	Transcontinental Gas P/L Corp.	06–16–93	C	25,000	N	I	05–19–93	Indef.
ST93–4188	Houston Pipe Line Co	Natural Gas P/L Co. of America.	06–16–93	C	50,000	N	I	05–12–93	Indef.
ST93–4189	Houston Pipe Line Co	Natural Gas P/L Co. of America.	06–16–93	C	50,000	N	I	05–27–93	Indef.
ST93–4190	Houston Pipe Line Co	Texas Eastern Transmission Corp.	06–16–93	C	100,000	N	I	05–04–93	Indef.
ST93–4191	Houston Pipe Line Co	Texas Eastern Transmission Corp.	06–16–93	C	15,000	N	I	05–01–93	Indef.
ST93–4192	Panhandle Eastern Pipe Line Co.	Peoples Natural Gas Co.	06–16–93	G–S	1,500	N	I	05–01–93	Indef.
ST93–4193	Panhandle Eastern Pipe Line Co.	Energy Dynamics, Inc	06–16–93	G–S	1,000	N	I	05–02–93	04–30–94
ST93–4194	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06–16–93	G–S	27,775	N	F	05–01–93	03–31–00
ST93–4195	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06–16–93	G–S	22,775	N	F	05–01–93	03–31–00
ST93–4196	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06–16–93	G–S	5,000	N	F	05–01–93	03–31–03
ST93–4197	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06–16–93	G–S	50,182	N	F	05–01–93	03–31–03
ST93–4198	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06–16–93	G–S	50,182	N	F	05–01–93	03–31–00
ST93–4199	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	06–16–93	G–S	353,000	N	I	05–01–93	Indef.
ST93–4200	El Paso Natural Gas Co.	Richardson Products Co., Ltd..	06–16–93	G–S	103,000	N	I	05–17–93	Indef.
ST93–4201	Columbia Gulf Transmission Co.	Amoco Production Co	06–16–93	G–S	100,000	N	I	06–04–93	Indef.
ST93–4202	Columbia Gulf Transmission Co.	Stellar Gas Co	06–16–93	G–S	50,000	N	I	06–05–93	Indef.
ST93–4203	Columbia Gulf Transmission Co.	Sonat Marketing Co ...	06–16–93	G–S	20,000	N	I	05–19–93	Indef.
ST93–4204	United Gas Pipe Line Co.	Eastex Gas Transmission Co.	06–17–93	G–S	146,720	N	I	06–11–93	10–09–93
ST93–4205	United Gas Pipe Line Co.	American Natural GS Production Co.	06–17–93	G–S	524	N	I	06–08–93	10–06–93
ST93–4206	United Gas Pipe Line Co.	Cokinos Natural Gas Trading Co.	06–17–93	G–S	20,960	N	I	06–09–93	10–07–93

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ST93–4207	United Gas Pipe Line Co.	National Gas Resources Ltd. Part.	06–17–93	G–S	52,400	N	I	06–02–93	09–30–93
ST93–4208	United Gas Pipe Line Co.	Tauber Oil Co	06–17–93	G–S	50,000	N	I	06–02–93	09–30–93
ST93–4209	United Gas Pipe Line Co.	Vesta Energy Co	06–17–93	G–S	104,800	N	I	06–09–93	10–07–93
ST93–4210	United Gas Pipe Line Co.	O&R Energy, Inc	06–17–93	G–S	31,440	N	I	06–11–93	10–09–93
ST93–4211	United Gas Pipe Line Co.	Midcon Gas Services Corp.	06–17–93	G–S	4,386	N	F	06–15–93	10–13–93
ST93–4212	United Gas Pipe Line Co.	Coastal Gas Marketing Co.	06–17–93	G–S	262,000	N	I	06–10–93	10–08–93
ST93–4213	Gateway Pipeline Co	Excel Resources, Inc	06–17–93	G–S	30,000	N	I	06–01–93	09–29–93
ST93–4214	Panhandle Eastern Pipe Line Co.	Clinton Gas Marketing, Inc.	06–17–93	G–S	2,000	N	I	05–14–93	05–13–98
ST93–4215	Panhandle Eastern Pipe Line Co.	Michcon Trading Co	06–17–93	G–S	50,000	Y	I	05–01–93	10–31–93
ST93–4216	Panhandle Eastern Pipe Line Co.	Missouri Public Service (Utilicorp).	06–17–93	G–S	3,022	Y	F	05–01–93	03–31–96
ST93–4217	Delhi Gas Pipeline Corp.	Natural Gas P/L Co. of Amer., et al.	06–17–93	C	5,000	N	I	05–17–93	05–31–93
ST93–4218	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	06–17–93	G–S	20,000	N	I	05–19–93	09–05–93
ST93–4219	Pacific Gas Transmission Co.	Grand Valley Gas Co	06–17–93	G–S	50,000	N	I	05–27–93	Indef.
ST93–4220	Northern Natural Gas Co.	City of Duluth	06–17–93	G–S	23,000	N	F	06–01–93	Indef.
ST93–4221	Tennessee Gas Pipeline Co.	VHC Gas Systems, L.P.	06–18–93	G–S	100,000	N	I	05–25–93	Indef.
ST93–4222	Florida Gas Transmission Co.	Florida Power & Light Co.	06–18–93	G–S	662,898	N	I	06–19–93	Indef.
ST93–4223	Arkla Energy Resources Co.	Cage Gas Marketing, Inc.	06–18–93	G–S	10,000	N	I	06–01–93	Indef.
ST93–4224	Arkla Energy Resources Co.	Unimark LLC	06–18–93	G–S	2,000	N	I	05–01–93	Indef.
ST93–4225	Arkla Energy Resources Co.	Coastal Gas Marketing Co.	06–18–93	G–S	150,000	N	I	05–01–93	Indef.
ST93–4226	Northwest Pipeline Corp.	Canadian Hydrocarbons Marketing.	06–18–93	G–S	20,514	N	F	06–01–93	Indef.
ST93–4227	Northwest Pipeline Corp.	Development Associates, Inc.	06–18–93	G–S	40,784	N	F	06–01–93	Indef.
ST93–4228	El Paso Natural Gas Co.	Meridian Oil Trading Inc.	06–18–93	G–S	257,500	N	F	06–06–93	Indef.
ST93–4229	El Paso Natural Gas Co.	U.S. Gas Transportation, Inc.	06–18–93	G–S	10,300	N	I	06–04–93	Indef.
ST93–4230	El Paso Natural Gas Co.	Chevron U.S.A. Inc	06–18–93	G–S	51,500	N	I	06–01–93	Indef.
ST93–4231	El Paso Natural Gas Co.	Landmark Gas Corp	06–18–93	G–S	5,150	N	I	06–03–93	Indef.
ST93–4232	El Paso Natural Gas Co.	Conoco Inc	06–18–93	G–S	50,000	N	I	06–05–93	Indef.
ST93–4233	El Paso Natural Gas Co.	Bridgegas U.S.A. Inc	06–18–93	G–S	25,000	N	I	06–03–93	Indef.
ST93–4234	El Paso Natural Gas Co.	Eastex Hydrocarbons, Inc.	06–18–93	G–S	51,000	N	I	06–03–93	Indef.
ST93–4235	El Paso Natural Gas Co.	Delhi Gas Marketing Corp.	06–18–93	G–S	25,750	N	I	04–01–93	Indef.
ST93–4236	Lone Star Gas Co	Transwestern Natural Gas Co., et al.	06–18–93	C	60,000	N	I	05–21–93	Indef.
ST93–4237	Enogex Inc	Riverside Pipeline Co., L.P.	06–18–93	C	20,000	N	I	06–01–93	Indef.
ST93–4238	Enogex Inc	Riverside Pipeline Co., L.P.	06–18–93	C	100,000	N	I	06–09–93	Indef.
ST93–4239	Channel Industries Gas Co.	Sabine Pipe Line Co	06–18–93	C	15,000	N	I	05–21–93	Indef.
ST93–4240	Questar Pipeline Co	Colorado Interstate Gas Co., et al.	06–21–93	G	10,000	N	I	06–02–93	Indef.
ST93–4241	Questar Pipeline Co	Union Pacific Fuels, Inc.	06–21–93	G–S	20,000	N	I	06–01–93	Indef.
ST93–4242	Trunkline Gas Co	Olympic Fuels Co	06–21–93	G–S	40,000	N	I	06–01–93	Indef.
ST93–4243	Trunkline Gas Co	Olympic Fuels Co	06–21–93	G–S	40,000	N	I	06–01–93	Indef.
ST93–4244	Trunkline Gas Co	Olympic Fuels Co	06–21–93	G–S	40,000	N	I	06–02–93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-4245	ANR Pipeline Co	Coenergy Ventures, Inc.	06-21-93	G-S	9,061	N	F	06-04-93	3-31-95
ST93-4246	ANR Pipeline Co	Tristar Gas Marketing Co.	06-21-93	G-S	50,000	N	F	06-03-93	Indef.
ST93-4247	ANR Pipeline Co	Consumer Power Co	06-21-93	B	300,000	N	I	06-02-93	Indef.
ST93-4248	ANR Pipeline Co	AIG Trading Corp	06-21-93	G-S	300,000	N	I	06-03-93	Indef.
ST93-4249	Trunkline Gas Co	AGIP Petroleum Co, Inc.	06-21-93	G-S	100,000	N	I	06-01-93	Indef.
ST93-4250	Valero Transmission, L.P.	Natural Gas P/L Co of America.	06-21-93	C	5,000	N	I	05-30-93	Indef.
ST93-4251	Valero Transmission, L.P.	Transcontinental Gas P/L Co.	06-21-93	C	1,000	N	I	06-03-93	Indef.
ST93-4252	Valero Transmission, L.P.	United Gas Pipe Line Co.	06-21-93	C	5,000	N	I	06-01-93	Indef.
ST93-4253	Valero Transmission, L.P.	Natural Gas P/L Co of America.	06-21-93	C	1,136	N	I	06-01-93	Indef.
ST93-4254	TransTexas Pipeline	Trunkline Gas Co	06-21-93	C	4,200	N	I	06-01-93	Indef.
ST93-4255	Valero Transmission, L.P.	Trunkline Gas Co	06-21-93	C	4,200	N	I	06-01-93	Indef.
ST93-4256	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	06-21-93	C	20,000	N	I	06-01-93	Indef.
ST93-4257	Valero Transmission, L.P.	Texas Gas Transmission Corp.	06-21-93	C	5,000	N	I	06-02-93	Indef.
ST93-4258	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	06-21-93	G-S	25,396	N	I	06-01-93	03-31-95
ST93-4259	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co	06-21-93	G-S	15,000	N	F	06-01-93	06-30-93
ST93-4260	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	06-21-93	G-S	4,882	N	F	05-21-93	03-31-95
ST93-4261	Panhandle Eastern Pipe Line Co.	Kokomo Gas & Fuel Co.	06-21-93	G-S	10,098	N	F	05-01-93	03-31-95
ST93-4262	Panhandle Eastern Pipe Line Co.	United Cities Gas Co	06-21-93	G-S	4,603	N	F	05-01-93	03-31-96
ST93-4263	Panhandle Eastern Pipe Line Co.	K N Energy, Inc	06-21-93	G	100	N	I	05-01-93	04-30-98
ST93-4264	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	06-21-93	G-S	1,500	N	F	06-01-93	06-30-93
ST93-4265	Panhandle Eastern Pipe Line Co.	Tenngasco Corp	06-21-93	G-S	50,000	N	I	06-01-93	05-23-98
ST93-4266	Panhandle Eastern Pipe Line Co.	Entrade Corp	06-21-93	G-S	5,000	N	I	06-01-93	06-30-93
ST93-4267	Panhandle Eastern Pipe Line Co.	Wes Cana Energy Marketing.	06-21-93	G-S	10,000	N	F	06-01-93	10-31-93
ST93-4268	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	06-21-93	G-S	32,128	N	F	05-12-93	03-31-94
ST93-4269	Panhandle Eastern Pipe Line Co.	Arcadian Partners, L.P	06-21-93	G-S	4,500	N	F	06-01-93	06-30-93
ST93-4270	Panhandle Eastern Pipe Line Co.	Eastex Hydrocarbons, Inc.	06-21-93	G-S	5,294	N	F	06-01-93	06-30-93
ST93-4271	Tennessee Gas Pipeline Co.	TransAmerican Natural Gas Corp.	06-21-93	G-S	150,000	N	I	05-20-93	Indef.
ST93-4272	Tennessee Gas Pipeline Co.	Unified Natural Gas Group, L.P.	06-21-93	G-S	10,000	N	I	05-10-93	Indef.
ST93-4273	Tennessee Gas Pipeline Co.	Vintage Gas, Inc	06-21-93	G-S	20,000	N	I	06-01-93	Indef.
ST93-4274	Tennessee Gas Pipeline Co.	CNG Trading Co	06-21-93	G-S	650,000	N	I	06-01-93	Indef.
ST93-4275	Tennessee Gas Pipeline Co.	Torch Gas, LC	06-21-93	G-S	100,000	N	I	06-03-93	Indef.
ST93-4276	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	06-21-93	G-S	30,000	N	I	05-21-93	Indef.
ST93-4277	Tennessee Gas Pipeline Co.	Altresco Pittsfield, L.P	06-21-93	G-S	50,000	N	I	05-22-93	Indef.
ST93-4278	Transcontinental Gas P/L Corp.	United Texas Trans. Co, et al.	06-21-93	B	250,000	N	I	06-01-93	Indef.
ST93-4279	Transcontinental Gas P/L Corp.	O & R Energy, Inc	06-21-93	G-S	800,000	N	I	06-14-93	Indef.
ST93-4280	Trunkline Gas Co	Brooklyn Interstate Natural Gas.	06-21-93	G-S	100,000	N	I	06-01-93	Indef.
ST93-4281	Trunkline Gas Co	EP Operating L.P	06-21-93	G-S	25,000	N	I	06-01-93	Indef.
ST93-4282	Trunkline Gas Co	Penzoil Gas Marketing Co.	06-21-93	G-S	25,000	N	I	06-01-93	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST93–4283	Trunkline Gas Co	Entrade Corp	06–21–93	G–S	50,000	N	I	06–03–93	Indef.
ST93–4284	Trunkline Gas Co	Texaco Exploration & Product., Inc.	06–21–93	G–S	100,000	N	I	06–01–93	Indef.
ST93–4285	Trunkline Gas Co	Union Oil Co of California.	06–21–93	G–S	5,000	N	I	06–01–93	Indef.
ST93–4286	Trunkline Gas Co	Polaris Pipeline Corp .	06–21–93	G–S	25,000	N	I	06–01–93	Indef.
ST93–4287	Trunkline Gas Co	Fina Natural Gas Co ..	06–21–93	G–S	25,000	N	I	06–01–93	Indef.
ST93–4288	Trunkline Gas Co	Nerco Oil & Gas, Inc ..	06–21–93	G–S	50,000	N	I	06–01–93	Indef.
ST93–4289	Trunkline Gas Co	Coastal Gas Marketing Co.	06–21–93	G–S	100,000	N	I	06–01–93	Indef.
ST93–4290	Channel Industries Gas Co.	Hoechst Celanese Chemical Group.	06–21–93	G–I	50,000	N	I	06–01–93	Indef.
ST93–4291	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales.	06–22–93	G–S	5,000	N	F	06–01–93	06–30–93
ST93–4292	Panhandle Eastern Pipe Line Co.	Guardian Industries Corp.	06–22–93	G–S	2,000	A	F	06–01–93	06–30–93
ST93–4293	Panhandle Eastern Pipe Line Co.	Ford Motor Co	06–22–93	G–S	25,000	A	F	06–01–93	06–30–93
ST93–4294	Panhandle Eastern Pipe Line Co.	Central Soya Co, Inc .	06–22–93	G–S	2,000	A	F	06–01–93	06–30–93
ST93–4295	Texas Gas Transmission Corp.	Eastex Hydrocarbons, Inc.	06–22–93	G–S	50,000	N	I	06–09–93	Indef.
ST93–4296	Texas Gas Transmission Corp.	Associated Natural Gas, Inc.	06–22–93	G–S	10,000	N	I	05–27–93	Indef.
ST93–4297	Texas Gas Transmission Corp.	Arkla Energy Marketing Co.	06–22–93	G–S	15,000	N	I	06–01–93	Indef.
ST93–4298	Texas Gas Transmission Corp.	Stellar Gas Co	06–22–93	G–S	50,000	N	I	06–01–93	Indef.
ST93–4299	Texas Gas Transmission Corp.	Panhandle Trading Co	06–22–93	G–S	50,000	N	I	06–02–93	Indef.
ST93–4300	Texas Gas Transmission Corp.	GM Hydrocarbons, Ltd	06–22–93	G–S	5,000	N	I	06–01–93	Indef.
ST93–4301	Texas Gas Transmission Corp.	Associated Natural Gas, Inc.	06–22–93	G–S	10,000	N	I	06–01–93	Indef.
ST93–4302	Gasdel Pipeline System Inc.	Amerada Hess Corp ..	06–22–93	G–S	1,397	N	I	06–01–93	Indef.
ST93–4303	Gulf States Transmission Corp.	Eagle Natural Gas Co	06–22–93	G–S	30,000	N	I	06–01–93	Indef.
ST93–4304	Gulf States Transmission Corp.	Union Pacific Fuels, Inc.	06–22–93	G–S	40,000	N	I	06–01–93	Indef.
ST93–4305	Louisiana Resources P/L Co, L.P.	Louisiana Gas Pipeline Co, L.P.	06–22–93	C	80,000	N	I	06–01–93	Indef.
ST93–4306	Westar Transmission Co.	Northern Natural Gas Co.	06–22–93	C	100,000	N	I	05–20–93	Indef.
ST93–4307	Westar Transmission Co.	Natural Gas Pipeline Co of America.	06–22–93	C	100,000	N	I	05–21–93	Indef.
ST93–4308	Gulf States Pipeline Corp.	Southern Natural Gas Co, et al.	06–22–93	C	40,000	N	I	06–01–93	Indef.
ST93–4309	Gulf States Pipeline Corp.	Gulf States Trans. Corp, et al.	06–22–93	C	30,000	N	I	06–01–93	Indef.
ST93–4310	Valero Transmission, L.P.	Valero Interstate Transmission Co.	06–23–93	C	1,000	N	I	06–01–93	Indef.
ST93–4311	Valero Transmission, L.P.	Trunkline Gas Co	06–23–93	C	10,000	N	I	06–01–93	Indef.
ST93–4312	Natural Gas P/L Co of America.	Enron Gas Marketing, Inc.	06–23–93	G–S	150,000	N	I	05–29–93	Indef.
ST93–4313	Great Lakes Gas Trans. L.P.	ANR Pipeline Co	06–23–93	G	57,398	A	F	06–01–93	04–01–13
ST93–4314	Transcontinental Gas P/L Corp.	Access Energy Corp ..	06–23–93	G–S	30,000	N	I	06–02–93	Indef.
ST93–4315	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	06–23–93	G–S	500,000	A	I	06–11–93	Indef.
ST93–4316	East Tennessee Natural Gas Co.	Equitable Resources Marketing Co.	06–24–93	G–S	75,000	N	I	06–16–93	Indef.
ST93–4317	Tennessee Gas Pipeline Co.	Excel Intrastate Pipeline Co.	06–24–93	G–S	90,000	N	I	06–01–93	Indef.
ST93–4318	Tennessee Gas Pipeline Co.	Laser Marketing Co ...	06–24–93	G–S	83,325	N	I	05–27–93	Indef.
ST93–4319	Webb/Duval Gatherers	Natural Gas Pipeline Co of America.	06–24–93	C	75,000	N	I	04–01–93	Indef.
ST93–4320	Westar Transmission Co.	Natural Gas Pipeline Co of America.	06–24–93	C	50,000	N	I	05–29–93	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–4321	Panola/Rusk Gatherers.	Natural Gas Pipeline Co of America.	06–24–93	C	20,000	N	I	05–01–93	Indef.
ST93–4322	Panhandle Eastern Pipe Line Co.	Direct Gas Supply Corp.	06–24–93	G–S	100,000	N	I	06–01–93	05–31–98
ST93–4323	Panhandle Eastern Pipe Line Co.	Rangeline Corp	06–24–93	G–S	700	N	I	06–01–93	05–31–98
ST93–4324	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	06–24–93	G–S	7,000	N	F	06–01–93	06–30–93
ST93–4325	Panhandle Eastern Pipe Line Co.	Vesta Energy Co	06–24–93	G–S	20,000	N	I	06–01–93	05–31–98
ST93–4326	Panhandle Eastern Pipe Line Co.	Hadson Gas Systems, Inc.	06–24–93	G–S	10,000	N	I	06–01–93	05–31–98
ST93–4327	Northern Natural Gas Co.	Midwest Natural Gas, Inc.	06–24–93	G–S	1,378	N	F	06–02–93	Indef.
ST93–4328	Northern Natural Gas Co.	Northern States Power Co.	06–24–93	G–S	20,013	N	F	06–01–93	Indef.
ST93–4329	Northern Natural Gas Co.	Superior Water, Light & Power Co.	06–24–93	G–S	2,359	N	F	06–01–93	Indef.
ST93–4330	Northern Natural Gas Co.	Osage Municipal Utilities.	06–24–93	G–S	867	N	F	06–01–93	Indef.
ST93–4331	Northern Natural Gas Co.	Northern Minnesota Utilities.	06–24–93	G–S	4,514	N	F	06–01–93	Indef.
ST93–4332	Northern Natural Gas Co.	Fremont Department of Utilities.	06–24–93	G–S	3,512	N	F	06–01–93	Indef.
ST93–4333	Northern Natural Gas Co.	Municipal Natural Gas	06–24–93	G–S	297	N	F	06–01–93	Indef.
ST93–4334	Northern Natural Gas Co.	Northern Illinois Gas Co.	06–24–93	G–S	30,813	N	F	06–01–93	Indef.
ST93–4335	Northern Natural Gas Co.	Michigan Gas Co	06–24–93	G–S	10,651	N	F	06–01–93	Indef.
ST93–4336	Northern Natural Gas Co.	City of Two Harbors ...	06–24–93	G–S	624	N	F	06–01–93	Indef.
ST93–4337	Northern Natural Gas Co.	Sheehan's Gas Co	06–24–93	G–S	312	N	F	06–01–93	Indef.
ST93–4338	Northern Natural Gas Co.	Municipal Natural Gas—Sioux Center.	06–24–93	G–S	239	N	F	06–01–93	Indef.
ST93–4339	Northern Natural Gas Co.	Metropolitan Utilities District.	06–24–93	G–S	47,655	N	F	06–01–93	Indef.
ST93–4340	Northern Natural Gas Co.	Natural Gas, Inc	06–24–93	G–S	611	N	F	06–01–93	Indef.
ST93–4341	Northern Natural Gas Co.	Austin Utilities	06–24–93	G–S	5,203	N	F	06–01–93	Indef.
ST93–4342	Natural Gas P/L Co of America.	Seagull Marketing Services, Inc.	06–24–93	G–S	50,000	N	I	05–26–93	Indef.
ST93–4343	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	06–24–93	B	23,016	N	F	06–01–93	Indef.
ST93–4344	Algonquin Gas Transmission Co.	Energy Transportation Management.	06–24–93	G–S	5,000	N	I	06–01–93	Indef.
ST93–4345	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	06–24–93	B	31,963	N	F	06–01–93	Indef.
ST93–4346	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06–24–93	G	77,500	N	F	06–01–93	11–01–02
ST93–4347	Algonquin Gas Transmission Co.	Providence Gas Co	06–24–93	B	12,808	N	F	06–01–93	Indef.
ST93–4348	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	06–24–93	B	1,877	N	F	06–01–93	Indef.
ST93–4349	Algonquin Gas Transmission Co.	Granite State Gas Transmission, Inc.	06–24–93	B	5,200	N	F	06–04–93	Indef.
ST93–4350	Algonquin Gas Transmission Co.	Granite State Gas Transmission, Inc.	06–24–93	B	1,540	N	F	06–04–93	11–01–02
ST93–4351	Algonquin Gas Transmission Co.	Central Hudson Gas Co.	06–24–93	B	874	N	F	06–01–93	Indef.
ST93–4352	Algonquin Gas Transmission Co.	Providence Gas Co	06–24–93	B	1,889	N	F	06–01–93	Indef.
ST93–4353	Algonquin Gas Transmission Co.	Boston Gas Co	06–24–93	B	97,059	N	F	06–01–93	Indef.
ST93–4354	Algonquin Gas Transmission Co.	Continental Energy Marketing, Inc.	06–24–93	G–S	50,000	N	I	06–01–93	Indef.
ST93–4355	Algonquin Gas Transmission Co.	Southern Connecticut Gas Co.	06–24–93	B	29,921	N	F	06–01–93	Indef.
ST93–4356	Algonquin Gas Transmission Co.	Town of Middleborough.	06–24–93	B	845	N	F	06–01–93	Indef.

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ST93–4357	Algonquin Gas Transmission Co.	Fall River Gas Co	06–24–93	B	14,606	N	F	06–01–93	Indef.
ST93–4358	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	06–24–93	B	53,696	N	F	06–01–93	Indef.
ST93–4359	Algonquin Gas Transmission Co.	City of Norwich	06–24–93	B	4,478	N	F	06–01–93	Indef.
ST93–4360	Algonquin Gas Transmission Co.	Orange & Rockland Utilities, inc.	06–24–93	B	1,104	N	F	06–01–93	Indef.
ST93–4361	Algonquin Gas Transmission Co.	Orange & Rockland Utilities, Inc.	06–24–93	B	5,089	N	F	06–01–93	Indef.
ST93–4362	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	06–24–93	B	6,340	N	F	06–01–93	Indef.
ST93–4363	Algonquin Gas Transmission Co.	Connecticut Natural Gas Corp.	06–24–93	B	11,514	N	F	06–01–93	Indef.
ST93–4364	Tejas Gas Corp	Mississippi River Transmission.	06–25–93	C	4,403	N	I	05–01–93	Indef.
ST93–4365	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	06–25–93	C	2,000	N	I	06–12–93	Indef.
ST93–4366	CNG Transmission Corp.	Penntech Papers	06–25–93	G–S	10,000	N	I	06–01–93	Indef.
ST93–4367	CNG Transmission Corp.	Entrade Corp	06–25–93	G–S	30,000	N	I	06–01–93	Indef.
ST93–4368	CNG Transmission Corp.	Phoenix Diversified Ventures.	06–25–93	G–S	3,000	N	I	06–01–93	Indef.
ST93–4369	Tennessee Gas Pipeline Co.	Stellar Gas Co	06–25–93	G–S	60,000	N	I	06–03–93	Indef.
ST93–4370	Tennessee Gas Pipeline Co.	Yankee Gas Services Co.	06–25–93	B	4,000	N	I	06–02–93	Indef.
ST93–4371	Tennessee Gas Pipeline Co.	Fitchburg Gas & Electric Light Co.	06–25–93	B	3,078	N	I	05–28–93	Indef.
ST93–4372	Lone Star Gas Co	El Paso Natural Gas Co, et al.	06–25–93	C	100,000	N	I	05–27–93	Indef.
ST93–4373	Lone Star Gas Co	Delhi Gas Pipeline Co, et al.	06–25–93	C	80,000	N	I	05–26–93	Indef.
ST93–4374	Northern Natural Gas Co.	Bridgegas U.S.A., Inc	06–25–93	G–S	100,000	N	F/I	06–01–93	Indef.
ST93–4375	Northern Natural Gas Co.	Apache Corp	06–25–93	G–S	45,000	N	F	05–28–93	Indef.
ST93–4376	Northern Natural Gas Co.	Transwestern Pipeline Co.	06–25–93	G	100,000	Y	F/I	04–30–93	Indef.
ST93–4377	Northern Natural Gas Co.	City of Sanborn	06–25–93	G–S	254	N	F	06–01–93	Indef.
ST93–4378	Northern Natural Gas Co.	Iowa Electric Light & Power Co.	06–25–93	G–S	48,218	N	F	06–01–93	Indef.
ST93–4379	Northern Natural Gas Co.	Midwest Power Systems, Inc.	06–25–93	G–S	138,756	N	F	06–01–93	Indef.
ST93–4380	Northern Natural Gas Co.	City of Ponca	06–25–93	G–S	260	N	F	06–01–93	Indef.
ST93–4381	Northern Natural Gas Co.	Western Gas Utilities, Inc.	06–25–93	G–S	1,301	N	F	06–01–93	Indef.
ST93–4382	Northern Natural Gas Co.	Northwestern Public Service Co.	06–25–93	G–S	6,938	N	F	06–01–93	Indef.
ST93–4383	Northern Natural Gas Co.	Interstate Power Co ...	06–25–93	G–S	13,363	N	F	06–01–93	Indef.
ST93–4384	Northern Natural Gas Co.	City of Duluth	06–25–93	G–S	13,008	N	F	06–01–93	Indef.
ST93–4385	Northern Natural Gas Co.	Cedar Falls Utilities	06–25–93	G–S	3,504	N	F	06–01–93	Indef.
ST93–4386	Northern Natural Gas Co.	City of Brooklyn	06–25–93	G–S	260	N	F	06–01–93	Indef.
ST93–4387	Northern Natural Gas Co.	Hutchinson Utility Comm..	06–25–93	G–S	2,602	N	F	06–01–93	Indef.
ST93–4388	Northern Natural Gas Co.	City of Waukee	06–25–93	G–S	434	N	F	06–02–93	Indef.
ST93–4389	Northern Natural Gas Co.	St. Croix Valley Natural Gas, Inc.	06–25–93	G–S	1,500	N	F	06–01–93	Indef.
ST93–4390	Northern Natural Gas Co.	Circle Pines Utilities ...	06–25–93	G–S	503	N	F	06–01–93	Indef.
ST93–4391	Northern Natural Gas Co.	City of Sabula	06–25–93	G–S	139	N	F	06–01–93	Indef.
ST93–4392	Arkla Energy Resources Co.	Enserch Gas Co	06–25–93	G–S	1,000	N	I	06–24–93	Indef.

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ST93–4393	Arkla Energy Resources Co.	Prior Intrastate Corp ..	06–25–93	G–S	5,000	N	I	04–01–93	Indef.
ST93–4394	Florida Gas Transmission Co.	Prior Intrastate Corp ..	06–25–93	G–S	30,000	N	I	06–04–93	Indef.
ST93–4395	Florida Gas Transmission Co.	Fort Pierce Utilities Authority.	06–25–93	G–S	685	N	I	06–01–93	Indef.
ST93–4396	Panhandle Eastern Pipe Line Co.	Illinois Power Co	06–25–93	G–S	58,500	N	F	05–01–93	03–31–96
ST93–4397	Panhandle Eastern Pipe Line Co.	New Mexico Natural Gas, Inc.	06–25–93	G–S	1,000	N	I	05–01–93	04–30–98
ST93–4398	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales.	06–25–93	G–S	50,000	N	I	06–12–93	04–30–98
ST93–4399	Panhandle Eastern Pipe Line Co.	Indiana Gas Co, Inc ...	06–25–93	G–S	6,450,980	N	F	05–01–93	03–31–96
ST93–4400	Northern Natural Gas Co.	City of Sac City	06–25–93	G–S	45,000	N	I	06–01–93	Indef.
ST93–4401	Trunkline Gas Co	Aquila Energy Marketing Corp.	06–28–93	G–S	20,000	N	I	06–11–93	Indef.
ST93–4402	Trunkline Gas Co	Bridgegas, U.S.A., Inc	06–28–93	G–S	200,000	N	I	06–15–93	Indef.
ST93–4403	Trunkline Gas Co	CNG Producing Co	06–28–93	G–S	30,000	N	I	06–14–93	Indef.
ST93–4404	Trunkline Gas Co	Enron Gas Marketing, Inc.	06–28–93	G–S	150,000	N	I	06–18–93	Indef.
ST93–4405	Trunkline Gas Co	Elf Exploration, Inc	06–28–93	G–S	75,000	N	I	06–10–93	Indef.
ST93–4406	Trunkline Gas Co	Samedan Oil Corp	06–28–93	G–S	30,000	N	I	06–15–93	Indef.
ST93–4407	Tennessee Gas Pipeline Co.	Catex Energy, Inc	06–28–93	G–S	12,400	N	I	06–01–93	06–30–93
ST93–4408	Tennessee Gas Pipeline Co.	Unigas Energy, Inc	06–28–93	G–S	5,000	N	I	06–01–93	Indef.
ST93–4409	Tennessee Gas Pipeline Co.	Pennzoil Gas Marketing Co.	06–28–93	G–S	60,000	N	I	06–10–93	Indef.
ST93–4410	Valero Transmission, L.P.	Arkla Energy Resources.	06–28–93	C	5,000	N	I	06–09–93	Indef.
ST93–4411	Columbia Gulf Transmission Corp.	Enron Gas Marketing, Inc Corp.	06–28–93	G–S	130,000	N	I	06–12–93	Indef.
ST93–4412	Columbia Gulf Transmission Corp.	NGC Transportation, Inc.	06–28–93	G–S	80,000	N	I	06–12–93	Indef.
ST93–4413	Columbia Gulf Transmission Corp.	Tejas Power Corp	06–28–93	G–S	150,000	N	I	06–18–93	Indef.
ST93–4414	Columbia Gulf Transmission Corp.	Alliance Resources Corp.	06–28–93	G–S	1,500	N	I	06–01–93	Indef.
ST93–4415	Columbia Gulf Transmission Corp.	Krupp & Associates ...	06–28–93	G–S	30,000	A	I	06–01–93	Indef.
ST93–4416	Columbia Gulf Transmission Corp.	Empire Exploration, Inc.	06–28–93	B	16,200	N	F	06–15–93	Indef.
ST93–4417	Northern Natural Gas Co.	Owatonna Public Utilities.	06–28–93	G–S	2,688	N	F	06–01–93	Indef.
ST93–4418	Northern Natural Gas Co.	Lake Park Municipal Utilities.	06–28–93	G–S	260	N	F	06–01–93	Indef.
ST93–4419	Northern Natural Gas Co.	Wisconsin Power & Light Co.	06–28–93	G–S	8,672	N	F	06–01–93	Indef.
ST93–4420	Northern Natural Gas Co.	Wisconsin Southern Gas Co, Inc.	06–28–93	G–S	867	N	F	06–01–93	Indef.
ST93–4421	Northern Natural Gas Co.	Manilla Municipal Gas Department.	06–28–93	G–S	146	N	F	06–01–93	Indef.
ST93–4422	Northern Natural Gas Co.	Rolfe Municipal Gas Department.	06–28–93	G–S	173	N	F	06–01–93	Indef.
ST93–4423	Northern Natural Gas Co.	City of Remsen	06–28–93	G–S	314	N	F	06–01–93	Indef.
ST93–4424	Northern Natural Gas Co.	Northern States Power Co.	06–28–93	G–S	111,005	N	F	06–01–93	Indef.
ST93–4425	Transok, Inc	ANR Pipeline Co, et al	06–28–93	C	35,000	N	I	03–19–93	Indef.
ST93–4426	Transok, Inc	ANR Pipeline Co, et al	06–28–93	C	10,000	N	I	06–02–93	Indef.
ST93–4427	Houston Pipe Line Co	Northern Natural Gas Co.	06–28–93	C	20,000	N	I	06–01–93	Indef.
ST93–4428	Houston Pipe Line Co	Sabine Pipeline Co	06–28–93	C	10,000	N	I	06–01–93	Indef.
ST93–4429	Monterey Pipeline Co	ANR Pipeline Co	06–28–93	C	25,000	N	I	05–19–93	Indef.
ST93–4430	Panhandle Eastern Pipe Line Co.	United Cities Gas Co .	06–29–93	G–S	2,549	A	F	06–12–93	10–31–93
ST93–4431	Panhandle Eastern Pipe Line Co.	NGC Transportation Inc.	06–29–93	G–S	20,000	N	F	06–01–93	06–30–93
ST93–4432	Panhandle Eastern Pipe Line Co.	Coenergy Ventures, Inc.	06–29–93	G–S	38,722	N	F	06–01–93	06–30–93

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93–4433	Overland Trail Transmission Co.	Kern River Gas Transmission.	06–29–93	C	100,000	A	I	06–02–93	Indef.
ST93–4434	ANR Pipeline Co	Printpak Inc	06–29–93	G–S	2,000	N	I	05–29–93	Indef.
ST93–4435	ANR Pipeline Co	Coastal Gas Marketing Co.	06–29–93	G–S	500,000	A	I	05–26–93	Indef.
ST93–4436	ANR Pipeline Co	Iowa Southern Utilities Co.	06–29–93	G–S	31,355	N	F	06–01–93	10–31–03
ST93–4437	ANR Pipeline Co	Stand Energy Co	06–29–93	G–S	2,000	A	I	06–01–93	Indef.
ST93–4438	ANR Pipeline Co	Kerr-McGee Corp	06–29–93	G–S	50,000	N	I	06–01–93	Indef.
ST93–4439	Tennessee Gas Pipeline Co.	Arkla Energy Marketing Co.	06–29–93	G–S	550,000	N	I	06–05–93	Indef.
ST93–4440	Exxon Gas System, Inc.	Houston Light & Power Co.	06–29–93	C	70,000	N	I	05–01–93	09–30–97
ST93–4441	United Gas Pipe Line Co.	Prior Intrastate Corp ..	06–29–93	G–S	524,000	N	I	6–18–93	10–16–93
ST93–4442	United Gas Pipe Line Co.	Olympic Pipeline Co ..	06–29–93	G–S	10,480	N	I	06–18–93	10–16–93
ST93–4443	United Gas Pipe Line Co.	Union Pacific Fuels, Inc.	06–29–93	G–S	60,000	N	I	06–18–93	10–16–93
ST93–4444	United Gas Pipe Line Co.	Texaco Gas Marketing, Inc.	06–29–93	G–S	209,600	N	I	06–18–93	10–16–93
ST93–4445	Southern Natural Gas Co.	Texaco Gas Marketing Co.	06–25–93	G–S	59,000	N	I	05–21–93	Indef.
ST93–4446	Southern Natural Gas Co.	Savannah Electric & Power.	06–25–93	G–S	500,000	N	I	05–27–93	Indef.
ST93–4447	Southern Natural Gas Co.	Chevron USA Inc	06–25–93	G–S	150,000	N	I	06–09–93	Indef.
ST93–4448	Southern Natural Gas Co.	Dowling Energy, Inc ...	06–25–93	G–S	2,000	N	I	06–12–93	Indef.
ST93–4449	Columbia Gas Transmission Corp.	New Jersey Natural Gas Co.	06–29–93	B	10,000	Y	I	06–01–93	Indef.
ST93–4450	Columbia Gas Transmission Corp.	C.D. & G. Development Co.	06–29–93	G–S	4,154	N	F	06–01–93	Indef.
ST93–4451	Columbia Gas Transmission Corp.	Owens Corning Fiberglas.	06–29–93	G–S	12,000	Y	I	06–09–93	Indef.
ST93–4452	Columbia Gas Transmission Corp.	KCS Energy Marketing, Inc.	06–29–93	G–S	675	N	I	06–15–93	Indef.
ST93–4453	Delhi Gas Pipeline Corp.	Arkla Energy Resources, et al.	06–30–93	C	4,000	N	I	06–01–93	Indef.
ST93–4454	Delhi Gas Pipeline Corp.	Arkla Energy Resources. .	06–30–93	C	25,000	N	I	06–01–93	Indef.
ST93–4455	Delhi Gas Pipeline Corp.	ANR Pipeline Co, et al	06–30–93	C	10,000	N	I	06–01–93	Indef.
ST93–4456	Delhi Gas Pipeline Corp.	Natural Gas Pipeline Co of America.	06–30–93	C	250,000	N	I	06–18–93	Indef.
ST93–4457	Delhi Gas Pipeline Corp.	Panhandle Eastern P/L Co, et al.	06–30–93	C	15,000	N	I	06–02–93	Indef.
ST93–4458	Delhi Gas Pipeline Corp.	Williams Natural Gas Co, et al.	06–30–93	C	13,000	N	I	06–01–93	Indef.
ST93–4459	Delhi Gas Pipeline Corp.	ANR pipeline Co, et al	06–30–93	C	30,000	N	I	06–01–93	Indef.
ST93–4460	K N Energy, Inc	Associated Natural Gas, Inc.	06–30–93	G–S	100,000	N	I	06–05–93	Indef.
ST93–4461	K N Energy, Inc	K N Gas Marketing Inc	06–30–93	G–S	2,660	N	I	06–01–93	09–01–93
ST93–4462	K N Energy, Inc	K N Gas Marketing, Inc.	06–30–93	G–S	1,043	N	I	06–01–93	09–30–93
ST93–4463	ANR Pipeline Co	Tenaska Marketing Ventures.	06–30–93	G–S	10,000	N	I	06–01–93	Indef.
ST93–4464	ANR Pipeline Co	Boyd Rosene & Associates, Inc.	06–30–93	G–S	20,000	N	F	06–01–93	Indef.
ST93–4465	ANR Pipeline Co	ARCO Natural Gas Marketing, Inc.	06–30–93	G–S	100,000	N	I	06–09–93	Indef.
ST93–4466	ANR Pipeline Co	Maxus Gas Marketing Co.	06–30–93	G–S	60,000	N	I	06–01–93	Indef.
ST93–4467	Panhandle Eastern Pipe Line Co.	Clinton Gas Marketing Inc.	06–30–93	G–S	7,000	N	I	05–14–93	03–31–98
ST93–4468	Iroquois Gas Trans. System, L.P.	Yuma Gas Corp	06–30–93	G–S	40,000	N	I	06–16–93	Indef.
ST93–4469	Tennessee Gas Pipeline Co.	Oryx Gas Marketing, L.P.	06–30–93	G–S	31,500	N	I	06–01–93	Indef.
ST93–4470	Midcon Texas Pipeline Corp.	Natural Gas Pipeline Co of America.	06–30–93	C	20,000	N	I	06–05–93	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST93–4471	Natural Gas P/L Co of Americ.	Shell Oil Co	06–30–93	G–S	10,000	N	F	06–01–93	05–31–94
ST93–4472	Transcontinental Gas P/L Corp.	Transco Offshore Gathering Co.	06–30–93	G–S	5,000,000	A	I	06–01–93	Indef.
ST93–4473	Transcontinental Gas P/L Corp.	Sonat Marketing Co	06–30–93	G–S	100,000	N	I	06–01–93	Indef.
ST93–4474	Mississippi River Trans. Corp.	MG Natural Gas Corp	06–30–93	G–S	3,500	N	F	06–01–93	Indef.
ST93–4475	Mississippi River Trans. Corp.	Monsanto Co	06–30–93	G–S	3,000	N	I	06–01–93	Indef.
ST93–4476	Mississippi River Trans. Corp.	Village of Dupo	06–30–93	G–S	60	N	F	06–01–93	Indef.
ST93–4477	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	5,000	N	F	06–01–93	06–30–93
ST93–4478	Transwestern Pipeline Co.	Yates Petroleum Corp	06–30–93	G–S	10,000	N	F	06–15–93	06–27–93
ST93–4479	Transwestern Pipeline Co.	Reliance Pipeline Co	06–30–93	B	100,000	N	I	06–04–93	Indef.
ST93–4480	Northern Natural Gas Co.	Brooklyn Interstate Nat. Gas Co.	06–30–93	G–S	100,000	N	I	05–28–93	Indef.
ST93–4481	Northern Natural Gas Co.	Iowa-Illinois Gas & Electric Co.	06–30–93	G–S	8,000	N	F	06–01–93	Indef.
ST93–4482	Northern Natural Gas Co.	Wisconsin Gas Co	06–30–93	G–S	14,965	N	F	06–01–93	Indef.
ST93–4483	Northern Natural Gas Co.	Peoples Natural Gas Co.	06–30–93	G–S	99,711	N	I	06–01–93	Indef.
ST93–4484	Northern Natural Gas Co.	Quatro Oil & Gas, Inc	06–30–93	G–S	450	N	F/I	06–03–93	Indef.
ST93–4485	Northern Natural Gas Co.	Sioux Pointe, Inc	06–30–93	G–S	400,000	N	F/I	03–25–93	Indef.
ST93–4486	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	12,045	N	F	06–01–93	06–01–93
ST93–4487	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	7,000	N	I	06–01–93	06–30–93
ST93–4488	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	5,000	A	F	06–01–93	06–30–93
ST93–4489	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	5,000	A	F	06–01–93	06–30–93
ST93–4490	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	5,000	A	F	06–30–93	06–30–93
ST93–4491	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	5,000	A	F	06–30–93	06–30–93
ST93–4492	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	10,000	N	F	06–01–93	06–30–93
ST93–4493	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	5,000	N	F	06–01–93	06–30–93
ST93–4494	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	1,000	N	F	06–30–93	06–30–93
ST93–4495	Transwestern Pipeline Co.	Lone Star Gas Co	06–30–93	B	5,000	A	F	06–01–93	06–30–93

[1] Notice of transactions does not constitute a determination that filings comply with commission. Regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 93–19951 Filed 8–17–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. JD93-13791T Texas–146]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 12, 1993.

Take notice that on August 9, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Frio Formation, Hanson Sand, underlying a portion of Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 4 and consists of approximately 4,400 acres located in portions of the Hidalgo Canal Company Subdivision, the Steele and Pershing Subdivision, and the A.J. McColl Subdivision in portions of the following surveys:

Porcion 64 (Juan Antonio Villareal Survey, A–44)
Porcion 65 (Mario Ujardo De Los Rios Survey, A–41)
Porcion 66 (Jose Felix Hinojosa Survey, A–39)
Porcion 67 (Domingo Fonseca Survey, A–33)
Porcion 68 (Gregorio Camacho Survey, A–28).

The notice of determination also contains Texas' findings that the

referenced portion of the Frio Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19948 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–13792T Texas–145]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 12, 1993.

Take notice that on August 9, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Frio Formation, 9400 Ft. Sand, underlying a portion of Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 4 and consists of approximately 4,200 acres located in portions of the Hidalgo Canal Company Subdivision and the Steele and Pershing Subdivision in portions of the following surveys:

Porcion 64 (Juan Antonio Villareal Survey A–44)
Porcion 65 (Mario Ujardo De Los Rios Survey (A–41)
Porcion 66 (Jose Felix Hinojose Survey, A–39)
Porcion 67 (Domingo Fonseca Survey, A–33).

The notice of determination also contains Texas' findings that the referenced portion of the Frio Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19949 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–163–000]

Aquila Energy Marketing Corp. v. Natural Gas Pipeline Co. of America; Complaint

August 12, 1993.

Take notice that on August 2, 1993, Aquila Energy Marketing Corporation (Aquila) filed a complaint against Natural Gas Pipeline Company of America (Natural) alleging violations of the NGA, the Commission's regulations, orders and directives, as well as certain provisions of Natural's FERC Gas Tariff by seeking to impose cash-out costs on historical imbalances based on an improper method of valuation. Aquila asserts that Natural's interpretations of Commission orders and policy as well as Natural's FERC Gas Tariff are inconsistent with Commission orders and policy as they relate to the cash-out of historical imbalances.

Aquila seeks orders from the Commission (i) requiring Natural to refrain from assessing any cash-out costs against shippers' historical imbalances until resolution of this proceeding; (ii) requiring Natural to clarify its tariff language to conform with Commission policy and orders; and (iii) granting such further relief as may be appropriate.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or 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, 385.211. All such motions or protests should be filed on or before September 13, 1993. 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. Answers to this complaint shall be due on or before September 13, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19945 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–164–000]

Hope Gas, Inc. v. Texas Eastern Transmission Corp.; Complaint

August 12, 1993.

Take notice that on August 5, 1993, Hope Gas, Inc. (Hope) filed a complaint against Texas Eastern Transmission Corporation (Texas Eastern): (1) For failure to comply with Texas Eastern's effective filed gas tariff and for undue discrimination in violation of Section 4 of the Natural Gas Act (NGA); (2) for denying Hope the choice of services contemplated by Order No. 636; and (3) for failure to perform in conformity with its legally binding service agreement for provision of firm transportation service to Hope under Rate Schedule SCT.

Hope states that this complaint against Texas Eastern deals with a denial of service to Hope under Rate Schedule SCT, on file as part of Texas Eastern's Order No. 636 restructuring tariffs (Docket No. RS92–11–000). Hope asserts that Texas Eastern has refused, in part, to honor its filed SCT Rate Schedule by declining to provide Hope with SCT service in the full amount of Hope's maximum daily quantity (MDQ) of 5,000 Dth/day. Hope asserts that, instead, Texas Eastern has agreed to provide Hope only with maximum daily quantities under Rate Schedule SCT of 3,308 Dth/day.

Hope states that Texas Eastern's refusal to provide Hope with transportation service under Rate Schedule SCT in the full amount of 5,000 Dth/day violates the express terms of Texas Eastern's tariff, and, as such, contravenes Section 4 of the Natural Gas Act. Hope argues that Texas Eastern also is unduly discriminating against Hope to the extent that it is providing SCT service to other small shippers, but, without reasonable basis, is refusing to do so for Hope.

Hope requests that the Commission order Texas Eastern to immediately cease and desist from its denial of service to Hope, and to honor its obligations under statute, tariff and contract by providing SCT service to Hope in the full amount of 5,000 Dth/day.

Any person desiring to be heard or to protests said complaint should file a motion to intervene or 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, 385.211. All such motions or protests should be filed on or before September 13, 1993. 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. Answers to this complaint shall be due on or before September 13, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–19946 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–47–035]

Northwest Pipeline Corp.; Report of Refunds

August 12, 1993.

Take notice that on July 15, 1993, Northwest Pipeline Corporation (Northwest) filed a refund report with the Federal Energy Regulatory Commission (Commission) to reflect the higher volumes in the Phase I Settlement approved by the Commission's order issued October 19, 1989, in Docket No. RP88–47–000, and to comply with the Commission's orders issued April 28, 1989 and September 24, 1992, in Docket No. RP89–137–000, *et al.*

Northwest states that on July 1, 1993, in accordance with the Commission's September 24, 1992 order, it refunded $12,053,507.70 to its transportation and sales customers who had paid both fixed and volumetric surcharges based on take-or-pay settlement costs found ineligible for recovery either under Order No. 500 or Order No. 528. Northwest states that this amount includes applicable interest, accrued from the date of initial invoice payment through the refund date. Northwest further states that included in the commodity portion of this refund are amounts representing a reduction in the volumetric surcharge rate for the period April 1, 1989 through November 30, 1989, due to a change in the underlying billing determinants as a result of the Phase I Settlement in Northwest's RP88–47–000 rate proceeding as ordered by the Commission on April 28, 1989, and reaffirmed in an order issued December 29, 1989.

Northwest states that it served a copy of the refund report on all affected customers and state regulatory 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 Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before August 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19943 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–132–002]

Tennessee Gas Pipeline Co.; Rate Change Pursuant to Tariff Adjustment Provisions

August 12, 1993.

Take notice that on August 10, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing an amendment to its filing on May 28 of revision to its recovery of take-or-pay and contract reformation costs pursuant to article XXX of the General Terms and Conditions of Volume One of its FERC Gas Tariff. This amendment reflects corrections to reflect actual payments made by EnergyNorth, Inc. that require an adjustment of its direct bill take-or-pay transition cost liability. The following changes are proposed to be effective July 1, 1993 and September 1, 1993 respectively:

Fourth Revised Volume No. 1
Substitute Third Revised Sheet No. 39
Fifth Revised Volume No. 1
Substitute Original Sheet No. 39

Tennessee states that copies of the tariff filing is being mailed to all affected customers and state regulatory 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 Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19944 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–166–000]

Tennessee Gas Pipeline Co.; Tariff Adjustment Filing

August 12, 1993.

Take notice that on August 10, 1993, Tennessee Gas Pipeline Company (Tennessee), tendered for filing the following revised tariff sheets to amend the General Terms and Conditions of Fifth Original Volume No. 1 (filed in Docket No. RS92–23) of its tariff, to be effective September 10, 1993:

First Revised Sheet No. 319
Original Sheet No. 319A
Original Sheet No. 319B
Original Sheet No. 319C

Tennessee states that the purpose of these revisions is to establish a mechanism for resolving transportation imbalances that remain outstanding after implementation of restructuring on the Tennessee system. Tennessee states that the reconciliation and resolution of these imbalances would be completed during the six month period following implementation of the restructured tariff on Tennessee, which six month period coincides with the period allowed for clean-up of trailing costs under Tennessee's direct bill mechanism for unrecovered PGA costs. Tennessee states that in-kind resolution of imbalances after restructuring will no longer be feasible since Tennessee will no longer have the system supply or storage capability to accommodate physical payback.

Tennessee states that copies of the filing are being mailed to all customers and affected state commissions.

Any person desiring to be heard or to protest such 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 August 19, 1993. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19947 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4693–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Metal Coil Surface Coating (Subpart TT)–Information Requirements (EPA ICR No. 0660.05; OMB No. 2060–0107). This is a request for renewal of a currently approved information collection.

Abstract: The provisions of this subpart apply to the following affected facilities in a metal coil surface coating operation: (1) Each prime coat operation; (2) each finish coat operation; and (3) each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously. Owners or operators of subject facilities must provide EPA, or the delegated State regulatory authority, with one-time notifications and initial compliance reports, and must keep records, as required of all facilities subject to the general NSPS requirements. Owners or operators of subject facilities must notify EPA or the state regulatory authority of the date upon which demonstration of the compliance devices commences. In addition, the owner or operator of the subject facilities must install and operate devices that control emissions and that measure and record the operating characteristics of those devices. (1) Where compliance is achieved through the intermittent use of a control device, reports must include separate values of the weighted average VOC-content of coatings used with and without the control device in operation. (2) Where compliance is achieved through the use of an emission control device that destroys VOC's, reports must include the combustion temperature for thermal incinerators, and the gas temperature both upstream and downstream of the incinerator catalyst bed.

Owners or operators of subject facilities must report all periods of emissions in excess of the standard quarterly.

The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 5.8 hours per response for reporting and 74.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Facilities having the following metal coil surface coating operations: (1) Prime coat operations; (2) finish coat operations; and (3) prime and finish coat operations combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously.

Estimated No. of Respondents: 116.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 11,310 hours.

Frequency of Collection: One-time notifications and initial demonstration reports for new facilities; quarterly reports for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 12, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19979 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4693–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Submission of Unreasonable Adverse Effects Information Under FIFRA section 6 (a)(2). (EPA ICR No: 1204.05; OMB No: 2070–0039). This is a request for an extension of the expiration date of a currently approved collection.

Abstract: Under section 6 (a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), pesticide registrants are required to report to the EPA, and keep records of, any information they receive about a previously-registered pesticide which indicates that potential adverse and unreasonable environmental effects may ensue from its production or use.

Respondents are required to submit to the Agency, and keep records of, the following: (1) Studies showing new or more severe toxicological responses than previously reported of any type in any strain of test organism; (2) epidemiological studies of human population groups; (3) studies or incidents tending to show lack of efficacy of certain pesticide products with public-health related uses; (4)incidents involving toxic or adverse effects to non-target organism; (5) information on excess residues on food or feed, or residues in surface water, ground water and drinking water; (6) information on metabolites or impurities which may be of toxicological concern; and (7) other information which may be relevant to risk/benefit determinations of any type.

The Agency uses these data to determine whether a pesticide should be re-registered.

Burden Statement: The burden for this collection of information is estimated to average 72.6 hours per response per respondent for reporting and 15.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search for existing data sources, gather

and maintain the data needed and complete and review the collection of information.

Respondents: Pesticide registrants.

Estimated No. of Respondents: 110.

Estimated No. of Responses per Respondent: 29.8.

Estimated Total Annual Burden on Respondents: 9,688 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: August 12, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19977 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4694–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only. (EPA ICR No: 0276.06; OMB No: 2070–0040). This is a request for an extension of the expiration date of a currently approved collection.

Abstract: Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), pesticide registrants must submit to the EPA a permit application when they wish to ship or use an unregistered pesticide, or an unregistered pesticide use, for experimental purposes. Respondents are required to complete, submit to the Agency, and keep records of, EPA Form No. 8750–17. In addition, respondents are required to submit to the Agency, and keep records of, a final report on the results of the experimental use program. The information on the final report must include the amount of the product applied; the crops or sites treated; any observed adverse effects; any adverse weather conditions which may have inhibited the program; the goals achieved; and the disposition of containers, unused pesticides material, and affected food/feed commodities.

Under the existing Experimental Use Permit (EUP) regulations, small-scale experimental use pesticides–tests conducted on ten acres of land or less, and against a particular pest–would be exempt. However, any food or feed crops involved in, or affected by, the tests, must be either destroyed, used only to feed experimental animals, or used if a tolerance or exemption from a tolerance has been established.

The Agency uses the information to decide whether to grant an Experimental Use Permit, and to monitor the EUP program in compliance with section 5 of the FIFRA.

Burden Statement: The burden for this collection of information is estimated to average 9.1 hours per response for reporting and 1 hour per recordkeeper annually. This estimate includes the time needed to review instructions, complete the form, prepare and submit the final report, and review the collection of information.

Respondents: Pesticide registrants.

Estimated No. of Respondents: 125.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,263 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 12, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19978 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100126; FRL–4637–7]

Kevric Company; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Kevric Company has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Kevric Company consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Kevric Company to fulfill the obligations of the contract.

DATES: Kevric Company will be given access to this information no sooner than August 23, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–D2–0038, Kevric Company will assist OPP to obtain use and usage information on the use of microbicides at aquatic sites. The information obtained will be used to assess economic and environmental impacts along with data requirements for reregistration of these microbicides. This contract involves no subcontractor.

OPP has determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by Kevric Company to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information

has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with Kevric Company, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Kevric Company is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied.

Records of information provided to this contractor will be maintained by the Project Officer for this contract in OPP. All information supplied to Kevric Company by EPA for use in connection with this contract will be returned to EPA when Kevric Company has completed its work.

Dated: August 3, 1993.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–19486 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL 4695–1]

Waste Isolation Pilot Plant Subcommittee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL92463, EPA gives notice of a two-day meeting of the Waste Isolation Pilot Plant (WIPP) Subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT). This will be the second meeting of the WIPP Subcommittee whose mission is to provide advice to the EPA regarding the Agency's role in reviewing the Department of Energy's activities pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA), PL102–579.

Discussion at the meeting will center around EPA's development of compliance criteria which will be used in certifying whether the WIPP complies with the 40 CFR part 191 radioactive waste disposal standards. More specifically, the WIPP Subcommittee will be asked to review the following three issues:

1. To reduce uncertainty in WIPP compliance assessment, should EPA specify certain "future states" assumptions? If so, what aspects of the future should EPA address and how?

2. Should EPA specify certain assumptions related to human intrusion? If so, what aspects of human intrusion should EPA address and how?

3. Should EPA address the use of engineered barriers at the WIPP? If so, why and how?

EPA staff will also make a presentation to the subcommittee on the status of their efforts to develop these criteria. The second day will be committed to an open discussion by the subcommittee of the criteria issues that have been presented by the EPA.

DATES: The public meeting will take place September 22–23, 1993, and will be held at the BDM International Complex, Sandia Vista Building, Sandia Vista Conference Center, 2301 Buena Vista in Albuquerque, New Mexico. On September 22nd, the meeting will begin at 9 a.m. and end at 5 p.m. and will resume the following day, September 23d, at 9 a.m. and end at 2:30 p.m.

ADDRESSES: Members of the public wishing to submit comments on the compliance criteria should submit them in writing to: USEPA, Office of Radiation and Indoor Air, Criteria and Standards Division, Mailcode 6602J, 401 M Street, SW., Washington, DC 20460, ATTN: Judi Maguire. Written comments may also be submitted at the public meeting. A limited period of time for oral comments to the WIPP Subcommittee will also be provided.

FOR FURTHER INFORMATION CONTACT: Rhonda Maddox, Office of Radiation and Indoor Air, Criteria and Standards Division, Mailcode 6602J, 401 M Street, SW., Washington, DC 20460; telephone (202) 233–9762, for questions and information about the compliance criteria. For general questions or information on the meeting logistics contact Rafaela Ferguson at (202) 233–9362 or call EPA's toll-free WIPP Information Line, 800–331–WIPP.

Dated: August 12, 1993.

Gordon Schisler,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 93–19975 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50768; FRL–4636–9]

Receipt of Notification to Conduct Small-Scale Testing of a Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale testing of nonindigenous strains of *Bacillus thuringiensis* from the Ciba-Geigy Corporation.

DATES: Written comments must be received on or before September 17, 1993.

ADDRESSES: By mail: Comments in triplicate, must bear the docket control number OPP–50768 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7690.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register**

of June 26, 1986 (51 FR 23313), has been received from the Ciba-Geigy Corporation of Greensboro, North Carolina. The purpose of the proposed testing is to evaluate the efficacy of 19 *Bacillus thuringiensis* strains isolated from Switzerland against the Colorado potato beetle on potatoes. The proposed field tests are to take place in Florida, New York, Pennsylvania, and Wisconsin from summer of 1993 to summer of 1995 with a combined acreage of 0.32 acre per year per strain. Following the review of the Ciba-Geigy Corporation application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: August 2, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–19974 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100125; FRL–4637–6]

Dynamac Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Dynamac Corp. has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Dynamac Corp. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Dynamac Corp. to fulfill the obligations of the contract.

DATES: Dynamac Corp. will be given access to this information no sooner than August 23, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259

SUPPLEMENTARY INFORMATION: Under Contract Number 68–D2–0053, Dynamac Corp. will assist in the review of data summaries and reformatted existing studies to identify data gaps and adverse effects, examine all product chemistry and residue chemistry data, and prepare documentation for each pesticide on product chemistry and residues. This contract involves no subcontractor.

OPP has determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by Dynamac Corp. to information on all pesticide products is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with Dynamac Corp., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Dynamac Corp. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied.

Records of information provided to this contractor will be maintained by the Project Officer for this contract in OPP. All information supplied to Dynamac Corp. by EPA for use in connection with this contract will be returned to EPA when Dynamac Corp. has completed its work.

Dated: August 3, 1993.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–19485 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–579; FRL–4636–3]

Ciba-Geigy Corp.; Amended Pesticide Petition for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Ciba-Geigy Corp. the filing of an amendment to pesticide petition (PP) 6F3422 proposing to establish regulations for combined residues of the insecticide cyromazine plus its major metabolite, melamine, in or on cabbage, barley, wheat, sugar beets, sorghum, and sweet potatoes when grown as rotational crops to a Trigard® 75W treated crop.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-579], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this 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. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Phillip O. Hutton, Product Manager (PM 18), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: EPA has received from the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, pesticide petition (PP) 6F3422 proposing to amend 40 CFR 180.414 for the insecticide cyromazine (*N*-cyclopropyl-1,-3,5-triazine-2,4,6-triamine) plus its major metabolite melamine (1,3,5-triazine-2,4-6-triamine), calculated as cyromazine, in or on the following raw agricultural commodities when grown as rotational crops to a Trigard® 75W (cyromazine) treated crop: cabbage at 0.05 part per million (ppm); sweet potatoes at 0.05 ppm; sugar beets (roots and tops) at 0.05 ppm; wheat grain at 0.05 ppm, wheat forage

at 0.5 ppm, wheat hay at 0.2 ppm, and wheat straw at 0.5 ppm; barley grain and forage at 0.1 ppm, barley hay at 0.05 ppm, and barley straw at 1.5 ppm; sorghum grain at 0.1 ppm, sorghum forage at 0.05 ppm, and sorghum fodder at 0.1 ppm. The proposed analytical method for determining residues is high-pressure liquid chromatography.

Authority: 7 U.S.C. 346a and 371.

Dated: August 2, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–19829; Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180899; FRL 4639–3]

Receipt of Application for Emergency Exemption To Use Pseudomonas Fluorescens; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Pennsylvania Department of Agriculture (hereafter referred to as the "Applicant") for use of the biological pesticide, Pseudomonas fluorescens biotype G (biovar), strain NCIB 12089, trade name Victus, to control bacterial blotch, caused by *Pseudomonas tolaasii*, on up to 100 acres of mushrooms in Pennsylvania. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 2, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180899," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #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." 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703–308–8327).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the biological pesticide, Pseudomonas fluorescens biotype G (biovar), strain 12089, trade name Victus, to control bacterial blotch, caused by *Pseudomonas tolaasii*, on up to 100 acres of mushrooms in Pennsylvania. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, a dramatic increase in bacterial blotch has been seen since April, 1993. The increase may have resulted from changes in cultural practices (i.e. a change in the casing material used at the mushroom facility) which were made earlier in the year to ward off a potentially devastating infestation of LaFrance virus. Since then, it has not been possible to regain equilibrium conditions and reduce the blotch problem, despite the use of best management growing practices and use of chlorine, the only available alternative for blotch control. Economic losses during the first two months of the epidemic are estimated at approximately $607,440. Losses are expected to continue at $80,000 per week until the disease is under control.

Under the proposed exemption, up to 5 applications per crop would be made: at spawning, at casing, at pinning, and after harvest of the first and second flushes. Applications would be made at the rate of 3 ml. of Victus concentrate, equivalent to at least 10,500 million cells of strain NCIB 12089, per square meter of mushroom bed surface.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)]. Pseudomonas fluorescens biotype G (biovar), strain NCIB 12089, trade name Victus, is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Pennsylvania Department of Agriculture.

Dated: August 4, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–19839 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–42052O; FRL–4639–5]

Testing Consent Agreement Development for Listed Chemical Substances; Solicitation for Interested Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice serves three purposes. First, it identifies and lists in the order in which they will be addressed, those chemical substances or categories of chemical substances for which EPA has chosen to pursue testing through Enforceable Consent Agreements (ECAs) negotiations. Second, it requests interested parties who want to monitor or participate in negotiations for these chemical substances to identify themselves to EPA. Third, it removes carbon disulfide from the ECA "open season" program.

DATES: To be designated an "interested party" for the chemical substances listed in Table 1. written notice must be received by EPA on or before September 17, 1993.

EPA will contact all interested parties who have expressed a desire to participate in or monitor negotiations in accordance with 40 CFR 790.22(b)(3) to advise them of meeting dates.

ADDRESSES: Submit written request to be an "interested party" in triplicate,

identified by the document control number (OPPTS–42052O) to: Public Docket Office (TS–793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Background

On July 17, 1992, (57 FR 31714, document control number OPPTS–42052K), EPA established an "open season" or period of time for industry and others to submit testing consent agreement proposals on any substances for which the Agency has not issued final test rules. The Agency offered this "open season" because EPA had been approached by chemical companies interested in negotiating consent agreements for substances that are, or are expected to be, the subject of proposed test rules.

The procedures for requiring the testing of chemical substances and mixtures under section 4 of TSCA include the adoption of ECAs and the promulgation of test rules. See 40 CFR part 790. ECAs may be adopted where timely consensus on a testing program can be reached by EPA, affected manufacturers or processors, and other interested parties. If timely consensus cannot be reached or seems unlikely, and the Agency makes certain statutory findings under TSCA, then EPA will issue a test rule under TSCA section 4.

On March 30, 1993 (59 FR 16669), after evaluating the testing proposals submitted during the open season, EPA issued a **Federal Register** notice which identified a three tier priority ranking of the testing proposals received from manufacturers, solicited parties interested in monitoring or participating in ECA negotiations of tier I chemicals to identify themselves to EPA, and extended the opportunity for manufacturers to supplement their test proposals for tier II, tier III and unranked chemicals.

With negotiations for tier I chemicals underway, EPA has reevaluated the tier II, tier III, and unranked proposals received in response to the March 1993 notice. This review resulted in the listing for ECA "Open Season" chemicals described in Unit II, Table 1. These chemicals are listed in the order in which EPA will pursue ECAs.

This notice requests all "interested parties" who wish to monitor or participate in testing negotiations for the substances listed in Table 1, to identify themselves in writing to EPA. Regarding the July 17, 1992 and the March 30, 1993 notices, persons who submitted testing program proposals are already considered "interested parties" of record.

II. Listing of Testing Proposals

In response to the March 30th notice, EPA received additional information for glycidol methacrylate, a testing proposal for the alkyl C_{12}–C_{14} glycidyl ethers, a request for removing carbon disulfide from the open season program, a testing proposal for brominated flame retardants, and a request for adding phenol to tier I.

The factors considered in evaluating these chemicals for testing included: (1) Comparison of the testing program proposal with EPA's views concerning testing needs; (2) the likelihood of success in negotiating an ECA; and (3) the Agency's programmatic priorities for action on given chemical substances or categories. Based upon the additional information it has received, EPA has listed the "open season" chemicals as shown below in the following Table 1:

TABLE 1.—REVISED LISTING FOR OPEN SEASON CHEMICALS

Chemical Substance	Cas No.
Alkyl (C_{12}–C_{14}) Glycidyl Ethers	2461–18–9 15965–99–8 16245–97–9 38954–75–5 68081–84–5 68609–97–2
Glycidyl Methacrylate (GMA)	106–91–2
Silicon Based Glycidyl Ethers	2530–83–8 2897–80–1 17963–04–1 7422–52–8 71808–64–5 126–80–7 69156–42–6
Phenol	108–05–2
Brominated Flame Retardants (BFR)	32534–81–9 32536–52–0 1163–19–5 37853–59–1 3194–55–5
Removed From Open Season.	
Carbon Disulfide	75–15–0

III. Identification of Interested Parties

EPA is soliciting interested parties to monitor or participate in testing negotiations for the substances now listed. These negotiations will be conducted pursuant to the procedures described in 40 CFR 790.22. Submitters of testing proposals in response to the **Federal Register** notice of July 17, 1992 are already considered interested parties and do not have to respond to this notice. Additionally, any persons who respond to this notice on or before September 17, 1993 will be given the status of "interested parties" and will be afforded opportunities to monitor or participate in the negotiation process. These "interested parties" will not incur any obligations by being so designated.

Negotiations will be conducted in meetings open to the public. The negotiation time schedule for each chemical will be established at the first negotiation meeting. If a consent agreement is not established in principle within the agreed upon time-frame and EPA does not choose to extend the negotiation time period, negotiations will be terminated and testing will be required under a test rule.

IV. Removal of a Chemical Substance from the "Open Season" Program

Carbon disulfide is one of the chemical substances subject to the Developmental and Reproductive Toxicity multi-substance test rule. On April 28, 1993, EPA received a letter from the Chemical Manufacturers Association urging EPA to clarify in a **Federal Register** notice that EPA did not receive a test proposal for carbon disulfide. CMA requested and EPA has agreed to remove carbon disulfide from the "open season" program.

V. Public Meetings and General Schedules for Alkyl (C_{12}–C_{14}) Glycidol Ethers, Glycidyl Methacrylate, silicon based Glycidyl Ethers, Phenol, and Brominated Flame Retardants (BFR)

Public meetings will be scheduled to initiate negotiations for the above chemical substances at EPA headquarters, 401 M St., SW., Washington, DC 20460, from either 9 a.m. to 12 noon or 1 p.m. to 4 p.m., in rm. 101, Northeast Mall. The deadline to be designated an interested party for the above listed chemical substances is September 17, 1993. EPA will use its best efforts to send a draft consent agreement to each of the interested parties approximately 3 weeks before the public meeting for their particular chemical substance. Further, to facilitate attendance at these meetings, EPA will

contact all interested parties who have expressed a desire to participate in or monitor negotiations and advise them of the exact meeting dates and times. The Agency expects to reach agreement in principle within 10 weeks of these public meetings.

Dated: August 10, 1993.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–19973 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1160
Name: Kogel Overseas, Inc.
Address: 5930 W. Jefferson Blvd., Los Angeles, CA 90016
Date Revoked: July 5, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 918
Name: Albert E. Bowen, Inc.
Address: One World Trade Center, Ste. 3327, New York, NY 10048
Date Revoked: July 9, 1993
Reason: Surrendered license voluntarily.

License Number: 1937
Name: Agricultural Air Exports, Inc.
Address: 1633 Bayshore Highway, Rm. 222, Burlingame, CA 94010
Date Revoked: July 9, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3095
Name: Flamingo International, Inc.
Address: 7350 NW. 12th St., Ste. 200, Miami, FL 33126
Date Revoked: July 11, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 2569
Name: John H. Duncan Forwarding, Inc.
Address: 5944 Luther Lane, Ste. 300, Dallas, TX 75225
Date Revoked: July 14, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3380
Name: J.P. Milton International Corporation
Address: 181 S. Franklin Ave., Valley Stream, NY 11581
Date Revoked: July 18, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3425
Name: Eden Air Freight, Inc.
Address: 3095 Redhill Ave., Costa Mesa, CA 92626
Date Revoked: July 22, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3221–R
Name: Bellair International Ocean/Air Inc. dba Bellair Express, Houston, Texas
Address: 3050 McKaughan, Houston, TX 77032
Date Revoked: July 23, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3499
Name: Expedite! Inc.
Address: 16514 Air Center Blvd., Houston, TX 77032
Date Revoked: July 28, 1993
Reason: Surrendered license voluntarily.

License Number: 3185
Name: Footwork-Hamacher Inc.
Address: 99 Hudson Street, New York, NY 10013
Date Revoked: July 31, 1993
Reason: Surrendered license voluntarily.

License Number: 3611
Name: Sea-Wings International, Inc.
Address: 380–B W. Irving Park Rd., P.O. Box 583, Wood Dale, IL 60191
Date Revoked: August 1, 1993
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–19939 Filed 8–17–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P52–93]

Petition of Transax Data as Agent for Everstrong, Inc., DBA Everstrong Line for Temporary Exemption From Electronic Tariff Filing Requirements

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than August 23, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Mr. Steve Baker, Manager, Regulatory, Transax Data, 721 Route 202/206, Bridgewater, New Jersey 08807.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Poling,

Secretary.

[FR Doc. 93–19960 Filed 8–17–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Beverly Alton Barnette, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Beverly Alton Barnette, Daytona Beach Shores, Florida; to acquire 28.65 percent of the voting shares of Tara Bankshares Corporation, Riverdale, Georgia, and thereby indirectly acquire Tara State Bank, Riverdale, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. David H. Clemmons, Harrisburg, Illinois; to acquire an additional 10.6 percent of the voting shares of Shawnee Bancorp, Inc., Harrisburg, Illinois, for a total of 12.72 percent, and thereby indirectly acquire The Bank of Harrisburg, Harrisburg, Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Dr. Richard E. Martin, Pryor, Oklahoma; to acquire an additional 78.8 percent of the voting shares of CNBO Bancorp, Inc., Pryor, Oklahoma, for a total of 97.6 percent, and thereby indirectly acquire Century National Bank of Oklahoma, Pryor, Oklahoma.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200

North Pearl Street, Dallas, Texas 75201-2272:

1. Calvin Fryar, Brownwood, Texas; to acquire an additional 5.33 percent for a total of 16 percent; and Fred Perry, Brownwood, Texas, to acquire an additional 5.33 percent for a total of 16 percent of the voting shares of Brownwood Bancshares, Inc., Brownwood, Texas, and thereby indirectly acquire Citizens National Bank at Brownwood, Brownwood, Texas.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19881 Filed 8-17-93; 8:45 am]

BILLING CODE 6210-01-F

Golden Isles Financial Holdings, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Golden Isles Financial Holdings, Inc., Brunswick, Georgia; to engage *de novo* through its subsidiary, First Bank Mortgage Corporation, Brunswick, Georgia, in mortgage lending activities, specifically to make, acquire, originate and service mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. The activities will be conducted throughout the Southeastern United States.

2. Golden Isles Financial Holdings, Inc., Brunswick, Georgia; to engage *de novo* through its subsidiary, First Credit Corporation, Brunswick, Georgia, in consumer finance activities and credit related insurance activities through its subsidiary, specifically to make, acquire or service loans that are generally made by consumer finance companies pursuant to § 225.25(b)(1)(i); and to provide credit related insurance products, pursuant to §§ 225.25(b)(8)(i) and (b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the Southeastern United States.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bankers Bancorporation of Wisconsin, Madison, Wisconsin; to engage *de novo* through its subsidiary, Bankers' Service Corporation, Madison, Wisconsin, in bank stock valuations pursuant to § 225.25(b)(4)(vi)(A)(1); electronic data processing services pursuant to § 225.25(b)(7); electronic data feasibility studies, consumer compliance law reviews, loan quality control reviews, director examinations and internal audit functions, and trust examinations pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the States of Minnesota, Iowa, Michigan and Illinois.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19882 Filed 8-17-93; 8:45 am]

BILLING CODE 6210-01-F

The Magnolia State Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. The Magnolia State Corporation, Bay Springs, Mississippi; to acquire Jones County Finance Co., Laurel, Mississippi, and thereby engage in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19883 Filed 8–17–93; 8:45 am]

BILLING CODE 6210–01–F

The Poca Valley Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 10, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. The Poca Valley Bankshares, Inc., Walton, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Poca Valley Bank, Walton, West Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Delta Corporation, Helena, Arkansas; to acquire at least 75.25 percent of the voting shares of The Delta State Bank, Elaine, Arkansas.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Watford City Bancshares, Inc., Watford City, North Dakota; to merge with Fessenden Bancshares, Inc., Fessenden, North Dakota, and thereby indirectly acquire First International Bank and Trust, N.A., Fessenden, North Dakota.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Robert Lee Bancshares, Inc., Robert Lee, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Robert Lee (Delaware), Inc., Wilmington, Delaware, and thereby indirectly acquire Robert Lee State Bank, Robert Lee, Texas. In connection with this application, Robert Lee (Delaware), Inc., Wilmington, Delaware, has applied to become a bank holding company by acquiring 93.61 percent of the voting shares of Robert Lee State Bank, Robert Lee, Texas.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19884 Filed 8–17–93; 8:45 am]

BILLING CODE 6210–01–F

Public Finance Service, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Public Finance Service, Inc., Bala Cynwyd, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Public Savings Association, Bala Cynwyd, Pennsylvania. Public Savings Association will convert to a Pennsylvania savings bank and will operate under the name Public Savings Bank.

In connection with this application, Applicant also proposes to acquire Public Consumer Discount Company, Inc., Bala Cynwyd, Pennsylvania, and thereby engage in making and collecting consumer finance loans pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y. These activities will be conducted throughout the State of Pennsylvania.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19885 Filed 8–17–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Variability of Respiratory Trace Deposition in Workers: Meeting

The National Institute for Occupational Safety and Health (NOISH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Variability of Respiratory Trace Deposition in Workers.

Time and Date: 8:30 a.m.–2:30 p.m., September 21, 1993.

Place: Appalachian Laboratory, room 138, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the meeting is to review the project entitled, "Variability of Respiratory Tract Deposition in Workers." Viewpoints and suggestions from industry, labor, academic, other government agencies, and the public are invited.

Contact Person for Additional Information: Lu-Ann F. Beeckman, Ph.D., NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop 240, Morgantown, West Virginia 26505–2888, telephone 304/291–4223.

Dated August 11, 1993.

Elvin Hilyer

Associate Director for Policy Coordination Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–19936 Filed 8–17–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93F–0243]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,5,6,7-tetrachloro-2-[2-(4,5,6,7-tetrachloro-2,3-dihydro-1,3-dioxo-1H-inden-2-yl)-8-quinolinyl]-1H-isoindole-1,3(2H)-dione (C.I. Pigment Yellow 138), as a colorant in all food-contact polymers.

DATES: Written comments on petitioner's environmental assessment by September 17, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4383) has been filed by BASF Corp., 8 Campus Dr., Parsippany, NJ 07054. The petition proposes to amend the food additive regulations to provide for the safe use of 4,5,6,7-tetrachloro-2-[2-(4,5,6,7-tetrachloro-2,3-dihydro-1,3-dioxo-1H-inden-2-yl)-8-quinolinyl]-1H-isoindole-1,3(2H)-dione (C.I. Pigment Yellow 138, CAS Registry No. 30125-47-4), as a colorant in all food-contact polymers.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 17, 1993, submit to the Dockets Management Branch (address above) written comments. 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–19892 Filed 8–17–93; 8:45 am]

BILLING CODE 4160–01–F

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Establishment of Interested Parties List

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it will publish a request for applications (RFA) notice announcing the anticipated availability of funds for fiscal year (FY) 1994 for awarding grants to support clinical trials on the safety and effectiveness of orphan products (i.e., those for diseases and conditions affecting a U.S. population of less than 200,000, or those for which there is no reasonable expectation of cost recovery). Potential applicants interested in having their names placed on a mailing list to receive the FY 94 RFA should write or call the Office of Orphan Products Development (OPD).

ADDRESSES: Submit written requests to be placed on the mailing list to Carol A. Wetmore, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 8–73, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carol A. Wetmore or Patricia R. Robuck (address above), 301–443–4903.

SUPPLEMENTARY INFORMATION: Contingent on the availability of FY 1994 funds, in September 1993, FDA plans to publish in the **Federal Register** a notice announcing that it intends to award approximately $9.1 million for 25 to 30 new grants and continuations. FDA advises that potential applicants interested in having their names placed on a mailing list to receive the FY 94 RFA write or call OPD (address above).

One established requirement for all studies submitted pursuant to an OPD-funded program, including studies for products already approved, is that they must be conducted under an investigational new drug application (IND) or an investigational device exemption (IDE). The IND/IDE number will be required to appear on the face page of the application with the title of the project. Other proposed submission requirements are: Evidence of product availability, evidence of patient availability, and a well-supported explanation as to why the product is appropriate for an OPD grant.

Dated: August 11, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19891 Filed 8–17–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally

funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

06/693,866 ..... Cloning and Expression of HTLV–III DNA [encoding immunoreactive polypeptides useful in assays for detecting HTLV–III. Licensing Specialist: Steven M. Ferguson.

07/057,183 ..... Human Immunodeficiency Virus Specific Proteolytic Enzyme and a Method for Its Synthesis and Renaturation (see also 07/201,654). Licensing Specialist: Steven M. Ferguson.

07/172,152 ..... [Recombinant] Trans-Activating Factor of HTLV–III/LAV [useful for turning on the LTR promotor for construction of high efficiency expression systems]. Licensing Specialist: Steven M. Ferguson.

07/201,654 ..... Human Immunodeficiency Virus Specific Proteolytic Enzyme and a method for Its Synthesis and Renaturation (see also 07/057,183). Licensing Specialist: Steven M. Ferguson.

07/202,508 ..... Method of Treating AIDS, ARC or Lymphoadenopathy Syndrome with Poly-ICLC [a synthetic double-stranded RNA complex] Alone or in Combination with AZT. Licensing Specialist: Steven M. Ferguson.

07/270,865 ..... Quantitive, Syncytium-Forming Microassay for the Detection of HIV Neutralizing Antibody. Licensing Specialist: Steven M. Ferguson.

07/286,977 ..... 2,3 Epoxy Alcohols, Acids and Derivatives as Anti-Retroviral Chemotherapeutic Agents (U.S. Patent No. 5,190,969). Licensing Specialist: Steven M. Ferguson.

07/323,778 ..... Rabbit Model for Diagnosing and Testing Vaccines or Therapeutic Agents Against AIDS (U.S. Patent No.5,183,949). Licensing Specialist: Steven M. Ferguson.

07/334,089 ..... Chemotherapeutic Composition for AIDS [using inhibitors of nucleoside and nucleobase transport such as dipyridamole]. Licensing Specialist: Steven M. Ferguson.

07/401,411 ..... Immunodominant Sites of HTLV–1 Envelope Protein [useful as immunogenic peptides for vaccine or diagnostic use]. Licensing Specialist: Steven M. Ferguson.

07/429,287 ..... Construction of Non-Infectious Retroviral Mutants Deficient in Viral RNA. Licensing Specialists: Steven M. Ferguson.

07/454,827 ..... Synthetic Peptides as Modulators of Functional Responses of Intact Cells [synthetic peptides as pharmacological agents, effectively inhibit cellular functions at the cellular molecular level in intact cells]. Licensing Specialist: Carl C. Floyd.

07/478,081 ..... Method for Detection of Human Immunodeficiency Virus and Cell Lines Useful Therefor. Licensing Specialist: Steven M. Ferguson.

07/535,407 ..... [Diagnostic] Method for Detecting Immune Dysfunction in Asymptomatic AIDS Patients and [also useful] for Predicting Organ Transplant Rejection. Licensing Specialist: Steven M. Ferguson.

07/594,156 ..... A Plant Protein Useful for Treating Tumors and HIV Infections. Licensing Specialist: Steven M. Ferguson.

07/703,118 ..... Method for Preventing Integration of Retroviral DNA into Host DNA. Licensing Specialist: Mark D. Hankins.

07/716,571 ..... [Novel compound useful for stimulating the] Growth of Kaposi's Sarcoma Cells in Tissue Culture. Licensing Specialist: Steven M. Ferguson.

07/742,750 ..... CD4+, Latently HIV–1–Infected Hematopoietic Progenitor Cells [that mimic the physiologic HIV–1 latency in the body]. Licensing Specialist: Steven M. Ferguson.

07/749,541 ..... Anti-HIV Proteins GAP 31, DAP 30 and DAP 32, DNA Coding Therefor and Therapeutic Uses Thereof. Licensing Specialist: Steven M. Ferguson.

07/751,998 ..... Multideterminant Peptide Antigens that Stimulate Helper T Lymphocytes Response to HIV in a Range of Human Subjects. Licensing Specialist: Steven M. Ferguson.

07/754,987 ..... Method of Detecting Infectious HIV Strains [using CD4 expressing HeLa T4 cells with an inducible β-galactosidase gene]. Licensing Specialist: Steven M. Ferguson.

07/760,530 ..... Method to Induce Cytotoxic T Lymphocytes Specific for a Broad Array of HIV–1 Isolates Using Hybrid Synthetic Peptides. Licensing Specialist: Steven M. Ferguson.

07/774,402 ..... Reagents for the Detection and Differentiation of SIV and HIV Groups of Viruses. Licensing Specialist: Steven M. Ferguson.

07/811,896 ..... Acquired Immune Deficiency Syndrome (AIDS) Viral Envelope Protein and Methods of Testing for Aids. Licensing Specialist: Steven M. Ferguson.

07/827,877 ..... Novel Plasmid (pJL6) [that produces large amounts of the protein coded by the exogenous gene]. Licensing Specialist: Carl C. Floyd.

07/832,236 ..... Method of Inhibiting HIV Protease. Licensing Specialist: Steven M. Ferguson.

07/847,311 ..... Potent Peptide for Stimulation of Cytotoxic T Lymphocytes Specific for the HIV–1 Envelope. Licensing Specialist: Steven M. Ferguson.

07/847,744 ..... Method of Modulating CD4–MHC Class II Interaction and Compounds Therefore. Licensing Specialist: Steven M. Ferguson.

07/861,249 ..... Calanolides, Novel Antiviral Compounds Compositions and Uses Thereof. Licensing Specialist: Steven M. Ferguson.

07/861,938 ..... Therapeutic Use of Restriction Enzymes Against Viruses, Including HIV. Licensing Specialist: Steven M. Ferguson.

07/870,547 ..... Vectors for Ligation-Independent Cloning and Methods for Using Same. Licensing Specialist: Carl C. Floyd.

07/873,640 ..... Aerosolization of Protein Therapeutic Agent. Licensing Specialist: Girish Barua.

07/882,078 ..... Test of HIV-Specific T Lymphocyte Function that Detects Exposure to HIV Antigens and Possibly Early HIV Infection. Licensing Specialist: Steven M. Ferguson.

07/882,646 ..... Dynamically Stable Associative Learning Neural Network System. Licensing Specialist: John Fahner-Vihtelic.

07/903,253 ..... Methods for the Treatment of HIV [using a platelet activating factor (PAF) antagonist]. Licensing Specialist: Steven M. Ferguson.

07/906,716 ..... Method for Viral-Proofing a Protective Barrier. Licensing Specialist: John Fahner-Vihtelic.

07/915,581 ..... Apparatus and Method for Testing Condoms as Barriers to Virus Penetration. Licensing Specialist: John Fahner-Vihtelic.

07/917,213 ..... Inhibition of Retroviral Expression by Interferon-Induced Cellular Genes and Proteins. Licensing Specialist: Steven M. Ferguson.

07/920,130 ..... Amino Acid Sequencing Peptides and Methods for Their Use. Licensing Specialist: Carl C. Floyd.

07/921,992 ..... DNA Segment Encoding a Natural Killer Cell Receptor. Licensing Specialist: Marjorie D. Hunter.

07/929,630 ..... The Use of CD4+ Plasma Membrane Vesicles (CD4PMV) as a Therapeutic Agent for AIDS. Licensing Specialist: Steven M. Ferguson.
07/930,315 ..... Pharmaceutical Compositions Containing AZO Dye Derivatives and Method of Using Same. Licensing Specialist: Steven M. Ferguson.
07/937,097 ..... Ear Based Hearing Protector/Communication System. Licensing Specialist: John Fahner-Vihtelic.
07/943,246 ..... Expression of Active Human Protein C in Mammary Tissue of Transgenic Animals Using a Long WAP Promoter. Licensing Specialist: Carl C. Floyd.
07/946,613 ..... Method for Concentrating a Solute by Countercurrent Chromatography. Licensing Specialist: John Fahner-Vihtelic.
07/950,020 ..... [Efficient alternative] Methods for Detection of Mycoplasmas [in mammalian cell cultures]. Licensing Specialist: Carl C. Floyd.
07/952,277 ..... Eleven Highly Informative Microsatellite Repeat Polymorphic DNA Markers. Licensing Specialist: Carl C. Floyd.
07/952,800 ..... New Member of the Nuclear Hormone Receptor Superfamily and a cDNA Clone Thereof. Licensing Specialist: Carl C. Floyd.
07/956,870 ..... Carriers for Self-Administration of Lyophilized Medicament to Animals [An animal food product for self-administration of medication to animals]. Licensing Specialist: Carl C. Floyd.
07/963,328 ..... Supercoiled Minicircle DNA as a Unitary Promoter Vector. Licensing Specialist: Carl C. Floyd.
07/965,544 ..... The Use of Monoclonal Antibodies That Define Oncostatin M to Inhibit Growth of Kaposi's Sarcoma. Licensing Specialist: Carl C. Floyd.
07/966,244 ..... Improved Multi-Unit Analyser. Licensing Specialist: John Fahner-Vihtelic.
07/967,658 ..... An Immunological Detection Assay for Human Immunodeficiency Virus (HIV) Based on the HIV Nucleocapsid Protein, p7. Licensing Specialist: Steven M. Ferguson.
07/971,093 ..... A Method of Generation of Nested Deletions [Randomed-primed/anchored polymerase chain reaction, a novel method to generate clones from nested deletions]. Licensing Specialist: Carl C. Floyd.
07/974,055 ..... Detection of Isocyanates in Air by Use of Polar Organic Solvents. Licensing Specialist: John Fahner-Vihtelic.
07/998,231 ..... Compositions and Methods for Inhibiting Deoxyhypusine Synthase and the Growth of Cells. Licensing Specialist: Marjorie D. Hunter.
08/010,695 ..... Multifinger Topocatheter Tip for Multilumen Catheter for Angioplasty and Manipulation. Licensing Specialist: John Fahner-Vihtelic.
08/010,696 ..... Prosthetic Ligament Abrasion Tester. Licensing Specialist: John Fahner-Vihtelic.
08/011,183 ..... Antiviral Naphthoquinone Compounds, Compositions and Uses Thereof. Licensing Specialist: Steven M. Ferguson.
08/012,988 ..... Complementary DNA Encoding the Macrophage Inflammatory Protein-1 (MIP–1)/Rantes Receptor. Licensing Specialist: Carl C. Floyd.
08/015, 983 ..... Method and Apparatus for Localization and Spectroscopy of Objects Using Optical Frequency Modulation of Diffusive Waves. Licensing Specialist: John Fahner-Vihtelic.
08/017,062 ..... Recombinant Protein Bioreactor System. Licensing Specialist: John Fahner-Vihtelic.
08/020,462 ..... Screening Test that Identifies Individuals at Increased Risk for the Development of Lymphoid Leukemia and Lymphoma. Licensing Specialist: Marjorie D. Hunter.
08/020,952 ..... Oxy-Hydrogen Propelled Torpedo for Introducing Angioplasty Guide Wire. Licensing Specialist: John Fahner-Vihtelic.
08/021,767 ..... Light Sensor for Photo-Dynamic Therapy. Licensing Specialist: John Fahner-Vihtelic.
08/025,336 ..... Human Liver Epithelial Cell Line and Culture Media Therefor. Licensing Specialist: Steven M. Ferguson.
08/025,471 ..... Monoterpenes, Sesquiterpenes and Diterpenes as Cancer Therapy. Licensing Specialist: Marjorie D. Hunter.
08/026,939 ..... pH-Zone Refining Countercurrent Chromatography. Licensing Specialist: John Fahner-Vihtelic.
08/027,111 ..... Improved Cross-Axis Coil Planet Centrifuge for Separation of Biopolymers. Licensing Specialist: John Fahner-Vihtelic.
08/029,917 ..... cDNA Encoding the Rat D, Dopamine Receptor Linked to Adenylyl Cyclase Activation and Expression of the Receptor Protein in Plasmid-Transfected Cell Lines. Licensing Specialist: Arthur J. Cohn.
08/038,198 ..... Method of Exciting Laser Action and Delivering Laser Energy for Medical and Scientific Application. Licensing Specialist: John Fahner-Vihtelic.
08/038,344 ..... Cystathionase and Derivatives Thereof. Licensing Specialist: Marjorie D. Hunter.
08/039,613 ..... Dust Control Plenum for a Hand Sander. Licensing Specialist: John Fahner-Vihtelic.
E–030–92/1 ..... Handheld Spirometry with Improved Accuracy. Licensing Specialist: John Fahner-Vihtelic.
E–085–92/1 ..... An Anti HIV Protein, TAP 29 from Trichosanthes, DNA Coding Therefor and Therapeutic Uses Thereof. Licensing Specialist: Steven M. Ferguson.

Opportunity for a License: Assay for Inhibitors of HIV DNA Integration

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health desires to license a novel *in vitro* assay system for identifying potential anti-retroviral (anti-HIV) drugs that target HIV integration and the HIV integrase protein. The lack of therapeutics in clinical development which affect this step in the HIV life cycle was noted recently in *Science*, Vol. 260, p. 1257 (May 28, 1993). This particular assay can be useful for determining whether viral integration into a host or target DNA is achieved or alternatively, whether integration is inhibited by a test drug. The assay uses HIV and MoLV recombinant integrase (IN) protein and synthetic oglionucleotides as substrates. Each step of the assay can be carried out in microtiter well plates enabling the easily automated simultaneous processing of large numbers of samples.

This new assay is believed to have significant advantages over current integration assays that are time consuming and utilize cells infected with HIV. For a more indepth discussion on this assay see: Craigie, et al., *Nucleic Acids Research*, Vol. 19, p. 2729, (March, 1991).

NIH is the assignee of the patent rights for this technology covered by U.S. Patent Application 08/038,182 (FWC of 07/572,186) and developed by Dr. Robert Craigie, Dr. Frederic Bushman and Dr. Kiyoshi Mizuuchi of the National Institute of Diabetes, Digestive and Kidney Diseases.

ADDRESSES: Licensing information and a copy of the U.S. patent application may be obtained by contacting Steven M. Ferguson, Technology Licensing Specialist, National Institutes of Health, Office of Technology Transfer, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed confidentiality agreement will be required to receive copies of the patent applications.

Dated: August 10, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–19903 Filed 8–17–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3590; FR–3409–N–03 and N–93–3591; FR–3408–N–03]

Fund Availability for Supportive Housing for Persons with Disabilities and Supportive Housing for the Elderly; Extensions for Cleveland Field Office and New York Regional Office

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of limited deadline extension.

SUMMARY: This Notice announces an extension of the application deadline for capital advances for the Supportive Housing for Persons With Disabilities and Supportive Housing for the Elderly programs for those applicants whose applications were submitted late to the Cleveland Field Office and the New York Regional Office as a result of conflicting instructions issued by those offices.

DATES: For affected applicants, the deadline date is being extended to August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen J. Havens, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development, room 6112, 451 Seventh St. SW., Washington, DC 20410, telephone 202–708–2730. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On May 5, 1993, HUD published Notices of Fund Availability for the Supportive Housing for Persons with Disabilities (58 FR 26824) and Supportive Housing for the Elderly (58 FR 26843) programs. In these NOFAs, HUD established an application deadline of 4 p.m. local time on July 8, 1993 in each HUD field office. Late applications were received in the Cleveland Field Office and the New York Regional Office because of conflicting information given to potential applicants on the time of the deadline, erroneously stated at close of business local time (4:40 p.m. in Cleveland and 5 p.m. in New York).

In today's Notice, HUD is extending the application deadline only for those sponsors whose applications were rejected or not accepted as a result of reliance upon the later submission time in the Cleveland Field Office and New York Regional Office. For those applicants who qualify, the application deadline is extended until 4 p.m. local time on August 23, 1993.

An applicant may qualify for extension of the application deadline for capital advances under the Supportive Housing for Persons With Disabilities and Supportive Housing for the Elderly programs if:

(1) The applicant certifies that it relied upon the deadline times established by the Cleveland Field Office and the New York Regional Office rather than the published NOFA deadline; and

(2) The applicant certifies and the HUD office determines that an attempt was made to deliver or the applications were actually delivered to the Cleveland and New York offices prior to their stated deadlines (4:40 p.m. in Cleveland and 5 p.m. in New York).

If HUD approves the certification, the application will be accepted for review.

A qualified applicant may resubmit its previously submitted application as long as the application is received by the Cleveland or New York office by the extended deadline above. All submission requirements published in the May 5, 1993 NOFAs other than the date by which such applications must be received remain unaffected by this Notice.

Dated: August 12, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–19899 Filed 8–17–93; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–93–3655; FR–3559–N–01]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c)(5) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

DATES: August 18, 1993.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1824; TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989)) requires that HUD "publish in the **Federal Register** a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from April 1, 1993 through June 30, 1993.

I. Mortgagees cited for failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA) and/or Quality Control Plan requirements for the origination of HUD-FHA insured mortgages.

Action: Letters of Reprimand

Cause: HUD monitoring reviews that disclosed noncompliance by the following mortgagees with the Department's reporting requirements under HMDA and/or failure to comply with HUD-FHA requirements for maintaining a Quality Control Plan.

Mortgagees issued a Letter of Reprimand for failure to meet HMDA reporting requirements and to maintain an adequate loan origination Quality Control Plan:

Westminister Mortgage Company, Houston, Texas; First American Mortgage of Texas, Austin, Texas; Aviles & Associates, Inc., Tampa, Florida; Suburban Financial Corporation, Leawood, Kansas; Allied Mortgage Capital Corporation, Houston, Texas; United Security Financial, Salt Lake City, Utah; First Choice Mortgage Corporation, Independence, Ohio; Johnston & Nelson, Inc., Phoenix, Arizona; Columbia Mortgage Incorporated, Phoenix, Arizona; Mortgage Center, Inc., Houston, Texas;

and United Mortgagee, Inc., Richmond, Virginia.

Mortgagees issued a Letter of Reprimand for failure to report HMDA data only:

Suburban Mortgage, Inc., Phoenix, Arizona; First Texan Mortgage Group, Houston, Texas; Republic Mortgage Corporation, Phoenix, Arizona; Adobe Financial Corporation, Mesa, Arizona; and Golden Financial Services, Houston, Texas.

Mortgagees issued a Letter of Reprimand for failure to maintain an adequate Quality Control Plan only:

Fox Mortgage Services, Inc., Houston, Texas; National Mortgage & Investment, Inc., Phoenix, Arizona; T.L. Hibbs Mortgage Corporation, Scottsdale, Arizona; and Peter Cook Mortgage, Tempe, Arizona.

II. Broekema & Associates, Inc. (formerly Bowest Corporation) La Jolla, California

Action: Settlement Agreement that includes reimbursement to the Department in the amount of $400,000.

Cause: A HUD monitoring review citing violations of HUD-FHA loan servicing requirements that included: failure to take prompt collection action to minimize the number of delinquent loans; failure to initiate foreclosure in a timely manner; and failure to comply with the requirements of the assignment program.

III. American Mortgages, Inc., Bethesda, Maryland

Action: Settlement Agreement that provides for implementation of a corrective plan of action to bring the company into compliance with HUD-FHA requirements for sound capital resources under the multifamily coinsurance program.

Cause: Failure to meet HUD-FHA sound capital resources requirements under the multifamily coinsurance program.

IV. Golden State Mortgage Company of Colorado, Englewood, Colorado

Action: Enforcement of Settlement Agreement that provides for indemnification to the Department in the amount of $71,716 for two improperly originated HUD-FHA insured mortgages.

Cause: Failure to comply with the terms and conditions of a Settlement Agreement with the Department.

V. Love Funding Corporation, Washington, D.C.

Action: Settlement Agreement that provides for indemnification to the Department in the amount of $237,000 for any claim loss in connection with an improperly originated coinsured multifamily project mortgage.

Cause: A HUD Office of Inspector General Audit Report that disclosed violations of HUD-FHA multifamily program requirements.

VI. Royal Thrift & Loan Company, Los Angeles, California

Action: Settlement Agreement that includes indemnification to the Department for any claim losses in connection with seven improperly originated Title I loans, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Title I program requirements that included: failure to verify borrowers' source of funds; failure to obtain detailed work descriptions and adequate estimates of repairs from borrowers; permitting a borrower to misuse loan proceeds; and use of misleading advertising regarding the Title I program.

VII. The Money Store, Union, New Jersey

Action: Settlement Agreement that includes indemnification to the Department for any claim losses in connection with two improperly originated Title I loans.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Title I program requirements that included: failure to obtain property appraisals which complied with the Uniform Standards of Professional Appraisal Practice, as adopted by the Appraisal Standards Board of the Appraisal Foundation; untimely property inspections; permitting borrowers to use loan proceeds for ineligible items; and failure to ensure that detailed descriptions and copies of work proposals or contracts were provided by borrowers.

VIII. County Mortgage Company, West Caldwell, New Jersey

Action: Settlement Agreement that includes indemnification to the Department in the amount of $311,508 in connection with 12 improperly originated HUD-FHA insured mortgages.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA program requirements including: overinsured mortgages; approving an ineligible loan for HUD-FHA mortgage insurance; submitting a defaulted loan for insurance endorsement; failure to verify the source and/or adequacy of mortgagors' funds; failure to perform a face-to-face interview with a mortgagor; and improper gift letters.

IX. First Mortgage Corporation, Tempe, Arizona

Action: Settlement Agreement that includes indemnification to HUD for claim losses in connection with seven HUD-FHA insured mortgages.

Cause: A HUD monitoring review which disclosed that the president of the company was a co-mortgagor on seven insured mortgages on which HUD-FHA paid insurance claims, and failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

X. Standard Mortgage Corporation, New Orleans, Louisiana

Action: Settlement Agreement that includes reimbursement to the Department in the amount of $43,312 for property preservation and protection claims paid by HUD, and compliance with HUD-FHA requirements for property preservation and protection work on HUD-acquired single-family properties.

Cause: A HUD Office of Inspector General investigation report citing violations of HUD-FHA program requirements and prudent business practices in property preservation and protection work during the period 1983 through 1987. The Report alleged that an officer of the company received improper payments for steering preservation work to another company formed for the purpose of performing the work for Standard Mortgage.

XI. Delmar Financial Company, Clayton, Missouri

Action: Settlement Agreement that includes indemnification to the Department in the amount of $30,725 in connection with two improperly originated HUD-FHA insured mortgages, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review citing the company for failure to verify borrowers' source of funds to close the transactions in connection with two insured mortgages.

XII. United Southern Mortgage Company, Charlottesville, Virginia

Action: Proposed Settlement Agreement that would include indemnification to the Department for an improperly originated mortgage and noncompliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed an overinsured mortgage, failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA), and failure to maintain an adequate Quality Control Plan.

XIII. Venture Mortgage, Inc., Marietta, Georgia

Action: Proposed Settlement Agreement that would include indemnification to the Department for one improperly originated mortgage, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA requirements including: submitting a defaulted loan for mortgage insurance endorsement; failure to maintain an adequate Quality Control Plan; and failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

XIV. S&L Financial Service Corporation, Clearwater, Florida

Action: Proposed Settlement Agreement that would provide for indemnification to the Department for one improperly originated mortgage, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed violation of HUD-FHA program requirements including failure to ensure that an investor mortgagor did not have a financial interest in more than seven contiguous rental properties; and failure to maintain an adequate Quality Control Plan.

XV. Sound Mortgage, Inc., Seattle, Washington

Action: Settlement Agreement that provides for indemnification to the Department in the amount of $48,258 for one improperly originated mortgage; and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that cited violations of HUD-FHA requirements including: failure to ensure that a borrower made the minimum required investment in the property; and failure to maintain an adequate Quality Control Plan.

XVI. Hallmark Mortgage Services, Inc., Tampa, Florida

Action: Settlement Agreement that includes indemnification to the Department in the amount of $42,414 for one improperly originated mortgage, and compliance with HUD-FHA requirements.

Cause: A HUD monitoring review citing violations of HUD-FHA requirements that included: permitting a strawbuyer to obtain mortgage insurance; and failure to maintain an adequate Quality Control Plan.

XVII. Interwest Mortgage Corporation, Salt Lake City, Utah

Action: Letter of Reprimand

Cause: A HUD monitoring review that cited the company for failure to maintain an adequate Quality Control Plan and to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

Dated: August 5, 1993

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–19972 Filed 8–17–93; 8:45am]

BILLING CODE 4210–27–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–03–4320–01]

Meeting of the Elko District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Elko District Grazing Advisory Board Meeting.

SUMMARY: A meeting of the Elko District Grazing Advisory Board will be held on September 16, 1993. The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 3900 E. Idaho St., Elko, Nevada 89801.

The Board will review:

1. Range improvement projects for Fiscal Year 1993 and 1994,

2. Proposed Allotment Management Plans, and

3. Allotment evaluations and proposed grazing agreements and decisions, as well as other matters that may come before the Board.

The meeting is open to the public. Interested persons may make oral statements to the Board between 11 a.m. and 11:30 a.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 E. Idaho St., Elko, NV 89801 by September 9, 1993.

Rodney Harris,

District Manager

[FR Doc. 93–19895 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–HC–M

[OR–943–2300–02; GP3–342; OR–44611]

Orders Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 3,040 acres of acquired land to surface entry, and 1,720 acres to mining and mineral leasing. The mineral estate in 40 acres is not in Federal ownership and the 1,280-acre balance is already open to mining and mineral leasing.

EFFECTIVE DATE: September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: 1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 32 S., R. 32¾ E.,
Sec. 2, SW¼ and W½SE¼;
Sec. 3, S½;
Sec. 4, E½SE¼;
Sec. 9, E½NE¼ and SE¼;
Sec. 10;
Sec. 11, W½E½, W½, and SE¼SE¼;
Sec. 14, W½E½ and W½;
Sec. 15, N½, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 23, NW¼NE¼.

The area described contains 3,040 acres in Harney County.

2. At 8:30 a.m., on September 23, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on September 23, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

3. At 8:30 a.m., on September 23, 1993, the following described lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal

law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 32 S., R. 32¾ E.,
Sec. 2, SW¼ and W½SE¼;
Sec. 3, S½;
Sec. 4, E½SE¼;
Sec. 9, E½NE¼;
Sec. 10, N½;
Sec. 11, SW¼NE¼, NW¼, NE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 15, W½NE¼, NW¼, NE¼SW¼, and NW¼SE¼.

The areas described aggregate 1,720 acres in Harney County.

4. At 8:30 a.m., on September 23, 1993, the lands described in paragraph 3 will be opened to applications and offers under the mineral leasing laws.

Dated: August 9, 1993.

Robert D. DeViney,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–19897 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–30–M

[OR–943–4210–06; GP3–343; OR–45862]

Conveyance of Public Lands; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 160 acres of public lands out of Federal ownership. This action will also open 120 acres of reconveyed land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, a Deed has been issued transferring 160 acres in Yamhill County, Oregon from Federal to private ownership.

In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 3 S., R. 7 W.,
Sec. 8, S½SW¼ and SW¼SE¼.

The area described contains 120 acres in Tillamook County.

At 8:30 a.m., on September 23, 1993, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on September 23, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on September 23, 1993, the land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on September 23, 1993, the land will be opened to applications and offers under the mineral leasing laws.

Dated: August 9, 1993.

Robert D. DeViney,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–19904 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–33–M

[ES–962–4950–10–4041; ES–046154, Group 92, Arkansas]

Filing of Plat of the Dependent Resurvey, Subdivision of Sections and the Survey of the Center Line of State Highway No. 43 in Sections 31 and 32

The plat of the dependent resurvey of the south boundary (Standard Parallel North); a portion of the subdivisional lines; the survey of the subdivision of certain sections and the survey of the center line (as built) of Arkansas State Highway No. 43, in sections 31 and 32, Township 17 North, Range 22 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on October 4, 1993.

The survey was made upon request submitted by the National Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 4, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: August 10, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–19913 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–4950–10–4513: ES–046166, Group 192, Florida]

Filing of Plat of the Dependent Resurvey, Subdivision of Section 36 and Metes-and-Bounds Survey

The plat of the dependent resurvey of a portion of the east boundary; a portion of the subdivisional lines; the survey of the subdivision of section 36, and the metes-and-bounds survey of certain parcels in section 36, Township 50 South, Range 41 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on October 4, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 4, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: August 10, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–19914 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–4950–10–4513; ES–046167, Group 192, Florida]

Filing of Plat of the Dependent Resurvey, Subdivision of Sections 1 and 2 and Metes-and-Bounds Survey

The plat of the dependent resurvey of portions of the east and north boundaries, a portion of the subdivisional lines; and the survey of the subdivision of sections 1 and 2, and the metes-and-bounds survey of certain parcels in sections 1 and 2, Township 51 South, Range 41 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on October 4, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 4, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: August 10, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–19915 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–4950–10–4489; ES–046152, Group 31, Missouri]

Filing of Plat of Dependent Resurvey and the Survey of the Cuivre Island Acquisition Boundary

The plat of the dependent resurvey of a portion of the subdivisional lines, and U.S. Survey No. 3288 (Cuivre Island) and the metes-and-bounds survey of the Cuivre Island acquisition boundary, Township 48 North, Range 3 East, Fifth Principal Meridian, Missouri, will be officially field in Eastern States, Springfield, Virginia at 7:30 a.m., on October 4, 1993.

The survey was made upon request submitted by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., October 4, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: August 10, 1993.

Larry Hamilton,

Acting State Director.

[FR Doc. 93–19912 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–GJ–M

National Park Service

National Register of Historic Places; NHL Boundaries

August 12, 1993.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

The 60-day comment period on the attached National Historic Landmark has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Attention: Chief of Registration (Phone: 202–343–9536).

Lolo Trail National Historic Landmark, Idaho County, Idaho, and Missoula County, Montana, designated a landmark on October 10, 1960.

Beth Boland,

Acting Chief of Registration, National Register of Historic Places, Interagency Resources Division.

[FR Doc. 93–19963 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701–TA–319–332, 334, 336–342, 344, 347–353 and 731–TA–573–579, 581–592, 594–597, 599–609, and 612–619 (Final)

Certain Flat-Rolled Carbon Steel Products From Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom

Determinations

On the basis of the record [1] developed in the subject countervailing duty investigations, the Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products [2] that have been found by the Department of Commerce (Commerce) to be subsidized by the Governments of the specified countries:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products [1]
Belgium	701–TA–319			
Brazil	701–TA–320			
France				701–TA–348 [2]
Germany	701–TA–322 [3]		701–TA–340 [4]	701–TA–349 [5]
Korea			701–TA–342 [6]	701–TA–350 [5]
Mexico	701–TA–325			
Spain	701–TA–326 [7]			
Sweden	701–TA–327			
United Kingdom	701–TA–328 [3]			

[1] Other than clad plate.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The products covered by the subject investigations (cut-to-length plate, hot-rolled products, cold-rolled products, and corrosion-resistant products) are provided for in headings/subheadings 7208, 7209, 7210.31, 7210.39, 7210.41, 7210.49, 7210.60, 7210.70, 7210.90, 7211, 7212.21, 7212.29, 7212.30, 7212.40, 7212.50, 7212.60, 7214, 7215, and 7217 of the Harmonized Tariff Schedule of the United States. Clad plate is defined as carbon steel plate that has been covered with a metallic coating (such as nickel, copper, stainless steel, or titanium) on one or both sides by a process that forms a physical bond between the cladding material and the carbon steel substrate. For a complete description of the products, see the Department of Commerce's final antidumping and countervailing duty determinations (58 FR 37062, July 9, 1993).

[2] Chairman Newquist and Commissioner Brunsdale dissenting.
[3] Chairman Newquist, Commissioner Brunsdale, and Commissioner Crawford dissenting.
[4] Commissioners Brunsdale and Crawford dissenting.
[5] Commissioner Brunsdale dissenting.
[6] Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford dissenting.
[7] The Commission also determines, pursuant to section 705(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.

The Commission determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of the following flat-rolled carbon steel products that have been found by Commerce to have been subsidized by the Governments of the specified countries:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion resistant products [1]
Austria			701–TA–336.	
Belgium		701–TA–329	701–TA–337 [2].	
Brazil		701–TA–330 [3]	701–TA–338 [2]	701–TA–347 [4]
France	701–TA–321 [4]	701–TA–331 [3]	701–TA–339 [2].	
Germany		701–TA–332 [3].		
Italy	701–TA–323 [5]		701–TA–341 [6].	
Korea	701–TA–324	701–TA–334 [3].		
Mexico				701–TA–351 [7]
New Zealand				701–TA–352 [4]
Spain			701–TA–344 [4].	
Sweden				701–TA–353 [4]

[1] Vice Chairman Watson and Commissioners Rohr, Brunsdale, Crawford, and Nuzum found two separate industries within this category; clad plate and corrosion-resistant products other than clad plate, and with regard to clad plate made negative determinations with regard to imports from France. (To the extent that any such determination is deemed necessary, the Commission would have made negative determinations with respect to subsidized imports from all other subject countries because there were no imports from those countries during the period examined.) Chairman Newquist did not find a separate industry producing clad plate; therefore, his determinations on clad plate correspond to his determinations on other corrosion-resistant products.
[2] Chairman Newquist and Commissioner Nuzum dissenting.
[3] Chairman Newquist dissenting.
[4] Commissioner Nuzum dissenting.
[5] Vice Chairman Watson not participating.
[6] Commissioner Nuzum dissenting, Vice Chairman Watson not participating.
[7] Commissioners Rohr and Nuzum dissenting.

On the basis of the record developed in the subject antidumping investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products that have been found by Commerce to have been sold in the United States at less than fair value (LTFV):

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products [1]
Australia				731–TA–612 [2]
Belgium	731–TA–573			
Brazil	731–TA–574			
Canada	731–TA–575			731–TA–614 [2]
Finland	731–TA–576			
France				731–TA–615 [3]
Germany	731–TA–578 [4]		731–TA–604 [5]	731–TA–616 [2]
Japan				731–TA–617 [2 6]
Korea			731–TA–607 [7]	731–TA–618 [2]
Mexico	731–TA–582			
Netherlands			731–TA–608 [7]	
Poland	731–TA–583 [4 6]			
Romania	731–TA–584 [4 6]			
Spain	731–TA–585 [6]			
Sweden	731–TA–586			
United Kingdom	731–TA–587 [4]			

[1] Other than clad plate.
[2] Commissioner Brunsdale dissenting.
[3] Chairman Newquist and Commissioner Brunsdale dissenting.
[4] Chairman Newquist, Commissioner Brunsdale, and Commissioner Crawford dissenting.
[5] Commissioners Brunsdale and Crawford dissenting.

[6] The Commission also determines, pursuant to section 735(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.
[7] Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford dissenting.

The Commission determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of the following flat-rolled carbon steel products that have been found by Commerce to have been sold at LTFV:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products [1]
Argentina			731–TA–597	
Austria			731–TA–599	
Belgium		731–TA–588	731–TA–600 [2]	
Brazil		731–TA–589 [3]	731–TA–601 [2]	731–TA–613 [4]
Canada		731–TA–590 [5]	731–TA–602 [5]	
France	731–TA–577 [4]	731–TA–591 [3]	731–TA–603 [2]	
Germany		731–TA–592 [3]		
Italy	731–TA–579 [6]		731–TA–605 [7]	
Japan		731–TA–594 [3]	731–TA–606 [3]	
Korea	731–TA–581	731–TA–595 [3]		
Mexico				731–TA–619 [8]
Netherlands		731–TA–596 [5]		
Spain			731–TA–609 [4]	

[1] Vice Chairman Watson and Commissioners Rohr, Brunsdale, Crawford, and Nuzum found two separate industries within this category; clad plate and corrosion-resistant products other than clad plate, and with regard to clad plate made negative determinations with regard to imports from France and Japan. (To the extent that any such determination is deemed necessary, the Commission would have made negative determinations with respect to LTFV imports from all other subject countries because there were no imports from those countries during the period examined.) Chairman Newquist did not find a separate industry producing clad plate; therefore, his determinations on clad plate correspond to his determinations on other corrosion-resistant products.
[2] Chairman Newquist and Commissioner Nuzum dissenting.
[3] Chairman Newquist dissenting.
[4] Commissioner Nuzum dissenting.
[5] Chairman Newquist and Commissioner Rohr dissenting.
[6] Vice Chairman Watson not participating.
[7] Commissioner Nuzum dissenting, Vice Chairman Watson not participating.
[8] Commissioners Rohr and Nuzum dissenting.

Background

The Commission instituted these investigations effective December 7, 1992, and February 4, 1993, following preliminary determinations by Commerce that imports of certain flat-rolled carbon steel products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and/or were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)).

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of December 18, 1992 and February 18, 1993 (57 FR 60247; 58 FR 8974). The hearing was held in Washington, DC, on June 29 and 30, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 9, 1993. The views of the Commission are contained in USITC Publication 2664 (August 1993), entitled "Certain Flat-rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom: Investigations Nos. 701–TA–319–332, 334, 336–342, 344, 347–353, and 731–TA–573–579, 581–592, 594–597, 599–609, and 612–619 (Final)."

By order of the Commission.

Issued: August 11, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19988 Filed 8–17–93; 8:45 am]

BILLING CODE 7020–02–P

International Trade Commission

In the Matter of: Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof. Investigation No. 337–TA–348.

Notice of Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Kent R. Stevens, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Jeffrey R. Whieldon, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: August 9, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93–19987 Filed 8–17–93; 8:45am]

BILLING CODE 7020–02–P

Notice of Decision not to Review and Initial Determination Granting Joint Motion to Terminate Investigation with Respect to Respondent Seagate Technology, Inc. on the Basis of a Settlement Agreement

In the Matter of Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives. Investigation No. 337–TA–350.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 53) issued on July 9, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Harry E. Aine ("Aine") and respondent Seagate Technology, Inc. ("Seagate") to terminate the investigation with respect to Seagate on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464.

On June 15, 1993, Aine and Seagate filed a joint motion to terminate the investigation with respect to Seagate on the basis of a settlement agreement. On July 9, 1993, the ALJ issued an ID granting the joint motion and terminating the investigation as to Seagate. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Dated: August 10, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19990 Filed 8–17–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–636–638 (Final)]

Stainless Steel Wire Rod From Brazil, France, and India

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–636–638 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, France, and/or India of stainless steel wire rod, provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of stainless steel wire rod from Brazil, France, and India are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were requested in a petition filed on December 30, 1992, by Al Tech Specialty Steel Corp.; Armco Stainless & Alloy Products, Inc.; Carpenter Technology Corp.; Republic Engineered Steels, Inc.; Talley Metals Technology, Inc.; and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report for these investigations will be placed in the nonpublic record on September 30, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations

beginning at 9:30 a.m. on October 14, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 7, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 12, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is October 7, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 22, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 22, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: August 11, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19989 Filed 8–17–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability:

AB–337 (Sub.–No. 2X), Dakota, Minnesota & Eastern Railroad Corporation—Abandonment exemption—in Brown County, South Dakota. EA available 8/10/93.

AB–391 (Sub.–No. 2X), Red River Valley & Western Railroad Company—Abandonment Exemptiom—in Cass and Barnes Counties, ND. EA available 8/13/93.

AB–55 (Sub.–No. 471X), CSX Transportation, Inc.—Abandonment in Lucas County, OH. EA available 8/13/93.

AB–167 (Sub.–No. 1118X), Consolidated Rail Corporation—Abandonment in Chester County, PA. EA available 8/13/93.

AB–167 (Sub.–No. 1124X), Consolidated rail Corporation—Abandonment in Chester County, PA. EA available 8/13/93.

Comments on the following assessment are due 30 days after the date of availability.

AB–362 (Sub.–No. 2X), Texas and Oklahoma RR. Co.—Exempt Abandonment—Between the Oklahoma-Texas State Line and Orient Junction (Sweetwater), TX. EA available 8/6/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19952 Filed 8–17–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Resource Conservation and Recovery Act

This supplemental notice is being provided concerning the lodging of a proposed Consent Decree in *United States of America* v. *General Chemical Corp., et al.*, Civil Action No. 93–10923T. The prior notice appeared in the **Federal Register** on May 17, 1993 in volume 58, number 93, at page 28,895. Notice of the lodging of the above-referenced Consent Decree with the United States District Court for the District of Massachusetts is being provided consistent with 28 CFR 50.7, 42 U.S.C. 6973(d) and 42 U.S.C. 9622(d). The United States' complaint, filed at the same time as the consent decree, seeks recovery of response costs and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and under the Resource Conservation and Recovery Act (RCRA) against the General Chemical Corp. and other entities responsible for hazardous substances and hazardous wastes found at the Silresim Superfund Site in Lowell, Massachusetts, a National Priorities List facility. The consent decree provides that the defendants will pay $40,989,278 to the United States so that the U.S. Environmental Protection Agency (EPA) can perform the response actions contained in the Record of Decision (ROD) issued by EPA. The remedial work will include excavation and treatment of contaminated soils and pumping and treating the contaminated groundwater.

The names of each of the settling parties with whom the United States and the Commonwealth of Massachusetts are resolving their claims are as follows: General Chemical Corporation; Worcester Stamp Co.; Adcole Corporation; A.E. Burgess Leather Company, Inc.; Aerospace Metals Company, Inc. (for Suisman and Blumenthal, Inc.); Akzona Chemicals Inc. (for Brand-Rex Company); Alden Research Laboratory; Alfa-Laval Food & Dairy Group, Inc. (for Contherm Division, formerly Contherm Corporation); Allen-Bradley Company.

Inc. (for Electronics Corp. of America); Allied-Signal Inc. (for Allied Chemical Corporation and The Warner & Swasey Company); Altron Incorporated; American Cyanamid Company; American Finish & Chemical Company; American Optical Corporation; American Power Devices; American Telephone & Telegraph Company (for Western Electric Company, Incorporated); Anderson Power Products Company Inc.; Anson Incorporated; Arlon Inc. (for Keene Corporation); Arrow Automotive Industries, Inc.; ARA Services, Inc. (for Smith's Transfer Corporation); Artisan Industries, Inc.; Augat Inc.; Ausimont USA, Inc. (for Pandel-Bradford, Inc. and Styletek, Inc.); Bacon Industries, Inc.; The Badger Company, Inc.; Barclay Chemical Company, Inc.; BASF Corporation (for BASF Systems Corporation); Bellofram Corporation; The B.F. Goodrich Company; Black & Decker (U.S.) Inc.; BLH Electronics, Inc.; Borden, Inc. (for Chemical Division, Columbus Coated Fabrics Division, and Prince Packaging); Borden & Remington Corp.; Boston City Hospital; Boston Edison Company; Boston Insulated Wire & Cable Company, Inc. (for BIW Cable Systems, Inc.); B.P. Chemicals Inc. (for Vistron Company, Inc.); Bull HN Information Systems, Inc. (for Honeywell Information Systems Inc.); Capitol Circuits Corp.; Capitol—EMI Music, Inc. (for Capitol Magnetic Products); Capitol Molding Corp.; Cerberus Technologies, Inc. (for Arrowhead Enterprises, Inc.); Ceridian Corporation (for Micro-Bit Corporation); CBS Inc. (for Columbia Magnetics); C.F. Jameson & Company, Inc.; Champion International Corporation (for St. Regis Paper Company); Chelsea Industries, Inc. (for Pyrotex Corp.); Chemical Waste Management, Inc. (for Interex Corporation); Chemineer (for Kenics Corp.); Ciba-Geigy Corporation; Circuit-Wise, Inc.; Clean Way Industries, Inc.; Columbia Equipment Co., Inc.; Copolymer Rubber & Chemical Corporation; Coppus Engineering Corporation; Corning, Inc. (for Components, Incorporated a/k/a Corning Components); Coulter Systems Corporation (for Coulter Information Systems, Inc.); Craig Systems Corp.; Data General Corporation; Datapoint Corporation (for Inforex, Inc.); David Clark Company Incorporated; Delta Electronics Mfg. Corp.; Di-An Controls, Inc.; Digital Equipment Corporation; The Dow Chemical Company; Dow Corning Corporation; Dynatech Corporation; Eastman Kodak Company; ECC Corporation; EG&G, Inc.; EG&G Watertown, Inc. (for Torque Systems Incorporated); E.I. du Pont de Nemours and Company (also for New England Nuclear); Ekco Group, Inc. (for Centronics Data Computer Corp.); Electro Signal Lab, Inc.; Electronic Products, Inc.; Eljer Manufacturing, Inc. (for Simonds Saw & Steel Co. and Wallace Murray Corporation); Emerson & Cuming, Inc. (for Amicon Corp.); Emhart Industries, Inc. (for Bostik Division, USM Corporation and Emhart Corporation); Engelhard Corporation; Ercon, Inc.; Esselte Pendaflex Corporation (for Dymo Graphic Systems Inc. and Dymo Retail Systems Inc.); Essex County Gas Company (for Haverhill Gas Co.); Fairchild Semiconductor Corporation (for Fairchild Camera and Instrument Corporation); Fenwal Incorporated; Ferrofluidics Corporation; Figgie International Inc. (for Myer World a/k/a Meyer/ World Packaging Manufacturing Company); G & R Screw Machine Products, Inc.; GAF Corporation; GAR–DOC, Inc.; General Electric Company, Inc. (also for Automated Systems Division, RCA Corporation); General Latex and Chemical Corporation; General Signal Corporation (for TAU-Tron, Inc.); Geochem, Inc.; George Demarais; George S. Carrington Company, Inc. (for George S. Carrington Division, Fox Valley Corporation); Germanium Power Devices Corp.; The Gillette Company; GKN North America Incorporated (for Presmet Corporation); Gordett Enterprises, Inc. (for National Heel Company, Inc.); Gould Inc.; Grimes Aerospace Company (for Cambridge Thermionics, Inc., Conductor Lab, Inc., and Consolidated Metal Finish, Inc.); GTE Products Corporation (for GTE Sylvania Incorporated); Haartz-Mason, Inc.; HADCO Corporation (for HADCO Printed Circuits Company); Halliburton Industrial Services, Inc. (for Halliburton Services Divison, Halliburton Company); Hamblet & Hayes Co.; Hartford Hospital; Hartford Bearing Co. (for Hartford Precision Products Company); Hermetite Corp.; Hewlett-Packard Company, Inc.; Hitchiner Manufacturing Co., Inc.; Hoechst Celanese Corporation (for Foster Grant Co., Inc.); Honeywell Inc. (also for Industrial Solid State Controls, Inc.); Hoya Micro Mask, Inc. (for SEMPRO Company, Inc.); Hurley Packaging Corporation; Hybrid Systems Corporation; IBM Corporation; ICI Americas Inc., now Zeneca Inc. (for United Finish Co., Inc.); Icon Corporation; Inco United States, Inc. (for Exide Safety Systems Division, ESB Inc.); Ionics, Incorporated; ITT Semiconductors Div., ITT Corporation; JANCO, Inc. (for JANCO Sales, Inc.); John Danais Co., Inc.; Keyes Fibre Company (for Madico Inc.); Koch Membrane Systems, Inc. (for ABCOR, Inc.); K.W. Thompson Tool Company, Inc.; Lepage's, Inc.; Litton Industries, Inc. (for Electrodyne and Reed Rolled Thread); Litton Systems, Inc. (for ITEK Optical Systems Divison, formerly ITEK Corporation); Lockheed Sanders, Inc. (for Sanders Associates, Inc.); Loctite Luminescent Systems, Inc. (for Atkins & Merrill); Loral Corporation (for GHZ Devices Company, Inc.); Lowell Shoe, Inc.; M/A–COM Omni Spectra, Inc. (for Omni Spectra, Inc.); Marisol, Inc.; Mason and Dixon Tank Lines, Inc.; Mass Disposal Service Corp.; McCord Winn Division, Textron, Inc. (for J.H. Winn Inc.); Miles, Inc. (for Compugraphic Corporation); Millipore Corporation (also for Waters Associates, Inc.); MKS Instruments, Inc.; Mobil Oil Corporation (for Mobil—Carteret and Mobil Solar Energy Corporation); Monsanto Company, Inc. (for Monsanto Industrial Chemicals Company); Morton International, Inc. (for Ventron Division); Nashua Corporation; NAVTEC, Inc.; NCR Corporation (for National Cash Register Company); Neles-Jamesbury, Inc. (for Jamesbury Corp.); New England Medical Center Hospitals, Inc.; New IMLAC Corporation (for IMLAC Corporation); NI Industries, Inc. (for Norris Industries, Inc.); Northeast Laboratory Machine Company, Inc.; Pacific Scientific Company (for Sigma Instruments, Inc.); Package Chemical Co., Inc.; Parker-Hannifin Corporation (for W.H. Nichols); Parker's Express, Inc.; Parlex Corporation; Peirce Bros. Oil Service, Inc.; Pervel Industries, Inc.; Pfizer, Inc.; Polaroid Corporation; Quality Coatings, Inc. (for Quality Enamel); Rathbone Corporation (for Carlisle Screw Corp.); Raymark Industries, Inc. (for Raybestos-Manhattan, Inc.); Raytheon Company; Rosenthal North America, Inc. (for Metalized Ceramics Corporation); Rospatch Orlando, Inc. (for Infrared Industries, Inc.); Roy Bros., Inc.; Rule Industries, Inc.; Scott Paper Company (for Scott Graphics, Inc.); S.D. Warren Company; Searle & Co. (for Searle Labs); Semicon, Inc.; Semiconductor Processing Co., Inc.; Sequa Corporation (for Kollsman Instrument Company); The Sibley Co.; Silicon Transistor Corporation (also for KSC Semiconductor Corp.); Simplex Time Recorder Co.; Simplex Wire & Cable Company; Spelco, Inc. (for Sprague Electric Company); Spire Corporation (for Simulation Physics, Inc.); The Stanley Works; Strem Chemicals, Inc.; Suffolk Services, Inc.; Suffolk

University; Teledyne Components Company, Inc. (for Teledyne Philbrick); Teradyne, Inc.; Texas Instruments Incorporated; Textron Defense Systems (for Avco Everett Research Laboratory, Inc.); Textron Inc. (for Bridgeport Machines and Davidson Interior Trim, formerly Davidson Rubber Company); TNCO, Inc.; Transcom Manufacturing Company Inc. (for Transcom Electronic); Transitron Electronics Trust (for Transitron Electronic Corp.); Tyco Engineered Systems, Inc. Division, Tyco Laboratories, Inc. (for Multi-Circuits); Unitrode Corporation (for Unitrode Computer Products Corporation); University System of New Hampshire; Van Waters & Rogers, Ltd. (for McArthur Chemical Company, Inc.); Varian Associates, Inc.; Wang Laboratories, Inc.; Weymouth Art Leather Company; White Consolidated Industries, Inc. (for Jerguson Gage & Valve Co. Division); Wickes Manufacturing Company (for Gamewell Systems Corporation); Wingaersheek Turbine Divison, Victor Equipment Company; Worcester Controls Corporation; Worthen Industries (for UPACO Adhesives Inc.); W.R. Grace & Co.—Conn.; W.W. & C.F. Tucker, Inc.; Department of the Air Force—Hanscom Air Force Base; Department of the Navy—Portsmouth Naval Shipyard.

The Department of Justice will extend the comment period for thirty (30) days from the date of this publication for comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Chemical Corp. et al.*, D.J. Ref. 90–11–2–774.

The proposed consent decree may be examined at the office of the United States Attorney, 1107 John W. McCormack Federal Building, U.S. Post and Courthouse, Boston, MA 02109 and at the Region I office of the Environmental Protection Agency, One Congress St., Boston, MA 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost, exclusive of the costs of copying the appendix) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–19906 Filed 8–17–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PowerOpen Association, Inc.

Notice is hereby given that, on July 12, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PowerOpen Association, Inc. ("PowerOpen"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of PowerOpen are: Harris Computer, Ft. Lauderdale, FL; Tadpole Technology PLC, Cambridge, United Kingdom; David Strom, Inc., Port Washington, NY; Firesign Computer Co., San Franciso, CA; Dolphin Server Technology AS, Oslo, Norway; Enabling Technologies Group, Inc., Dunwoody, GA; System Group Inc., South Bend, IN; CCT, Southbury, CT; B&E Software GmbH, Hilden, Germany; MacroTek GmbH, Dortmund, Germany; New Media Inc., Cleveland, OH; Worldata Corp., Bolton, MA; PBS Professional Business, Klef, Germany; Helios Software, Hanover, Germany; Informix Software, Inc., Menlo Park, CA; UniWare Computer GmbH, Berlin, Germany; Formation, Inc., Moorestown, NJ; JSB Computer Limited, Cheshire, United Kingdom; Mosaic Multisoft Corp., San Diego, CA; Universal Algorithms, Inc., Portland, OR; BAeSEMA, New Malden, Surrey, United Kingdom; Locus Company, Burlington, MA; Cygnus Support, Mountain View, CA; Lucid, Inc., Menlo Park, CA; Radstone Technology Corp., Montvale, NJ; Six Schwarz Und Kissner GmbH, Echterdingen, Germany; Mount Bonnell, Inc., Austin, TX; MacLaboratory Inc., Devon, PA; BGS Systems, Waltham, MA; Center for High Performance, Marlborough, MA; E–Systems, Dallas, TX; Beckman Software Engineering, Ventura, CA; Lightwell Co., Ltd, Tokyo, Japan; Must Software International, Norwalk, CT; ACSC, Inc., Los Angeles, CA; Applix, Inc., Westboro, MA; Object Technology Inc., Phoenix, AZ; and MicroAge, Tempe, AZ.

On April 21, 1993, PowerOpen filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 22, 1993 (58 FR 33954).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–19907 Filed 8–17–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of an expedited clearance of an information collection that will affect the public. Interested persons are invited to submit comments by September 13, 1993. The survey instrument is printed with this notice. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: 1994 Survey of Scientific and Engineering Research Facilities.

Affected Public: Non-profit institutions.

Respondents/Reporting Burden: 415 respondents; 23 hours per response.

Abstract: This survey of adacemic research (1994) will update data from previous biennial surveys in 1988 and 1990, 1992 and will document trends in facilities amount, condition, adequacy, cost and needs. Findings will be used to inform institutions, state and Federal facilities programs and policy.

Dated: August 13, 1993.

Herman G. Fleming,

Reports Clearance Officer.

Attachment 3—1994 Survey of Scientific and Engineering Research Facilities at Colleges and Universities

National Science Foundation, National Institutes of Health

Acting out of concerns raised by the academic community, Congress directed the National Science Foundation (NSF) to collect and analyze data about research facilities at colleges and universities and to report to Congress every two years. This survey is in response to that requirement under authorization of the National Science Foundation Act of 1950, as amended.

For this survey, we're asking you to respond to 12 items in these five categories:

- amount of space in your institution,
- amount and condition of research space in your institution,
- costs of renovation/repair and new construction of research space completed or begun,
- amount of new space needed for current research projects, and
- miscellaneous topics.

We will use the information that you provide us for a report that gives a broad, quantitative picture of

- the cost, availability, and condition of existing research facilities; and
- the current capital spending by colleges and universities, sources of funding, and plans for future construction and renovation of research facilities.

The report is used by Congress, many higher education associations, and university and college administrations to help make policy decisions. NSF and NIH do not use or allow other agencies to use the information from this survey to affect individual institutional funding.

The president or chancellor of your institution named the individual on the label below to coordinate data collection for this survey. Please correct any wrong information on the label.

Label

If someone other than the person listed above coordinates the data collection, please tells us whom we may call if we have questions about the information.

Name _____

Title/Department _____

Telephone no. and ext. _____

Completing this survey requires an average of 30 hours. If you wish to comment on this burden, contact Herman Fleming, Reports Clearance Officer, NSF, at 202–357–9520, and the Office of Management and Budget, Paperwork Reduction Project (OMB Number 3145–0101), Washington, DC 20503.

Return the completed survey by January 6, 1994, to: The Gallup Organization, One Church Street, Suite 900, Rockville, MD 20850.

If you have any questions or comments about the survey, contact Dr. Ann Lanier of NSF at (202) 634–4035 or Marlene Battelle of The Gallup Organization at 1–800–288–9439.

Definitions and Guidelines

Use the definitions and guidelines in this section as you fill out the survey.

Definitions

Research—Refers to all research and development activities of an institution that are budgeted and accounted for. Research can be funded by the federal government, state governments, foundations, corporations, universities, or other sources.

Research Facilities—Refers to the physical plant in which research activities take place, including

- research laboratories;
- controlled environment space, such as clean or white rooms;
- technical support space, such as carpentry and machine shops;
- facilities for laboratory animals, such as animal production colonies, holding rooms, isolation and germ-free rooms;
- faculty or staff offices, to the extent that they are used for research;
- department libraries, to the extent that they are used for research; and
- fixed (built-in) equipment such as fume hoods and benches.

Does not include:

- Non-fixed equipment costing less than $1 million (these data are collected in a separate NSF/NIH survey);
- facilities that have been designated as federally funded research and development centers, such as Brookhaven, Kitt Peak, Fermi, etc.; or
- facilities that are used by faculty but are not administered by the institution, such as research space at VA or other non-university hospitals.

Research Space—Refers to the net assignable square feet (NASF) of space in facilities within which research activities take place.

Repair/Renovation—Refers to the fixing up of facilities in deteriorated condition, capital improvements on facilities, conversion of facilities, and so on.

New Construction—Refers to additions to an existing building or construction of a new building.

Science and Engineering (S&E) Fields—Because every institution has its own way of classifying fields of study, for consistency please use the cross reference (see page 16) to classify areas of study at your institution. The cross reference identifies the departments that are included within each of the science and engineering (S&E) fields used in this survey. The cross reference is based on the classification of instructional programs used by the National Center for Educational Statistics.

If you are unable to separate data for academic programs, report the combined data under "Other Sciences, not elsewhere classified" and list the fields that those data represent.

For this survey, Science and Engineering (S&E) Fields includes

- Engineering
- Physical Sciences
- Environmental Sciences
- Mathematics
- Computer Sciences
- Agricultural Sciences
- Biological Sciences
- Medical Sciences
- Psychology
- Social Sciences
- Other Sciences, not elsewhere classified

It does not include:

- law, business administration/management (except economics), humanities, history, the arts, or education (except educational psychology).

Guidelines

For multi-purpose space—Prorate the net assignable square feet (NASF) to reflect the proportion of use devoted to research activity.

For example, if a room or building is devoted to research activity approximately 40% of the time, count 40% of the NASF as research space.

For shared space—Prorate the NASF to reflect the proportion of use devoted to each field.

For example, if a room or building is devoted equally to research activity in Computer Science and Mathematics, count 50% of the NASF as research space for Computer Sciences and 50% for Mathematics.

For multi-purpose facilities—Prorate the cost of repair/renovation and new construction projects to reflect the proportion of research space involved.

For multi-year projects—Allocate the entire project completion cost (planning, construction, fixed equipment) to the fiscal year in which construction actually began or is expected to begin.

Amount of Space in Your Facility

Item 1a. Instructional and Research Space

To determine the current amount of instructional and research space in your facilities, include

- all space assigned to the fields or to the departments within fields, such as departmental and faculty offices, conference and seminar rooms, research space, and instructional space; and
- space leased by your institution.

If the information is not available, you may estimate the amounts.

1. In Column 1 on the next page, fill in the current amount of net assig nable square feet (NASF) devoted to *instruction and research* for each field on department listed.

2. Then near the bottom of Column 1, fill in the current *total* NASF devoted to instruction and research for

- science and engineering (S&E) facilities,
- non-science facilities, and
- all S&E and all non-science facilities.

3. In Column 2, fill in the current amount of NASF devoted to *research only* for each S&E field or department listed.

4. Then at the bottom of Column 2, fill in the *total* NASF devoted to research in all S&E fields.

Note for institutions using a facilities inventory system based on either NCES, NACUBO, or WICHE classifications:

You may define the universe of total NASF devoted to instruction and research as the space that is assigned to functional category 1 (Instruction) and to functional category 2 (Research).

Please refer to pages 95–96 in Appendix 2 of *Postsecondary Education Facilities Inventory and Classification Manual*, U.S. Department of Education, Office of Educational Research and Improvement, NCES 92–165. The definitions in that book are adapted from the 1988 NACUBO *Taxonomy of Functions* and the 1972 WICHE *Program Classification Structure*.

Field	Column 1 Instructional and Research NASF	Column 2 Research NASF
Science and Engineering (S&E) Fields		
Engineering		
Physical Sciences		
Environmental Sciences.		
Mathematics		
Computer Sciences		
Agricultural Sciences.		
Biological Sciences: Other than medical school.		
Biological Sciences: Medical school.		
Medical Sciences: Other than medical school.		
Medical Sciences: Medical school.		
Psychology		
Social Sciences		
Other Sciences not elsewhere classified. List them:		
Total for all S&E facilities.		
Total for all non-science facilities.		
Total for all S&E and all non-science facilities.		

Item 1b. Leased Research and Development Space

Look at the total research space for all S&E facilities at the bottom of Column 2 in the chart above.

How much of that space is leased?

_____NASF of leased research space.

Amount of Research Space

Item 2. Amount of Research Space, by Field

To rate whether the amount of research space at your institution reported in Item 1a, Column 2 is sufficient for current research programs, consider

- only the existing amount of research space, and
- only your current research programs.

For each field listed below, circle one of the following codes:

A Adequate amount; sufficient to support all the needs of your research in the field

B Generally adequate amount; sufficient to support most research needs in the field, but may have some limitations

C Inadequate amount; not sufficient to support the needs of your research in the field

D Nonexistent space, but needed

NA Not applicable or not needed

Field	Amount of research space (circle one in each row)				
Engineering	A	B	C	D	NA
Physical Sciences	A	B	C	D	NA
Environmental Sciences	A	B	C	D	NA
Mathematics	A	B	C	D	NA
Computer Sciences	A	B	C	D	NA
Agricultural Sciences	A	B	C	D	NA
Biological Sciences: Other than medical school	A	B	C	D	NA
Biological Sciences: Medical school	A	B	C	D	NA
Medical Sciences: Other than medical school	A	B	C	D	NA
Medical Sciences: Medical school	A	B	C	D	NA
Psychology	A	B	C	D	NA
Social Sciences	A	B	C	D	NA
Other Sciences, not elsewhere classified	A	B	C	D	NA
List them:					

Who provided the above assessments (e.g., deans, department heads, physical plant administrators, the survey coordinator)?

_____

_____

Item 3. Current Condition of Research Space, by Field

To rate the condition of current research space reported in Item 1a, Column 2,

- consider only current research programs,
- consider the type of research conducted in the facility, and
- exclude non-fixed research instrumentation costing less than $1 million.

For each field, fill in the percentage of research space that falls into each category below.

A Suitable for use in the most highly developed and scientifically sophisticated research in the field

B Effective for most purposes but not applicable to category A

C Effective for some purposes but in need of limited renovation or repair

D Requires major repair or renovation to be used effectively

E Requires replacement

NA Not applicable or no research space in this field

Field	Percentage of research space according to condition						
	A	B	C	D	E	NA	Total
Engineering							100
Physical Sciences							100
Environmental Sciences							100
Mathematics							100
Computer Sciences							100
Agricultural Sciences							100
Biological Sciences: Other than medical school							100
Biological Sciences: Medical school							100
Medical Sciences: Other than medical school							100
Medical Sciences: Medical school							100
Psychology							100
Social Sciences							100
Other Sciences, not elsewhere classified							100
List them:							

Who provided the above assessments (e.g., deans, department heads, physical plant administrators, the survey coordinator)?

_____

_____

Costs of Projects Completed or Begun

Item 4a. Research Facilities Projects Over $100,000: Your FY 1992 and FY 1993

To report the completion costs and net assignable square feet (NASF) involved in repair/renovation and new construction of research facilities,

- consider only projects begun during your Fiscal Year 1992 or your Fiscal Year 1993,
- consider only projects over $100,000 (see Item 7 for projects under $100,000), and
- prorate as necessary.

1. In Columns 1 and 3, fill in the *completion costs* for repair/renovation and for new construction for each field listed. Then fill in the total completion costs for all science and engineering (S&E) fields at the bottom of Columns 1 and 3.

2. In Columns 2 and 4, estimate the NASF involved in these projects for each field listed. Then estimate the total NASF involved for all S&E fields at the bottom of Columns 2 and 4.

Field	Repair/renovation begun during your FY 1992 or 1993		New construction begun during your FY 1992 or 1993	
	Column 1	Column 2	Column 3	Column 4
	Cost	NASF	Cost	NASF
Engineering				
Physical Sciences				
Environmental Sciences				
Mathematics				
Computer Sciences				
Agricultural Sciences				
Biological Sciences: Other than medical school.				
Biological Sciences: Medical school				
Medical Sciences: Other than medical school				
Medical Sciences: Medical school				
Psychology				
Social Sciences				
Other Sciences, not elsewhere classified. List them:				
Total for All S&E Fields.				

Item 4b. Costs To Comply With the 1990 Americons With Disabilities Act

Look at the total cost reported in Item 4a in the last row of Column 1. Estimate the percentage of these total repair and renovation costs that your institution spent to bring this space into compliance with the 1990 Americans with Disabilities Act.

_____% spent to comply with the 1990 Americans with Disabilities Act.

Item 5. Sources of Funding for Research Facilities Projects Over $100,000: Your FY 1992 and FY 1993

To provide the sources of funding for the projects begun during your Fiscal Year 1992 or your Fiscal Year 1993 that you reported in Item 4a,

1. Look back at the last row of the chart in Item 4a. Copy the totals that you wrote in Columns 1 and 3 into the first row below.

2. Fill in the expected dollar amounts of funding expected from each source listed below:

Source	Column 1	Column 2
	Repair/ Renovation begun during your FY 1992 or 1993	New Construction begun during your FY 1992 or 1993
Cost of All Projects for S&E Research Facilities:		
Federal Government.		
State or Local Government.		
Private Donation.		
Institution Funds: Operating funds, endowments, indirect cost recovery, etc.		
Tax-Exempt Bonds.		
Other Debt Financing.		
Other Sources of Funding. List them:		

Item 6. Actual vs. Planned Research Facilities Spending: Your FY 1992 and FY 1993

(1) Did your institution fill out this survey in 1992?

- Yes. Go to (2).
- No. Go to Item 7 on the next page.

(2) On the copy of your responses to the 1992 survey (included in this survey package), look at the total amount your institution planned to spend for repair/ renovation of research facilities during your Fiscal Year 1992 and your Fiscal Year 1993. You'll find this amount listed under Item 5 in the 1992 survey.

Now, look at the amount you wrote in the first row of Column 1 in Item 5 on the previous page. Is that amount within 25% (±) of the amount of spending listed under Item 5 in your 1992 survey?

- Yes. Go to (3).
- No. What factors account for the difference?

_____

_____

_____

_____

(3) On the copy of your responses to the 1992 survey, look at the total amount your institution planned to spend for new construction of research facilities during your Fiscal Year 1992 and your Fiscal Year 1993. You'll also find this amount under Item 5 in the 1992 survey.

Now, look at the amount you wrote in the first row of Column 2 in Item 5 on the previous page. Is that amount within 25% (±) of the amount of spending listed under Item 5 in your 1992 survey?

- Yes. Go to Item 7 on the next page.
- No. What factors account for the difference?

_____

_____

_____

_____

Item 7. Repair/renovotion Projects Between $5,000 ond $100,000: Your FY 1992 ond FY 1993

To report the completion costs involved in repair/renovation of science and engineering (S&E) research facilities,

- include only costs for research components,
- consider only projects begun during your Fiscal Year 1992 or your Fiscal Year 1993, and
- consider only projects costing between $5,000 and $100,000 (see Item 4a for projects over $100,000).

Fill in the total dollar amount in the space below, prorating as necessary.

$_____Total for all S&E research facilities.

Item 8. Planned Reseorch Focilities Over $100,000 Scheduled To Begin Construction in Your FY 1994 ond FY 1995

To report the completion costs and net assignable square feet (NASF) for repair/ renovation and new construction of research facilities that your institution plans to begin,

- consider only projects in which construction is planned to begin during your Fiscal Year 1994 or your Fiscal Year 1995,
- consider only projects to cost over $100,000, and
- prorate as necessary.

1. In Columns 1 and 3, fill in the *completion costs* for repair/renovation and for new construction for each field listed. Then fill in the total completion costs for all science and engineering (S&E) fields at the bottom of Columns 1 and 3.

2. In Columns 2 and 4, estimate the NASF involved in these projects for each field listed. Then fill in the total NASF for all S&E fields at the bottom of Columns 2 and 4.

Field	REPAIR/RENOVATION scheduled to begin in your FY 1994 or 1995		NEW CONSTRUCTION scheduled to begin in your FY 1994 or 1995	
	Column 1	Column 2	Column 3	Column 4
	Expected Cost	Estimated NASF	Expected Cost	Estimated NASF
Engineering				
Physical Sciences				
Environmental Sciences				
Mathematics				
Computer Sciences				
Agricultural Sciences				
Biological Sciences: Other than medical school				
Biological Sciences: Medical school				
Medical Sciences: Other than medical school				
Medical Sciences: Medical school				
Psychology				
Social Sciences				
Other Sciences, not elsewhere classified				

Field	REPAIR/RENOVATION scheduled to begin in your FY 1994 or 1995		NEW CONSTRUCTION scheduled to begin in your FY 1994 or 1995	
	Column 1	Column 2	Column 3	Column 4
	Expected Cost	Estimated NASF	Expected Cost	Estimated NASF
List them:				
Total for All S&E Fields.				

New Space Needed

Item 9. Research Space Needed for Current Faculty and Programs but not Scheduled to Begin Construction During your FY 1994 or FY 1995

1. Does your approved institutional plan include any deferred space that requires repair/renovation or new construction? (Deferred space must satisfy the following three criteria: the space must be necessary to meet the critical needs of your current faculty or programs; construction must not be scheduled to begin during your Fiscal Year 1994 or your Fiscal Year 1995; and the construction must not currently have funding.)

- Yes. Go to 2.
- No. Go to Item 10 on the next page.

2. In Column 1, estimate the completion costs for deferred space which needs repair/renovation for each field listed. Then fill in the total costs for all science and engineering (S&E) fields at the bottom of Column 1.

3. In Column 2, estimate the completion costs for deferred space which needs new construction for each field listed. Then fill in the total costs for all S&E fields at the bottom of Column 2.

Do not include

- space needed for current faculty and programs that are not part of an approved institutional plan,
- space needed for an expansion in the number of current faculty, or
- space needed to develop new programs.

4. If you cannot provide cost estimates, then check here and fill in estimated square footage in the chart.

Field	Column 1	Column 2
	Estimated costs for needed Repair/ Renovation not scheduled to begin during your FY 1994 or 1995	Estimated costs for needed New Construction not scheduled to begin during your FY 1994 or 1995
Engineering		
Physical Sciences ...		
Environmental Sciences.		
Mathematics		
Computer Sciences		
Agricultural Sciences.		
Biological Sciences: Other than medical school.		
Biological Sciences: Medical school.		
Medical Sciences: Other than medical school.		
Medical Sciences: Medical school.		
Psychology		
Social Sciences		
Other Sciences, not elsewhere classified.		
List them:		
Total For All S&E fields.		

Miscellaneous Topics

Item 10. Facilities for Laboratory Animals

1. Does your institution have facilities for laboratory animals?

- No. Go to Item 11 on the next page.
- Yes. Go to 2.

2. To report on facilities for laboratory animals,

Include

- both departmental and central facilities that are subject to government (U.S. Public Health Service, USDA, state) regulations concerning humane care and use of laboratory animals; and
- all animal housing areas (e.g., cage rooms, stalls, wards, animal production colonies, laboratory space occupied by animals), holding rooms, isolation and germ-free rooms, surgical facilities, and other related service areas (e.g., feed storage rooms, cage washing rooms, casting rooms, shops, storage), if these areas directly support research.

Do not include

- agricultural field buildings sheltering animals that do not directly support research or that are not subject to government regulations concerning humane care and use of laboratory animals, or
- areas for treatment of animals that are veterinary patients.

Fill in the total amount of net assignable square feet (NASF) allotted to these facilities. Then fill in the amount of NASF allotted to research facilities for laboratory animals.

_____Total NASF.
_____Research NASF.

3. Fill in the percentage of research NASF that

	Percent
Fully meet government regulations	.....
Needs limited renovation or repair to meet government regulations	.....
Needs major renovation, repair, or replacement to meet government regulations.	
Total	100

4. Fill in the cost of repair/renovation and construction projects planned to begin during your Fiscal Year 1994 or your Fiscal Year 1995.

$ _____

Item 11. Limit on Tax-exempt Bonds

1. Is your institution a private college or university?

- No. Go to Item 12.
- Yes. Go to 2.

2. Recent federal tax reform legislation established a limit on tax-exempt bonds of $150 million per private college or university.

Has your institution reached the limit on tax-exempt bonds?

- Yes.
- No, but we expect to within the next two fiscal years.
- No, and we do not expect to within the next two fiscal years.

Item 12. Feedback

We appreciate the time you have taken to fill out the 1994 survey. We will be extensively revising the 1996 survey to help make your task less burdensome and to improve the reliability of the information.

1. Would you be willing to discuss drafts of the revised survey with members of the development team?

- Yes. Please write your name and phone number below.

• No.

2. How many person-hours were required to complete this form? _____

You are finished with the survey. *Return it by January 6, 1994, to: The Gallup Organization, One Church Street, Suite 900, Rockville, MD 20850.*

Cross Reference Between NSF Field Categories and the NCES Classification of Instructional Programs

Use this chart to identify the departments that are included within each of the science and engineering (S&E) fields used in this survey.

Engineering

101 Aerospace Engineering
- 14.02 Aerospace, aeronautical, and astronautical engineering

102 Agricultural Engineering
- 14.03 Agricultural engineering

103 Biomedical Engineering
- 14.05 Bioengineering and biomedical engineering

104 Chemical Engineering
- 03.0509 Wood sciences
- 14.07 Chemical engineering

105 Civil Engineering
- 04.02 Architecture
- 14.04 Architectural engineering
- 14.08 Civil engineering
- 14.14 Environmental health engineering

106 Electrical Engineering
- 14.09 Computer engineering
- 14.10 Electrical, electronics, and communications engineering
- 14.1002 Microelectronic engineering

107 Engineering Science
- 14.12 Engineering physics
- 14.13 Engineering science

108 Industrial Engineering/Management Science
- 14.17 Industrial engineering
- 14.27 Systems engineering
- 30.06 Systems science

109 Mechanical Engineering
- 14.11 Engineering mechanics
- 14.19 Mechanical engineering

110 Metallurgical and Materials Engineering
- 14.06 Ceramic engineering
- 14.18 Materials engineering
- 14.20 Metallurgical engineering
- 40.0701 Metallurgy

111 Mining Engineering
- 14.15 Geological engineering
- 14.16 Geophysical engineering
- 14.21 Mining and mineral engineering

112 Nuclear Engineering
- 14.23 Nuclear engineering

113 Petroleum Engineering
- 14.25 Petroleum engineering

114 Engineering, not elsewhere classified
- 14.01 Engineering, general
- 14.22 Naval architecture and marine engineering
- 14.24 Ocean engineering
- 14.28 Textile engineering
- 14.99 Engineering, other
- 19.09 Textiles and clothing (excluding 19.0902, Fashion Design)
- 30.03 Engineering and other fields

Physical Sciences

201 Astronomy
- 40.02 Astronomy
- 40.03 Astrophysics
- 40.09 Planetary science

202 Chemistry
- 40.05 Chemistry

203 Physics
- 40.08 Physics

204 Physical Sciences, not elsewhere classified
- 40.01 Physcial sciences, general
- 40.0799 Miscellaneous physical sciences, other
- 40.099 Physical sciences, other

Environmental Sciences

301 Atmospheric Sciences
- 40.4 Atmospheric sciences and meteorology

302 Geosciences
- 14.26 Surveying and mapping sciences
- 40.06 Geological sciences
- 40.0703 Earth sciences

303 Oceanography
- 26.0607 Marine biology
- 40.0702 Oceanography

304 Environmental Sciences, not elsewhere classified

Mathematics

402 Mathematics and Applied Mathematics
- 06.1302 Operations research (quantitative methods)
- 27.01 Mathematics, general
- 27.03 Applied mathematics
- 27.04 Pure mathematics
- 27.99 Mathematics, other
- 30.08 Mathematics and computer science

403 Statistics
- 27.02 Actuarial sciences
- 27.05 Statistics

Computer Sciences

401 Computer Sciences
- 06.12 Management information systems
- 11 Computer and information sciences, general
- 30.09 Imaging science

Agricultural Sciences (see also 102 and 901)

501 Agricultural Sciences
- 02.01 Agricultural sciences, general
- 02.02 Animal sciences
- 02.03 Food sciences
- 02.04 Plant sciences
- 02.05 Soil sciences
- 02.99 Agricultural sciences, other
- 03.01 Renewable natural resources, general
- 03.03 Fishing and fisheries
- 03.05 Forestry and related sciences
- 03.06 Wildlife management
- 03.99 Renewable natural resources, other
- 31.04 Water resources

Biological Sciences

601 Anatomy
- 18.0201 Clinical anatomy
- 26.0601 Anatomy

602 Biochemistry
- 18.0202 Clinical biochemistry
- 26.02 Biochemistry and biophysics

603 Biology
- 26.01 Biology, general
- 26.0604 Embryology

604 Biometry and epidemiology
- 18.2202 Epidemiology
- 26.0602 Biometrics and biostatistics

605 Biophysics

606 Botany
- 26.03 Botany (excluding 26.0302, Bacteriology, see 611)

607 Cell Biology
- 26.04 Cell and molecular biology
- 26.0606 Histology

608 Ecology
- 26.0603 Ecology

609 Entomology and Parasitology
- 26.0610 Parasitology
- 26.07102 Entomology

610 Genetics
- 26.0703 Genetics, human and animal

611 Microbiology, Immunology, and Virology
- 18.0203 Clinical microbiology
- 18.1002 Allergies and endomology
- 18.1009 Immunology
- 26.0302 Bacteriology
- 26.05 Microbiology

612 Nutrition
- 19.05 Food sciences and human nutrition
- 20.0108 Food and nutrition
- 26.0609 Nutritional sciences

613 Pathology
- 18.0204 Clinical pathology
- 18.1018 Pathology
- 26.0704 Pathology, human and animal

614 Pharmacology
- 18.0206 Clinical toxicology
- 26.0612 Toxicology
- 26.0705 Pharmacology, human and animal
- 42.14 Psychopharmacology

615 Physiology
- 18.0205 Physiology
- 26.0706 Physiology, human and animal

616 Zoology
- 26.0701 Zoology
- 26.0799 Zoology, other

617 Biosciences, not elsewhere classified
- 26.0699 Miscellaneous specialized areas, life sciences, other
- 26.99 Life sciences, other

Medical Sciences (see also 103)

701 Anesthesiology
- 18.1003 Anesthesiology

702 Cardiology

703 Cancer Research/Oncology

704 Endocrinology
- 26.0605 Endocrinology

705 Gastroenterology

706 Hematology
- 18.08 Hematology

707 Neurology
- 18.1024 Neurology
- 26.0608 Neurosciences

708 Obstetrics and Gynecology
- 18.1013 Obstetrics and gynecology

709 Ophthalmology
- 18.1014 Ophthalmology
- 18.12 Optometry

710 Otorhinolaryngology
- 18.1017 Otorhinolaryngology/otolaryngology

711 Pediatrics
- 18.1019 Pediatrics
- 20.0102 Child development

712 Preventive Medicine and Community Health
- 18.1007 Family practice
- 18.1022 Preventive medicine

713 Psychiatry

18.1023 Psychiatry
18.1106 Psychiatry/mental health
714 Pulmonary Disease
715 Radiology
18.1012 Nuclear medicine
18.1025 Radiology
26.0611 Radiobiology
716 Surgery
18.1004 Colon and rectal surgery
18.1011 Neurological surgery
18.1016 Orthopedic
18.1021 Plastic surgery
18.1026 Surgery
18.1027 Thoracic surgery
717 Clinical Medicine, not elsewhere classified
18.0299 Basic clinical health sciences, other
18.1001 Mredicine, general
18.1005 Dermatology
18.1008 Geriatrics
18.1010 Internal medicine
18.1020 Physical medicine and rehabilitation
18.1028 Urology
18.1099 Medicine, other
18.13 Osteopathic medicine
18.15 Podiatry
30.01 Biological and physical sciences
718 Dental Sciences
18.04 Dentistry
18.1015 Orthodontic surgery
719 Nursing
18.11 Nursing (excluding 18.1106, Psychiatry/Mental Health, see 713)
720 Pharmaceutical Sciences
18.14 Pharmacy
721 Veterinary Sciences
18.24 Veterinary medicine
722 Health Related, not elsewhere classified
17.0807 Occupational therapy
17.0813 Physical therapy
17.0899 Rehabilitation services, other
17.99 Allied health, other
18.07 Health sciences administration
18.09 Medical laboratory
18.22 Public health
18.99 Health sciences, other
723 Speech Pathology and Audiology
18.01 Audiology and speech pathology

Psychology

801 Psychology
13.08 School psychology (not including Educational Psychology)
17.0801 Art therapy
42 Psychology (including Educational Psychology)

Social Sciences

901 Agricultural Economics
01.0102 Agricultural business and management
01.0103 Agricultural economics
902 Anthropology (Cultural and Social)
45.02 Anthropology
45.03 Archeology
903 Economics (except Agricultural)
06.05 Business Economics
45.06 Economics
904 Geography
45.07 Geography
905 History and philosophy of science
906 Linguistics
23.06 Lingulstics
42.12 Psycholinguistics
907 Political Science
44.01 Public affairs, general
44.03 International public service
44.04 Public administration
44.05 Public policy studies
44.99 Public affairs, other
45.09 International affairs
45.10 Political science and government
908 Sociology
45.05 Demography
45.11 Sociology
909 Sociology and Anthropology
910 Social Sciences, not elsewhere classified
04.03 City, community, and regional planning
05 Area and ethnic studies
06.06 Human resources development
06.15 Organizational behavior
31.03 Parks and recreational management
43.01 Criminal justice
44.02 Community services
44.07 Social work
45.01 Social sciences, general
45.04 Criminology
45.12 Urban studies
45.99 Social sciences, other

[FR Doc. 93–19983 Filed 8–17–93; 8:45 am]
BILLING CODE 7555–01–M

Permit Application Received Under the Antarctic Conservation Act of 1978

August 13, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 10, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817 .

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Alan B. Crockett
EG&G Idaho, Inc.
PO Box 1625
Idaho Falls, ID 83415

Activity for Which Permit Requested

Introduction of non-indigenous species into Antarctica. This permit application is for the transport and use of vials of non-toxic, freeze dried fluorescent bacteria at McMurdo for assessing sediment toxicity. It is anticipated that about 300 vials of microorganisms will be required for the planned work. The vials and test equipment would be shipped to McMurdo as air cargo or hand carried depending upon when the permit application is approved. The test is being widely used by EPA and others for assessing toxicity of sediments, soil, and wastes. If necessary, the sediment samples containing the microorganisms can be autoclaved/sterilized after the testing is completed.

Location

McMurdo Station, Antarctica

Dates

10/15/93–2/28/95

Thomas F. Forhan,
Permit Office, Office of Polar Programs.

[FR Doc. 93–19982 Filed 8–17–93; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into

account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published July 22, 1993 (58 FR 39251). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the September 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., (EDT).

ACRS Subcommittee Meetings

Advonced Boiling Woter Reoctors, September 8, 1993, Bethesda, MD. The Subcommittee will discuss the status of resolution of the remaining open issues in the ABWR Standard Safety Analysis Report and the resolution of USIs and GSIs. Also, it will discuss the NRC staff's schedule for submittal of the Final Safety Evaluation Report.

Plonning ond Procedures, September 8, 1993, Bethesda, MD (2 p.m.—4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS matters the release of which would represent a clearly unwarranted invasion of personal privacy.

401st ACRS Meeting, September 9–11, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Proposed Rulemoking on the Frocture Toughness Requirements for Reoctor Pressure Vessel (RPV)—Revisions to 10 CFR 50.61, Appendix G ond Appendix H, ond o New Rule on Thermol Anneoling (10 CFR 50.66)*—Review and comment on the proposed rulemaking on the fracture toughness requirements for RPV for protection against pressurized thermal shock events. Also, review and comment on a new rule on thermal annealing of the RPV. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

B. *Proposed Priority Ronking of Generic Issues*—Review and comment on the priority rankings proposed by the NRC staff for a number of generic issues. Representatives of the NRC staff will participate.

C. *Proposed Generic Letter on Removal of Acceleroted Testing and Speciol Reporting Requirements for Emergency Diesel Generators from Plant Technicol Specifications*—Review and comment on the proposed generic letter on removal of accelerated testing and special reporting requirements for emergency diesel generators from plant technical specifications. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

D. *Proposed Guidelines for Digitol Instrumentotion and Control (I&C) Systems Upgrades*—Review and comment on the guidelines proposed by NUMARC for 10 CFR 50.59 evaluations of digital I&C systems upgrades. Representatives of the NRC staff and the industry will participate.

E. *SECY–93–143, "NRC Stoff Actions to Address the Recommendations in the Report on the Reossessment of the NRC Fire Protection Program"*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding SECY–93–143. Representatives of the industry will participate, as appropriate.

F. *Stotus of Individuol Plant Exominotion (IPE) Progrom*—Hear a briefing by and hold discussions with representatives of the NRC staff on the status of the IPE Program, including how generic issues are addressed in the IPE program. Representatives of the industry will participate, as appropriate.

G. *Periodic Meeting Between the ACRS and the Commissioners*—Meet with the Commissioners to discuss matters of mutual interest.

*H. *Insights Goined from Foreign Trips ond U.S. Military Sources regarding Digitol I&C Issues*—Hear a briefing by and hold discussions with representatives of the NRC staff regarding insights gained by the staff from its interactions with foreign regulatory authorities and nuclear utilities as well as U.S. military sources on digital I&C issues. This session will be closed to discuss foreign proprietary information per 5 U.S.C. 552b(c)(4) and classified national security information per 5 U.S.C. 552b(c)(1).

I. *Resolution of ACRS Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

*J. *Report of the Planning and Procedures Subcommittee*—Hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business. A portion of this session may be closed to public attendance pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

K. *ACRS Subcommittee Activities*—Hear reports and hold discussions regarding the status of ACRS subcommittee activities, including reports from the Subcommittees on Materials and Metallurgy, Mechanical Components, and Advanced Boiling Water Reactors.

L. *Future Activities*—Discuss anticipated and proposed Committee activities, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Thermol Hydraulic Phenomeno, September 21, 1993, Oregon State University (OSU), LaSalle Stewart Center, Corvallis, OR. The Subcommittee will continue its review of the Westinghouse integral systems test programs supporting the AP600 design certification effort. The meeting discussion will focus on the OSU integral systems test facility program.

Severe Accidents, September 22–24, 1993, Sheraton Portland Airport Hotel, Portland, OR. The Subcommittee will continue its review of the severe accident and PRA issues associated with the GE ABWR design certification effort.

Decay Heot Removol Systems, October 5, 1993, Bethesda, MD. The Subcommittee will review the proposed rule to address resolution of Generic Issue–23, "Reactor Coolant Pump Seal Failure."

Mechonicol Components, October 5, 1993, Bethesda, MD. The Subcommittee will discuss the status of the ongoing NRC and industry activities associated with motor-operated valves, check valves, butterfly valves, and other related matters.

Improved Light Woter Reoctors, October 6, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Safety Evaluation Report

for the EPRI passive LWR Utility Requirements document.

Planning and Procedures, October 6, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

402nd ACRS Meeting, October 7–9, 1993, Bethesda, MD. Agenda to be announced.

Advanced Boiling Water Reactors, October 26–27, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

Ad Hoc Subcommittee on Design Acceptance Criteria/Computers in Nuclear Power Plant Operations, November 2, 1993, Bethesda, MD. The Subcommittees will review Chapter 7, "Instrumentation and Control Systems" of the Standard Safety Analysis Report for the ABWR design and associated Design Acceptance Criteria/Inspections, Tests, Analyses, and Acceptance Criteria.

Safeguards and Security, November 3, 1993, Bethesda, MD. The Subcommittee will review the proposed SECY paper on Internal Threat and the Rulemaking Associated with Staff Recommendation for Protection Against Malevolent Use of Vehicles at Nuclear Power Plants. Portions of this meeting may be closed to discuss safeguards information.

Planning and Procedures, November 3, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

403rd ACRS Meeting, November 4–6, 1993, Bethesda, MD. Agenda to be announced.

Advanced Boiling Water Reactors, November 16–17, 1993, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

ABB–CE Standard Plant Designs, December 8, 1993, Bethesda, MD. The Subcommittee will begin its review of the Standard Safety Analysis Report for the ABB–CE System 80+ design.

Planning and Procedures, December 8, 1993, Bethesda, MD (4 p.m.–6 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

404th ACRS Meeting, December 9–11, 1993, Bethesda, MD. Agenda to be announced.

Advanced Boiling Water Reactors, January 25–26, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on ABWR issues for consideration by the full Committee.

ACNW Full Committee and Working Group Meetings

57th ACNW Meeting, September 29–30, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. Review and comment on the Low-Level Waste Performance Assessment Program. Representatives of the NRC staff will participate.

B. Continue preparation of the ACNW Strategy Implementation Issues Paper.

C. Hear a report from the Chairman on the National Academy of Sciences Workshop on EPA Standards held in Las Vegas, NV. Representatives of the NRC staff will participate, as appropriate.

D. Discuss activities related to the upcoming ACNW visit to the proposed Yucca Mountain repository site during October 1993.

E. Hear a report on the August 24, 1993, DOE/NRC Technical Exchange meeting on the Engineered Barrier Systems.

*F. Discuss anticipated and proposed activities, future meeting agenda, budget and organizational matters, as appropriate. Portions of this meeting may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

G. Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

ACNW Working Group on Characterization of the Unsaturated Zone Flow and Transport Properties Fracture vs. *Matrix Flow*, October 26, 1993, Las Vegas, NV. The Working Group will examine the relationships between precipitation, recharge, and flux through the unsaturated zone at the proposed Yucca Mountain site, and the adequacy of ongoing field studies to ascertain these relationships. Emphasis will be placed on the modeling of flow in the unsaturated zone, alternative conceptual models of fracture versus matrix flow, and conditions under which fracture flow can be shown to predominate. The Working Group will also focus on the recharge term in hydrogeologic models, alternative conceptual models for how and where regional recharge occurs, and the effect of assumptions about recharge on model results.

58th ACNW Meeting, October 27–28, 1993, Las Vegas, NV. Agenda to be announced.

59th ACNW Meeting, November 22–23, 1993, Bethesda, MD. Agenda to be announced.

60th ACNW Meeting, December 15–16, 1993, Bethesda, MD. Agenda to be announced.

Dated: August 12, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–19966 Filed 8–17–93; 8:45 am]

BILLING CODE 7590–01–M

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Tennessee

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Tennessee. The MOU provides the basis for mutually agreeable procedures whereby the State of Tennessee may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Tennessee. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the Federal Register Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective July 15, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the

NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Tennessee to provide data related to plant conditions during emergencies at commercial nuclear power plants in Tennessee.

Dated at Rockville, Maryland, this 9th day of August 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Tennessee and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Tennessee enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

The State of Tennessee/Division of Radiological Health (TDRH) recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. TDRH fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the "Tennessee Multi-Jurisdictional Radiological Emergency Response Plan."

III. Scope

A. This Agreement defines the way in which NRC and TDRH will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of Tennessee.

B. It is understood by the NRC and the State of Tennessee that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Tennessee or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Tennessee on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Tennessee authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Tennessee during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Tennessee. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring and ERDS workstation.

V. TDRH's General Responsibilities

A. TDRH will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, TDRH will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. TDRH agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

c. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the liaisons currently established between the State of Tennessee and the Tennessee Valley Authority (TVA) for the interpretation of technical information. Clarification of specific data related to the ERDS system will be pursued through the NRC. TDRH will not request clarification of ERDS data through the plant operators.

VI. Implementation

TDRH and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. TDRH and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and TDRH agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and TDRH will protect sensitive information to the extent permitted by the Federal Freedom of Information Act,

the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to TDRH by the NRC. TDRH may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, TDRH will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Director, Division of Radiological Health. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and TDRH staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and TDRH will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: July 1, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: July 15, 1993.

For the State of Tennessee.

Michael H. Mobley,

Director, Division of Radiological Health.

[FR Doc. 93-19971 Filed 8-17-93; 8:45 am]
BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 26, 1993, through August 6, 1993. The last biweekly notice was published on August 4, 1993 (58 FR 41499).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve 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 basis for this proposed determination for each amendment request is shown below.

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.

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 before action is taken. Should the Commission take this action, it will publish in the **Federal Register** 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.

Written comments may be submitted by mail to the Rules Review and Directives 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. Federal workdays. 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 a hearing and petitions for leave to intervene is discussed below.

By September 17, 1993, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 for the particular facility involved. 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 Commission 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 a 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 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 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 petitioner 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 participate 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 amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 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) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (**Project Director**): 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a 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 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 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 for the particular facility involved.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 22, 1993

Description of amendment request: The amendment will revise the Technical Specifications (TS) to include an Augmented Erosion/Corrosion Program for the piping in the auxiliary feedwater (AFW) building and related piping as committed to in Connecticut Yankee Atomic Power Company's (CYAPCO's) letter dated December 24, 1991. The existing program of weld inspections (augmented In-service Inspection Program) is being removed in lieu of this new Erosion/Corrosion program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

CYAPCO has reviewed the proposed change in accordance with 10 CFR 50.92 and has concluded that the change does not involve a significant hazards consideration. The bases for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

This proposed change will modify the technical specifications to incorporate an augmented inspection and testing methodology which will continue to monitor the steam-supply piping to the Terry turbines and to the atmospheric steam-dump valves. The purpose of the new augmented Erosion/Corrosion Program is to reduce the probability of a HELB due to potential erosion/corrosion degradation by performing piping inspections on the piping in question. The consequences of a HELB remain unchanged.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The potential for an unanalyzed accident is not created since there are no changes in the way the plant is operated. The testing methodologies that CYAPCO proposes on using are permitted for use by the NRC Staff. These testing methodologies will replace existing test methodologies which the NRC Staff has indicated did not adequately substantiate piping integrity. The new methodology, which was discussed in general terms with the NRC Staff, will, we believe, identify piping that may experience erosion/corrosion.

3. Involve a significant reduction in margin of safety.

This change fulfills the intention of the NRC Staff request and our commitments: it will contribute to reducing the probability of HELBs due to erosion/corrosion degradation in the AFW building by the performance of examinations. It also reduces the probability of a single-piping failure in the auxiliary steam piping resulting in a common-mode failure of the AFW system. Since this proposed change alters inspection requirements to the technical specifications, it continues to contribute to the safety of the plant. The augmented ISI Program did detect welding flaws on the 3-inch steam-supply piping to the Terry turbines which would not have been included in the scope of the 10-year ISI Program. However, the augmented Erosion/Corrosion Program will also inspect this steam supply piping which would normally be excluded for the regular Erosion/Corrosion Program. Therefore, the margin of safety is maintained by including piping which would have been excluded from the normal inspection programs. Further, since the proposed change does not negatively impact any accident previously analyzed or create any new accidents, there is no reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: July 19, 1993

Description of amendment request: The proposed amendment would change the reporting requirement for effluent releases from semiannual to annual. This change is consistent with the revision to 10 CFR 50.36a(a)(2) which was published in the **Federal Register** on August 31, 1992 (57 FR 39358).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the proposed change involve a significant increase in the probability of consequences of an accident previously evaluated?

The proposed change does not affect the probability or consequences of an accident. The proposed change is to the Administrative and Radiological Effluent Releases sections of the Facility Technical Specifications, and is administrative in nature.

All the proposed changes reflect the revision to 10 CFR 50.36a(a)(2) which were published in the Federal Register on August 31, 1992. The Revision changes the reporting requirement for effluent releases from semiannual to annual, with a specified time between reports not to exceed 12 months.

The change will only affect the content of the radioactive effluent report by including four quarters (12 months) instead of two quarters (6 months). The total released for the period of the report will be 12 months instead of 6 months.

2. Will the proposed change(s) create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed change is required to implement the change to 10 CFR 50.36a(a)(2) and [is] administrative in nature. Neither the material condition of the facility nor the accident analyses are affected by this proposed change. Therefore, the proposed change does not create the possibility of a different type of accident than previously evaluated.

3. Will the proposed change involve a significant reduction in the margin of safety?

No radioactive effluent release limits have changed. This change reflects a reporting period of 12 months instead of 6 months and is only administrative.

Therefore, the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: William M. Dean, Acting

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 28, 1989, as supplemented May 1, 1991, September 26, 1991, March 18, 1992, August 24, 1992, August 28, 1992, and May 19, 1993.

Description of amendment request: The proposed amendment would add new operability requirements, action statements, and surveillance requirements to assure the availability of shutdown cooling to the Primary Coolant System (PCS) during certain operational conditions. Specifically, the proposed amendment would (1) add new Technical Specifications (TS) Sections 3.1.9 and 3.7.3, (2) add new surveillance item 14 to Table 4.2.2, (3) revise related TS affected by restricting operation of the Shutdown Cooling System (SDCS) to when PCS temperature is less than or equal to 300°F, and (4) revise appropriate Bases pages.

Proposed TS Section 3.1.9 adds shutdown cooling equipment operability requirements for the PCS and SDCS when fuel is in the reactor and the PCS temperature is less than or equal to 300°F. Proposed Section 3.7.3 identifies the electrical system requirements to permit shutdown cooling systems and equipment to be operable whenever PCS temperature is less than or equal to 300°F. Proposed Item 14 to Table 4.2.2 adds a surveillance to verify that the shutdown cooling requirements of Section 3.1.9 will be maintained. The above proposed changes increase the range of PCS temperatures over which the steam generators and associated equipment

must be operable and add definitions and operability requirements for the SDCS systems. These proposed changes integrate various requirements and guidance from Combustion Engineering (CE) Standard Technical Specifications (STS), CE Restructured STS, NRC Generic Letter 88-17, and specifics of the Palisades SDCS design configuration. The June 28, 1989, application was initially noticed in the **Federal Register** on March 7, 1990 (55 FR 8221).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because they only add operability and surveillance requirements to the TS to assure continued availability of shutdown cooling to the reactor. The proposed requirements are in conformance with those specified in the Palisades Final Safety Analysis Report (FSAR) and reflect current analyses of postulated accidents and operating practices. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they do not affect the material condition of the plant nor the manner in which the facility is operated. The proposed changes are consistent with Standard Technical Specifications, in conformance with the Palisades FSAR, take into consideration the specifics of the Palisades SDCS design configuration, and reflect current analysis and operating practices. Therefore, no new or different kind of accident is created.

3. The changes do not involve a significant reduction in a margin of safety because the proposed changes do not affect the manner in which the facility is operated or involve changes to equipment or features which affect the operational characteristics of the facility. Therefore, the proposed changes would not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: William M. Dean, Acting

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 24, 1993

Description of amendment request: The proposed amendment would modify Technical Specification (TS) surveillance requirement 4.6.1.2 which requires, in part, that if two consecutive periodic Type A containment leak rate tests fail to meet the applicable acceptance criteria, a Type A test shall be performed at least every 18 months until two Type A tests meet the acceptance criteria, at which time the normal schedule (3 times during a 10-year interval) is resumed. The licensee proposes a one-time exemption from this accelerated test frequency, based on corrective actions to be taken for the Type A test failures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change provides a schedular exemption to the increased frequency testing requirements contained in Fermi 2 [TS] 4.6.1.2 for the primary containment Integrated Leak Rate Test. The change does not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

This change allows the submittal of a Corrective Action Plan (CAP) as an exemption to Appendix J requirements for NRC Staff review in lieu of more frequent Type A tests. The approval of a CAP as an alternative, will adequately maintain containment leakage surveillance requirements and overall containment integrity. Therefore, this change cannot increase the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

It has been determined that a new or different kind of accident will not be possible due to this change. Since there are no changes in the way the plant is operated, the potential of an unanalyzed accident is not created. No new failure modes and no new testing methodologies are introduced.

3. Involve a significant reduction in a margin of safety.

Plant [TS] including an NRC-approved CAP ensure that the containment's margin of safety is maintained. The CAP, for penetrations determined to be the cause of the failure of the "As-Found" ILRTs [Integrated Leak Rate Tests], will provide added assurance that containment integrity will be maintained without the need for additional ILRTs. Moreover, before Detroit Edison may utilize the proposed alternative, its CAP must be formally approved by the NRC Staff as an exemption to Appendix J, pursuant to 10CFR50.12. Thus, the addition of a CAP, as an alternative to increased Type A test frequency, will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: William M. Dean, Acting

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: July 29, 1993

Description of amendment request: The proposed amendment would provide an updated laboratory testing standard for surveillance testing of representative activated charcoal samples from the Control Room Emergency Filtration (CREFS) and Standby Gas Treatment Systems (SGTS) Also, the proposed amendment would modify the Action Requirements for inoperability of a CREFS filter train. This proposed amendment supersedes the licensee's previous amendment request dated January 29, 1992 which was noticed in the **Federal Register** on April 28, 1993 (58 FR 25853).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change provides an updated standard for laboratory analysis of representative charcoal samples from filter units in the "...(SGTS) and the...(CREFS) [and]... The proposed change to modify the action requirements during shutdown conditions to allow fuel handling and core alterations during charcoal replacement and duct leakage surveillance testing...[do not]:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

By providing an improved procedure for charcoal analysis the proposal provides greater assurance that the installed charcoal can perform its design function and, thus, the consequences of evaluated accidents are valid. The method of laboratory analysis has no effect upon how the plant is operated, including the method of sample removal. Therefore, the probability of any evaluated accident is unchanged. The proposed [change to the] action requirement recognizes that the potential radiological source term due to a fuel handling accident is significantly less than the CREFS design source term. Allowing fuel handling when the CREFS charcoal filtration capability is lost does not result in a significant increase in consequences for the fuel handling accident (FHA) since adequate protection is maintained using the required to be operable SGTS subsystem. The evaluation of a FHA under the proposed action requirement determined that a control room thyroid dose of 1.37 rem would result. This is less than the current evaluation of the FHA which concludes that the FHA is bounded by the more severe loss-of-coolant accident during power operation scenario which has an evaluated thyroid dose of 7.1 rem. The change does not affect system operation and thus does not increase any accident probability.

(2) Create the probability of a new or different kind of accident from any accident previously evaluated.

As described in (1) above, the proposal has no effect on the manner of plant operation. The proposal does not involve any change to the plant design. Therefore, the change creates no new accident modes.

(3) Involve a significant reduction in a margin of safety.

By providing an improved procedure for charcoal analysis, the proposal acts to maintain existing safety margins. [With respect to the change in action requirements], since adequate protection is maintained by continuing to meet the standards of General Design Criterion 19, safety margins are not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: William M. Dean, Acting

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 20, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) of the Turkey Point Units 3 and 4 relating to the implementation of the revised requirements of Title 10 Code of Federal Regulations (CFR) Part 20 which became effective June 21, 1991. Specifically, TS 1.0 "Definitions," 3/4.3.3 "Monitoring Instrumentation" relating to radiation, 3/4.11 "Radioactive Effluents," 5.0 "Design Features" and 6.0 "Administrative Controls" would be revised. Consistent with 10 CFR Part 20, the proposed TS changes would revise:

(a) concentration limits for liquid effluent releases

(b) dose measurement distance, and controls for very high radiation areas

(c) certain definitions, references and the site area map

(d) administrative controls for recordkeeping

(e) frequency of reporting the quantity of liquid and gaseous effluents released to unrestricted areas and solid waste releases (shipped for burial or disposal) from semiannual to annual basis.Applicable surveillance requirements and TS Bases would also be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being proposed to facilitate implementation of the new 10 CFR Part 20 requirements or revise the reporting frequency for the Radiological Effluent Release Report are either administrative in nature or are necessary for operational flexibility. Compliance with the limits of the new 10 CFR Part 20 will be demonstrated by operating within the limits of 10 CFR 50, Appendix I and 40 CFR 190. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Also, the proposed changes do not affect any assumptions or conditions in any of the Updated Final Safety Analysis Report (UFSAR) accident analyses. Since the UFSAR accident analyses remain bounding, their radiological consequences are not adversely affected.

Therefore, the probability or consequences of an accident previously evaluated are not affected.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed to facilitate implementation of the new 10 CFR Part 20 requirements or revise the reporting frequency for the Radiological Effluent Release Report are administrative in nature, or are required for operational flexibility. Compliance with the limits of the new 10 CFR Part 20 will be demonstrated by operating within the limits of 10 CFR 50, Appendix I and 40 CFR 190. They do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor has any new limiting single failure been identified as a result of the proposed changes.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The changes being proposed to facilitate implementation of the new 10 CFR Part 20 requirements or revise the reporting frequency for the Radiological Effluent Release Report are administrative in nature, or are required for operational flexibility. Compliance with the limits of the new 10 CFR Part 20 will be demonstrated by operating within the limits of 10 CFR 50, Appendix I and 40 CFR 190. The changes in measurement distances for the determination of high radiation areas will not result in an increase in individual or cumulative occupational radiation exposure since it will result in more conservative identification of high radiation areas. Margins of safety as discussed in the Technical Specification BASES are not affected by these changes.

Therefore, a significant reduction in a margin of safety would not be involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 18, 1993

Description of amendment request: The proposed amendment would change Clinton Power Station (CPS) Technical Specifications (TS) 6.2.3.1, "Independent Safety Engineering Group (ISEG) Function;" 6.2.3.4, "ISEG Records;" 6.4.1, "Training;" and 6.5.2.2, "Nuclear Review and Audit Group (NRAG) Composition." The amendment proposed editorial changes that reflect administrative/organization changes which have occurred at CPS. The amendment also included a proposed title change to correct a position title from "Director-Nuclear Training" to "Director-Operations Training."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes are of an administrative or editorial nature. Since these are changes which do not impact plant design or operation, they cannot increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are editorial only and do not affect the plant design or operation. No new failure modes are introduced by changes of this nature, and as a result, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes only involve corrections to position titles or the removal of extraneous information. They do not alter the duties, responsibilities, or required qualifications associated with the affected positions or the affected review groups (ISEG and NRAG). An equivalent level of safety and effectiveness is maintained, and, in addition, the proposed changes do not alter the plant design or operation. As a result, the proposed changes cannot reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 18, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by clarifying TS wording for the Low Pressure Coolant Injection (LPCI) and Containment Spray modes of the Residual Heat Removal (RHR) system to assure consistency with requirements of the DAEC Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The probability or consequences of a previously-analyzed accident will not be increased by these proposed changes to the LPCI and Containment Spray LCOs and BASES because they merely clarify existing TS requirements and are consistent with the DAEC UFSAR accident analysis. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG-1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no opportunity exists to increase the probability or consequences of a previously-analyzed accident.

2) The possibility of a new or different kind of accident from those previously analyzed will not be created by these changes to the LPCI and Containment Spray LCOs and BASES because they merely clarify existing requirements. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG-1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no possibility exists to introduce a new or different kind of accident.

3) The margin of safety will not be decreased as a result of these changes because they merely clarify existing TS requirements and are consistent with the UFSAR accident analysis. The addition of the footnote clarifying LPCI OPERABILITY during RHR system operation in the Shutdown Cooling mode is consistent with the requirements in the NRC Standard TS (NUREG-1433). No changes in either system design or operating strategies will be made as a result of these changes, thus no possibility exists to reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 18, 1993

Description of amendment request: Technical Specification (TS) 6.2.3, Independent Safety Engineering Group (ISEG), requires the establishment of a separate organization composed of at least five full-time engineers who are dedicated to performing independent technical reviews. The proposed amendment would revise TS 6.2.3 to delete the requirement to maintain a five-person organization, and require that the technical reviews be performed by personnel who are independent of the plant management chain.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change does not affect the operation of the plant, nor revise any plant design, configuration, or procedure related to the operation of the plant. The proposed change affects only the requirements for an organizational composition, and does not have any effect upon the radiological consequences of an accident previously evaluated.

B. The change does not create the possibility of a new or different kind of accident from any accident previously

evaluated (10 CFR 50.92(c)(2)) because it does not affect the plant design, nor the way plant equipment is operated. The change does not affect equipment reliability, nor revise the requirements for maintenance or repair. The change does not have the potential to introduce any new failure mechanism.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because it does not alter the design or operation of any plant system structure or component, nor change the manner in which any plant system is operated. The proposed change modifies an existing administrative requirement that is not referenced in the bases of any Technical Specification to define or establish a margin of safety for the operation of the plant.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110-2624.

NRC Project Director: John F. Stolz

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 18, 1993

Description of amendment request: The proposed amendment would modify the Seabrook Station Technical Specifications (TS) to reduce the frequency of surveillances that are required to verify the integrity of the Condensate Storage Tank (CST) Enclosure. Specifically, surveillance requirement TS 4.7.1.3 would be changed to require verification of CST Enclosure integrity every 18 months instead of every 12 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change does not affect the operation of any active component. The CST Enclosure is designed to ensure the availability of the CST water volume following the rupture of the CST by a tornado generated missile entering the top of the CST.

The CST Enclosure and its seals are passive devices and are not subject to transient or cyclical forces from the normal operation of the plant. The most likely failure mode for the penetration seals is long term degradation due to aging. The CST Enclosure 18 month inspection will be more comprehensive than the current inspection and may be more effective in identifying long term degradation.

The proposed change will not affect the probability of a tornado-induced accident. The failure of the CST Enclosure during this accident sequence is itself improbable due to the relatively low hydrostatic pressure in the vented CST. The proposed revision to the CST Enclosure integrity verification apparently will not significantly increase the probability or consequences of a tornado-induced accident sequence.

Therefore, it appears that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the proposed change does not affect the design, properties, or function of the CST Enclosure nor will it affect the ability of the CST Enclosure to perform its design safety function.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed change does not modify the plant nor revise any aspects of plant operation or operating procedures. The proposed change does not invalidate any assumptions nor accident analyses presented in Chapter 6 and 15 of the UFSAR. The proposed change does not affect the integrity of the CST Enclosure and does not revise its capabilities. The change does not revise the conclusions reached in the bases for Technical Specification 3/4.7.1.3, Condensate Storage Tank, nor the description of the Enclosure's functions as described in UFSAR Section 3.8.4.1.g.

Based on this review, it appears that the three criteria of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Grey, One International Place, Boston Massachusetts 02110-2624

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 30, 1993

Description of amendment request: The amendment increases the volume requirements of the boric acid storage system of Technical Specification 3.1.2.6 in order to meet the requirements of the redesigned core for Cycle 5 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, NNECO has reviewed the attached proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Cycle 5 reload core design meets all applicable design criteria and ensures that all pertinent licensing basis acceptance criteria are met. The demonstrated adherence to these standards and criteria precludes new challenges to components and systems that could: (a) adversely affect the ability of existing components and systems to mitigate the consequences of any accident and/or; (b) adversely affect the integrity of the fuel rod cladding as a fission product barrier. Furthermore, adherence to applicable standards and criteria ensures that these fission product barriers maintain the design margin of safety.

This is a change to the technical specifications only. There are no hardware changes (i.e, the tanks are designed to accommodate the new limit) associated with the proposed change and no change to the functioning of any equipment which could affect any accident precursors. Therefore, the probability or consequences of any previously evaluated accident is not significantly increased.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change reflects the revised [Reloading Safety Evaluation] RSE. There are no hardware changes associated with it and no change to the functioning of any equipment which could introduce new or unique accident precursors. All design and

performance criteria will continue to be met and no new single-failure mechanisms have been created as documented in the RSE, nor will they cause the core to operate in excess of pertinent design basis operating limits. Therefore, the possibility of an accident of a different type than any previously evaluated in the FSAR has not been created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The RSE documents that the margin of safety, as defined in the Bases to the Millstone Unit 3 Technical Specifications, is not reduced. The Cycle 5 reload core redesign meets all applicable design criteria and ensures that all pertinent licensing basis acceptance criteria are met. It has been determined that the Millstone Unit No. 3 VANTAGE 5H reload design and safety analysis limits remain applicable, and that these limits are supported by the applicable Millstone Unit No. 3 Technical Specifications for Cycle 5.

This change is more restrictive in that it increases the volume requirements for the boric acid storage system in Modes 1 through 4. This change is necessary to support Cycle 5 operation prior to initial entry into Modes 1 or 2. However, the current analysis of record remains bounding with this proposed change in place. Therefore, the change will not affect any of the plant's safety analysis and will have no impact in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: July 29, 1993

Description of amendment requests: The proposed amendments would incorporate a reference to the revised methodologies described in WCAP-13677 and NSPNAD-93003 into the Prairie Island Technical Specifications (TS) so the model revisions can be used in the determination of the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed administrative change to [TS] Section 6.7.A.6.b incorporates references to revised core analysis methodology reviewed and approved by the NRC Staff. Because the proposed change is administrative in nature and because the revised methodology referenced in the change will have prior NRC review and approval, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

As stated above, the proposed change does not contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operations will be altered as a result of the proposed changes. The cycle-specific core operating limits will be calculated using the revised NRC-approved methods and submitted to the NRC. The [TS] will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The margin of safety is not affected by the addition of references to NRC approved core analysis methodology to the [TS]. The margin of safety provided by the current [TS] remains unchanged. The [TS] continue to require operation within the core limits obtained from NRC-approved reload design methodologies. The actions to be taken when or if limits are violated remain unchanged.

Therefore, the proposed changes are administrative in nature and do not impact the operation of the plant in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: William M. Dean, Acting

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 6, 1993 (Reference LAR 93-03)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to relax the slave relay test frequency for slave relays K612A, K614B, K615A, and K615B from quarterly to once per 18 months during refueling or extended cold shutdowns. The specific TS change proposed is as follows: Technical Specification (TS) 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements," would be revised to add Table Notation 3. The notation would relax the slave relay test frequency for slave relays K612A, K614B, K615A, and K615B from quarterly to at least once per 18 months during refueling or extended cold shutdowns. The affected slave relays cause isolation of the charging and letdown portions of the chemical and volume control system, and actuate charging pump suction valves associated with volume control tank and refueling water storage tank isolation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The changes proposed eliminate charging and letdown thermal and hydraulic transients not anticipated when the system was designed. Additionally, reactivity transients are reduced. The relaxed surveillance frequency does not significantly increase the chances of a slave relay failure, since generic problems with slave relays would be identified through the testing of the other slave relays at DCPP.

A PRA [probablistic risk assessment] was performed to quantify the increase in the CDF [core damage frequency] as a result of the relaxed test frequency. The PRA demonstrated that the CDF associated with testing slave relays K612A, K614B, K615A, and K615B on an 18-month frequency is not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the

probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Extending the surveillance testing frequency for the previously described relays does not introduce any new component into the facility, change the operating methodology of the plant, or result in changes to parameters governing plant operation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The increased surveillance frequency for the previously described relays will result in a longer operational period without testing the described relays and valves. However, the proven, high reliability of the currently installed slave relays assures that there is an insignificant effect on the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 7, 1993 (Reference LAR 93-04)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to change TS 5.1.3 "Map Defining Unrestricted Areas and Site Boundary for Radioactive Gaseous and Liquid Effluents," to be consistent with a recent interpretation of the restricted area definition in 10 CFR 20. Specifically, TS 5.1.3 would be revised to remove two references to a restricted area.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

A change to the defined restricted area has no affect on any plant operating parameters. Consequently, a change to the defined restricted area will not affect the probability or consequences of an accident occurring.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revision to the DCPP TS is administrative in nature. Further, the proposed changes would not result in any physical alteration to any plant system, and there would not be a change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed revision to the DCPP TS does not affect the margin of safety of any accident analysis since it does not affect the parameters for any accident analysis, and has no effect on the current operating methodologies or actions which govern plant performance.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 7, 1993 (Reference LAR 93-05)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to change the gaseous effluent limit of TS 6.8.4.g., "Radioactive Effluent Controls Program," and the Bases for TS 3/4.11.1.4, "Liquid Holdup Tanks," due to recent revisions to 10 CFR 20. The specific TS changes proposed are as follows: (1) The proposed administrative change to the Bases for TS 3/4.11.1.4 would change the basis for the radioactive material concentration of the liquid holdup tanks from less than the limits of 10 CFR 20, Appendix B, Table II, Column 2 to less than the limits of 10 CFR 20.1001 - 20.2401, Appendix B, Table 2, Column 2.(2) The proposed administrative change to TS 6.8.4.g.3) would change the reference from 10 CFR 20.106 to the equivalent section, 10 CFR 20.1302, in the revision to 10 CFR 20. (3) The proposed changes to TS 6.8.4.g.7) would specify the dose rate for noble gases as less than or equal to 500 millirem (mrem) per year to the whole body, and less than or equal to 3000 mrem per year to the skin. The dose rate for Iodine-131, Iodine-133, tritium, and all particulates with half lives greater than 8 days would be less than or equal to 1500 mrem per year to any organ.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the gaseous effluent release limits maintains the release limits at their current level. The proposed change will not alter the type or amount of effluents discharged, and will have no effect on any DCPP parameter.

The change to the reference to 10 CFR 20 is administrative and will have no effect on plant systems or operating methodology.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes would not result in any physical alteration to any plant system, and there would not be a change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed changes only maintain the limits on which the plant has operated in the past. No actual change in any DCPP

parameter would occur. Consequently, the changes do not effect the margin of safety of any accident analysis since the parameters are not affected. Additionally, the changes have no effect on the current operating methodologies or actions which govern plant performance.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 21, 1993

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) requirements for testing the Safety/Relief Valves (SRVs). Currently, the TSs require that at least one half of the SRVs be removed, set pressure tested, and reinstalled or replaced at least once-per-18-months such that all of the SRVs are tested at least once-per- 40-months. The licensee is proposing to revise the TSs such that only the pilot stage portions of the SRVs are required to be removed and tested at the specified frequencies, and will require the main (mechanical) stage portion of the SRVs to be setpoint tested at least once per 5 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specifications (TSs) currently require that one-half of the safety/relief valves (SRVs) be tested at least once per 18 months, and that they be rotated such that all 14 SRVs are tested at least once per 40 months. This requirement was incorporated into the Hope Creek TSs based upon the recommendations of General Electric Service Information Letter (SIL) 196, which was issued to address concerns relative to upward setpoint drift resulting from potential malfunctions in the pilot stage of the SRVs. PSE&G believes that the mechanical stage of the SRVs has proven to be highly reliable and need not be subject to these requirements. We are therefore proposing that the mechanical stage portion of the SRVs be tested at least once every 5 years. The pilot stage of the SRVs will continue to be tested in accordance with the recommendations of SIL 196. PSE&G believes that these proposed testing requirements will not significantly affect the reliability of the SRVs and will continue to ensure adequate capability of the SRVs to perform their intended safety functions. We therefore believe that the proposed changes will not significantly increase the probability or consequences of a previously analyzed accident.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not involve any hardware or logic changes, nor alters the way in which any plant system is operated; therefore, there are no new possibilities or types of accidents introduced.

3. Will not involve a significant reduction in a margin of safety.

As discussed in Criterion 1 above, the proposed testing frequency and applicability will provide a comparable degree of assurance that the SRVs will be capable of performing their intended function. In addition, the implementation of the proposed amendment will result in a reduction of radiological exposure of plant personnel and provide an enhancement to personnel safety. We therefore believe that the proposed change will not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 6, 1991, September 20, 1991, December 19, 1991, January 31, 1992, August 19, 1992, and April 28, 1993. The March 6, 1991, request was previously noticed (56 FR 31441 dated July 10, 1991). This notice supersedes that previous notice.

Description of amendment request: The amendment request modifies Technical Specification (TS) Sections 3/4.8.1.1 and 3/4.8.1.2 and the associated Bases Section for Salem, Units 1 and 2. It incorporates guidance of Generic Letter 84-15 with regard to modified surveillance testing and operability requirements to improve diesel generator reliability. It also includes changes outside the scope of the Generic Letter, based on the operating experience and accepted industry practice, intended to improve the TS regarding A.C. power sources.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. do not involve a significant increase in the probability or consequences of an accident previously evaluated. Reducing the test frequency while in an action statement and modifying Emergency Diesel Generator (EDG) starting and loading requirements is intended to enhance diesel reliability by minimizing repetitive testing and facilitating testing in accordance with the manufacturer's recommendations. The proposal to eliminate Action Statement operability testing for a diesel inoperable because of preventive maintenance or pre-test inspection will facilitate the performance of activities to enhance overall EDG reliability.

The proposed changes to EDG test loads will continue to demonstrate the ability of the EDG's to respond to loading conditions, consistent with the manufacturer's ratings. Using the proposed basis for determining test frequency according to individual diesel generator performance will prevent overtesting of the diesels because it would increase the test frequency of only those diesels which have an increase in failure rate.

The changes proposed to make the Unit 1 EDG surveillance requirements identical to that of Unit 2 is a conservative change; it will provide Unit 1 with a more comprehensive testing program. The proposed changes will continue to assure availability of the diesels and should serve to enhance EDG reliability and consequently the overall safe operation of the Salem Generating Station.

2. do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change affects testing frequency, starting and loading practices only and has no impact on the accident analysis. No new operating modes or equipment are introduced which could initiate or affect the progression of an accident.

3. do not involve a significant reduction in a margin of safety. The changes in the testing requirements do not adversely affect the capability of the diesels to perform their required function. The purpose of the proposed changes is to increase the overall reliability of the diesels. In adopting many of the suggestions identified in GL 84-15, the requested change would implement actions

which have been determined by the NRC to reduce the risk of core damage from station blackout events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 11, 1993, and supplemented by letter dated July 19, 1993

Description of amendment request: The proposed amendment reduces the boron concentration in the boric acid storage tank from 12 percent by weight to between 3.75 and 4 percent by weight. The reduced boron concentration results in eliminating the need for heat tracing in the boric acid tank piping systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The reduction of the boric acid concentration in the boric acid tanks (BAT) and elimination of requirements for the associated heat trace circuits will not significantly increase the probability or consequence of an accident previously evaluated. Only minor modifications are planned, and while operating procedures will be revised to reflect the new boration method, the capability to safely shut down has not been changed or modified. TS controls have been placed on the boric acid tank to ensure that the lack of heat tracing does not result in the boron precipitating out of solution. Originally, Salem had the ability to borate at 10 gallons per minute (gpm) with boron solution of 20,000 parts per million (ppm). With the proposed change, Salem will provide the ability to borate at 33 gpm with a solution of between 6,560-ppm to 6,990-ppm boron. This will ensure that the boron addition rate remains essentially the same. In addition, boron addition from the BAT is not taken credit for in any accident analysis.

Two independent and redundant boration flow paths with appropriate borated water are provided to compensate for reactivity changes and all expected transients throughout core life. The sources of borated water are the BATs and the Refueling Water Storage Tank (RWST). The RWST is necessary for ECCS [emergency core cooling system] requirements. The current Technical Specification Bases covers using feed and bleed from the RWST [or the BAT]. [The licensee's analysis has shown that the borated water from a BAT and additional make-up from either the second BAT and/or batching, or the RWST will provide the required volume and boration.]

The existing boric acid tank heaters, with the BAT pumps on recirculation, will ensure that there is no precipitation of boric acid in the majority of the safety related portion of the boric acid injection system. This includes the boric acid tanks, the BAT pumps, and most of the process lines.

The exception is on the injection paths between the BAT pump recirculation line and the suction line to the charging pumps. A 4% [6990 ppm] boric acid solution will not cause line blockage even with the temperatures well below 50° F. At 50° F, [12.5% (875 ppm)] or less, of the [4%] boric acid [solution] will precipitate out creating a small film at the bottom of the piping. Since this portion of the flowpath does not contain a significant amount of 4% boric acid solution, there is no significant amount of boron precipitating out. Also, this film will not adhere to the piping and will not cause the blockage of the flow path. When ambient temperature is restored, the film will go back very quickly into solution. Based upon this analysis, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new of different kind of accident from any previously evaluated.

The original Salem design required heat trace circuits to ensure the boron, which was at 12% by weight, would remain in solution and be available for reactor coolant system reactivity control throughout core life. By lowering the boron concentration to 3.75 to 4.0 percent by weight, there is no possibility of boron precipitating out of the solution as long as the boric acid solution remains above 58°F. The auxiliary building, where this equipment is located[,] normally remains well above 58°F. Continuous monitoring of the required area temperatures, in conjunction with an alarm in the main control room, will allow for operator actions to ensure the solution temperature remains above the TS-required temperature of greater than or equal to 63°F. By eliminating the need for the heat trace, there is an increase in the availability of the boric acid storage system. This stored volume remains adequate to bring the unit to a safe, cold shutdown. Therefore, the removal of requirements for heat trace circuits and the reduction of the boron concentration in the BATs do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The margin of safety requirements is not affected by the removal of the heat trace circuits and reduction of the boric acid concentration in the BATs. The required flow paths and borated water sources are still available as before. The required quantity of borated water is still available based upon the new evaluation, and the ability to deliver this borated water remains the same. As stated previously, the reduction of the boric acid concentration in the BATs will ensure that the boric acid remains in solution at the normal room temperature in the auxiliary building. To ensure this, temperature will be continuously monitored at the control room. With the above changes, there will be a net improvement in system reliability and, accordingly, the proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: August 24, 1992, as revised December 17, 1992, March 4, 1993, and April 29, 1993

Description of amendments request: The amendments would revise the Technical Specifications to implement the revision to 10 CFR Part 20, Standards for Protection Against Radiation.

The licensee's March 4, 1993, letter revises Proposed Change 5 of the August 24, 1992, submittal. Specifically, the revision of the prior proposal pertains to gaseous effluent release rates which would be revised to maintain the current instantaneous dose rate limits contained in the Technical Specifications. This amendment was previously noticed on September 30, 1992 (57 FR 45089).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes will facilitate the implementation of the new 10 CFR 20 requirements. Compliance with other applicable regulatory requirements will continue to be maintained. Also, the proposed changes do not alter the conditions or assumptions in any of the Final Safety Analysis Report (FSAR) accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amount of gaseous effluent released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not involve any change in the methodology that will be used in the radiological effluent monitoring of gaseous releases since current technical specification requirements will continue to be employed. Accordingly, the methodology that will be used in the control of gaseous effluents will remain unchanged. Additionally, annual doses will be limited to the doses specified in 10 CFR 50, Appendix I and 40 CFR 190. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 30, 1993

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Technical Specifications (TS) Section 6 to replace the requirements associated with the Boron Dilution Mitigation System (BDMS) with alarms, indicators, procedures, and controls to assure proper resolution of potential boron dilution events. The proposed changes include revisions to the Technical Specifications (the removal of the BDMS); the addition of alarms and indicators; a change to the normal plant lineup; and procedural enhancements. Because these changes relate to an alternative method of addressing postulated boron dilution events, the changes are presented for approval in a single package.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The only event potentially impacted by the proposed change is the inadvertent boron dilution event. The discussion of the probability and consequences of an inadvertent boron dilution event at CPSES is provided in FSAR Section 15.4.6. Primarily, the proposed changes revise the method of detecting and mitigating the event. The only aspect of the changes that impact the potential causes of an inadvertent boron dilution event is the increased requirement to isolate potential dilution sources in MODES 3, 4, and 5. As a result, the overall probability of the event is slightly decreased.

The alternate methods to detect and mitigate this event achieve the same basic goal as the originally proposed BDMS - to prevent a return to critical during an inadvertent dilution event. Because the BDMS as installed could not be shown to always be successful and the proposed change results in a design that does prevent a return to critical, the proposed change represents an improved response to the event. Thus it can be concluded that there is no increase in the consequences of a postulated boron dilution event.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revisions to plant procedural requirements to either operate a reactor coolant pump or to isolate/control potential dilution sources does not create the potential for a new or different kind of accident because these new requirements are configurations which have always been allowed. Similarly, the new normal position for the letdown divert valve does not create a new or different accident because the new normal position has always been an allowed position. The other procedural changes only increase the plant operators' awareness of potential boron dilution problems or provide the steps needed to respond to available indications and alarms to mitigate the potential event. As a result, these procedural changes do not create the possibility of a new or different kind of accident.

The proposed changes also include addition of new redundant VCT [volume control tank] high level alarms and a new alarm indicating that the letdown divert valve is not in the "VCT" position. Because the alarms are passive, they do not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The design criterion and margin of safety for the previous BDMS was that the dilution event is terminated prior to the loss of all shutdown margin. The same criterion will be met following the implementation of the proposed changes. Therefore there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: May 21, 1993

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 Technical Specifications to replace the existing requirements for operation of the control room HVAC system with requirements for operation of the control room emergency filtration/ pressurization system and control room air conditioning system that are consistent with the requirements of the Westinghouse Standard Technical

Specifications (NUREG-1431) issued on September 28, 1992.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed changes have no impact on the probability of an accident. The control room ventilation systems are support systems which have a role in the detection and mitigation of accidents but do not contribute to the initiation of any accident previously evaluated.

The administrative changes (e.g., reorganizing the Technical Specifications by function) have no impact on the course of any accidents previously evaluated. Expanding the applicability to include movement of irradiated fuel assemblies and adding action requirements to suspend CORE ALTERATIONS and the movement of irradiated fuel assemblies are changes which improve the ability to mitigate fuel handling accidents.

Removing the action requirement in MODES 5 and 6 when one train is inoperable and the second cannot be powered from an operable emergency power source represents a slight decrease in the potential availability of the Control Room Emergency Filtration/ Pressurization System. However, due to the high reliability of the offsite power sources, the lack of any direct relationship between loss of offsite power and a fuel handling accident, and the capability of powering these systems from the other CPSES unit, the slight decrease in availability is not considered significant.

Specifying an allowed outage time (AOT) of 30 days for the heating and cooling of recirculated air while one train is inoperable and while each train is capable of 50% of load requirements (but not 100%), is based on the significance of the heating and cooling function but does represent an increase in AOT (from 7 days) and thus an increase in the probability that the functions could be unavailable. This increase is not considered significant based on several factors including: the design is based on the worst postulated meteorological conditions; generally, less than design cooling is required and a partial failure in the system may have no impact; an unavailability failure does not create an immediate irreversible impact (i.e., temperature will increase slowly over a period of time); the system could very possibly be restored or its loss mitigated without any impact on the course of whatever accident is being considered; and the extended AOT would allow more opportunity to perform major required maintenance and thus may provide an overall improvement in equipment reliability.

The new surveillance requirement to test the performance of the heating and cooling functions tends to improve the ability to detect long term degradation. Deleting the STAGGERED TEST BASIS for the heater surveillance and using actual actuation signals to test the automatic actual logic are expected to have little or no impact on system availability.

Overall, some of the proposed changes may increase the system's availability during an accident and others may decrease the system's availability. The net effect is not significant and, as a result, does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes do not involve any hardware or setpoint changes. System operation has not been changed to create new system configurations not previously allowed. As a result, even though the changes could have a minor impact on system availability and thus accident mitigation, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

None of the changes being proposed alters the environmental conditions which are to be maintained in the control room during normal operations and following an accident. As a result, the margin of safety for these functions remains the same. The only potential impact is the system's postulated availability, as discussed in response to question 1 above. As noted in that response, there is no significant impact on the accident analyses. Thus, even if system availability issues were considered an aspect of margin of safety, the proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: May 28, 1993

Brief description of amendment: The proposed amendment would revise the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 Technical Specifications to allow the use of certain NRC-approved methodologies, incorporate cycle-specific changes to the core safety limit curves and N-16 overtemperature reactor trip setpoints. In addition, the minimum required reactor coolant system (RCS) flow is increased, a previously imposed penalty on pressurizer pressure uncertainty is removed, and the uncertainty allowance for the N-16 power indication is increased.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

A. Revision to incorporate TU Electric's topical reports

The NRC assures that appropriate core operating limits are applied by requiring that the operating limits be determined using NRC approved analytical methods. These approved methods are listed in TS Section 6.9.1.6b. TU Electric has developed the in-house analysis capability to determine and confirm core operating limits. The TU Electric methodology has been documented in a series of TU Electric submittals which get approved by the NRC. This TS revision adds the TU Electric documents (which are NRC approved or will be approved prior to Unit 1, Cycle 4) to the list of acceptable methods.

Because the revision is administrative only, it cannot directly affect the probability or the consequences of any previously evaluated accident. The core operating limits are set to assure that relevant plant parameters are maintained such that potential accidents are within the bounds of the accident analyses. Because the applicable limits of the safety analysis will continue to be met, there is no significant impact on the consequences of an accident previously evaluated. In addition, since the core operating limits do not affect any accident initiators, the change has no impact on the probability of any accident previously analyzed.

B. Increase in Unit 1 Thermal Design Flow

This revision increases the Unit 1 Thermal Design Flow rate assumed in the safety analyses by 3.5%. The actual core flow is unchanged and is approximately 7.9% higher than the value assumed in previous accident analyses. The remaining 4.4% flow is sufficient to account for all uncertainties associated with the core flow measurement. Since this change only involves analysis methodology and does not affect actual core flow, it does not increase the actual probability or consequences of any postulated accident.

When considered separately, increasing the thermal design flow is a conservative change. Although there is no impact on the initiation

of any postulated accidents, the potential severity of the affected accidents is typically less when flow is increased. In general, the increased ability to remove heat from the fuel will reduce the peak temperature seen by the fuel and reduce the potential for undesirable boiling conditions. Thus, the increase in the thermal design flow will not increase the probability or consequences of an accident previously analyzed.

C. Increase in Unit 1 Minimum Pressurizer Pressure

The CPSES Unit 1 safety analysis value for pressurizer pressure was assessed a penalty (-12 psi, treated as a bias on pressurizer pressure uncertainty) due to the non-repeatability of the Barton 763 pressure transmitters at high temperatures. This penalty was assessed so that the same control range could be retained for pressurizer pressure. These transmitters were refurbished and now have acceptable repeatability. The penalty can be removed from the safety analysis value without affecting the normal control range. Removing the penalty increases the assumed safety analysis value. Because the same control range is being maintained and the transmitters were previously refurbished, it is expected that actual pressurizer pressure range that is maintained in the unit will not be changed as a result of this change in the safety analysis value. Thus, when considering normal plant operations, this change by itself is not expected to have any impact on the actual probability or consequences of an accident.

I*COM008*n general, increasing the required minimum pressurizer pressure is a conservative change. An increase in pressure delays the onset of the various modes of boiling and allows better heat transfer which can be expected to result in lower peak fuel temperatures. Thus, the increase in minimum indicated pressurizer pressure will not change the probability of an accident but will tend to decrease the severity of the analysis results for accidents previously analyzed.

D. Revision to the Unit 1 Core Safety Limits

Analyses of reactor core safety limits are required as part of reload calculations for each cycle. TU Electric has performed in-house analyses of the Unit 1, Cycle 4 core to determine the reactor core safety limits. The newer methodologies and safety analysis values result in new operating curves which, in general, permit plant operation over a broader range of acceptable conditions. This increase means that if a transient were to occur with the plant operating at the limits of the new curve, the transient might be more severe than if the plant were operating within the bounds of the old curve. However, since the new curves were developed using approved methodologies which are wholly consistent with and do not represent a change in the Technical Specification bases for safety limits, all applicable postulated transients will continue to be properly mitigated. As a result, there will be no significant increase in the consequences, as determined by accident analyses, of any accident previously evaluated.

E. Revision to Unit 1 Overtemperature and Overpower N-16 Reactor Trip Setpoints, Parameters and Coefficients

As a result of changes discussed in paragraphs "A", "B", "C" and "D" above, the Overtemperature N-16 reactor trip setpoint has been recalculated. An additional uncertainty allowance has also been added to the statistical combination of uncertainties used to determine both the Overtemperature and Overpower N-16 reactor trip setpoints and parameters. These trip setpoints help ensure that the core safety limits are maintained and that all applicable limits of the safety analysis are met.

Based on the calculations performed, the safety analysis value for Overtemperature N-16 reactor trip setpoint has increased. This essentially means if a transient were to occur, the actual course of the transient could be slightly more severe. However, the analysis performed show that, using the new methodologies, all core safety limits are met and all applicable limits of the safety analysis are met. The safety analysis value for Overpower N-16 remains unchanged. Both of these parameters have setpoints to allow the mitigation of postulated accidents and have no impact on accident initiation. Therefore, the changes in safety analysis values do not involve an increase in the probability of an accident and, based on satisfying the core safety limits and all applicable safety analysis limits, there is no significant increase in the consequences of any accident previously evaluated.

In addition, the changes result in setpoint values which offer safety benefits. By including an additional allowance to the combination of uncertainties used to determine these setpoints, the required frequency of N-16 power indication readjustments has been reduced. Not only does this reduce the wear on the hardware but it also reduces the potential for personnel error while working on sensitive safety related process equipment. The higher Overtemperature N-16 setpoints offer another operational improvement. The risk of turbine runbacks or reactor trips due to upper plenum flow anomalies will be minimized, thus reducing potential challenges to the plant safety system. A final benefit is that the new methods for considering N-16 setpoints and values will be consistent with Unit 2, which reduces the potential for personnel error due to unit differences.

Considering both the safety analysis impact and the benefits described above, the changes in N-16 setpoints and parameters probably reduce the probability of an accident and do not significantly increase the consequences of an accident previously evaluated.

SUMMARY

The changes in the amendment request provide new methodologies, changes in safety analysis values, new core safety limits and new N-16 setpoint and parameter values to assure that all applicable safety analysis limits have been met. The potential for an accident to occur has been reduced and there has been no significant impact on the consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve the use of new analysis methodologies, revised safety analysis values, and the calculation of a new core safety limits and reactor trip setpoints. As such, the changes play an important role in the analysis of postulated accidents but none of the changes effect plant hardware or the operation of plant systems in a way that could initiate an accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

In reviewing and approving the methods used for safety analyses and calculations, the NRC has approved the safety analysis limits which establish the margin of safety to be maintained. While the actual impact on safety is discussed in response to question 1, the impact on margin of safety is discussed below.

A. Revision to incorporate TU Electric's topical reports

The use of the methodology contained in the TU Electric topical reports does not in itself have any impact on the margin of safety. Satisfaction of event-specific acceptance criteria provide the margin of safety. The methodologies demonstrate, in a conservative manner (through input selection), that the event acceptance criteria are satisfied.

The proposed methods developed by TU Electric have been approved by the NRC or approval is expected soon. When approved, the methods identify the methodologies, correlations, etc. that may be used by TU Electric and establish the applicable safety analysis limits that must be met. Therefore, including these new methods in the TS does not change the margin of safety, it merely incorporates the previously approved margin of safety in the TS.

B. Increase in the Unit 1 Thermal Design Flow

In performing the DNB-related analysis, the Reactor Coolant System Thermal Design Flow rate assumed in these analyses is increased by 3.5 percent to insure that all applicable limits of the safety analysis are met. The TS 3.2.5 limit for this parameter will be changed to insure that it is maintained within the normal steady-state envelope of operation assumed in the transient and accident safety analyses (i.e., ensuring that the Thermal Design Flow rate assumed in the safety analyses remains valid). The Technical Specification limits are consistent with the initial safety analysis assumption (plus uncertainties) and have been analytically demonstrated to be adequate to maintain a minimum DNBR [departure from nucleate boiling ratio] at or above the safety analysis DNBR limit throughout each analyzed transient. Because the 95/95 DNBR acceptance criteria is met with the proposed change and assumptions of the safety analyses are maintained valid by the Technical Specification limits, there is no change in a margin of safety.

C. Increase in the Unit 1 Minimum Pressurizer Pressure

The removal of the bias on the CPSES Unit 1 pressurizer pressure due to refurbishment of the pressure transmitters by the vendor has allowed TU Electric to increase the minimum

pressurizer pressure value used in the safety analysis. The TS 3.2.5 limit for this parameter will be changed to ensure that it is maintained within normal steady state envelope of operation assumed in the transient and accident analyses (i.e., ensuring pressurizer pressure assumed in accident analyses remains valid). The Technical Specification limits are consistent with the safety analysis assumptions (plus uncertainties) and have been analytically demonstrated to be adequate to maintain a minimum DNBR at or above the safety analysis limit throughout each analyzed transient. Because the 95/95 DNBR acceptance criteria is met with the proposed change and assumptions of the safety analyses are maintained valid by the Technical Specification limits, there is no change in the margin of safety.

D. Revision to the Unit 1 Core Safety Limits

The TU Electric reload analysis methods (see A above) have been used to determine new core safety limits. All applicable safety analysis limits have been met. The methods used are wholly consistent with TS BASES 2.1 which is the bases for the safety limits. In particular, the curves assure that for Unit 1, Cycle 4, the calculated DNBR is no less than the safety analysis limit and the average enthalpy at the vessel exit is less than the enthalpy of saturated liquid.

In conjunction with the core safety limit methodology, the NRC approved TUE-1 DNB correlation is used for performing DNB-related analyses. This correlation will be applied to the core configuration of CPSES Unit 1, Cycle 4 and future core configurations. The TUE-1 correlation DNBR limit is established such that there is a 95 percent probability with 95 percent confidence level that DNB will not occur when the minimum DNBR for the limiting fuel is greater than or equal to the TUE-1 correlation DNBR limit. This 95/95 criteria defines the "margin of safety" for the DNB-related analyses and remains valid even though the DNB correlation and associated correlation limit are changed. Margin is retained in the DNB-related analysis for known and potential effects such as hydraulic differences between the two co-resident fuel assembly designs and the presence of the Reactor Coolant System lower plenum flow anomaly. The TUE-1 correlation DNBR limit plus margin constitutes the safety analysis DNBR limit. The accident analyses are preformed to ensure that the safety analysis DNBR limit acceptance criteria are satisfied. Because the 95/95 DNBR acceptance criteria remains valid and continues to be satisfied, no change in a margin of safety occurs.

E. Revision to Unit 1 Overtemperature and Overpower N-16 Reactor Trip Setpoints, Parameters and Coefficients

Because the core safety limits for CPSES Unit 1, Cycle 4 are recalculated, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint which protect the core safety limits must also be recalculated. The Overtemperature N-16 reactor trip setpoint helps prevent the core and Reactor Coolant System from exceeding their safety limits during normal operation and design basis anticipated operational occurrences. The design basis analyses in Chapter 15 of the CPSES Final Safety Analysis Report (FSAR) affected by the change in the safety analysis value for the CPSES Unit 1 Overtemperature N-16 reactor trip setpoint are the Uncontrolled Rod Cluster Control Assembly Bank Withdrawal at Full Power (FSAR Section 15.4.2), and Inadvertent Opening of a Pressurizer Safety or Relief Valve (FSAR Section 15.6.1). These affected events have been re-analyzed with the revised safety analysis value for the Overtemperature N-16 reactor trip setpoint to demonstrate compliance with event specific acceptance criteria. Because all event acceptance criteria are satisfied, there is no degradation in a margin of safety.

The nominal Reactor Trip System instrumentation setpoints values for the Overtemperature N-16 reactor trip setpoint (Technical Specification Table 2.2-1) are determined based on a statistical combination of all of the uncertainties in the channels to arrive at a total uncertainty. The total uncertainty (which includes the addition of the indicated N-16 power SMTE [sensor measurement and test equipment] allowance discussed below) plus additional margin is applied in a conservative direction to the safety analysis trip setpoint value to arrive at the nominal and allowable values presented in Technical Specification Table 2.2-1. Meeting the requirements of Technical Specification Table 2.2-1 assures that the Overtemperature N-16 reactor trip setpoint assumed in the safety analyses remains valid. The CPSES Unit 1, Cycle 4 Overtemperature N-16 reactor trip setpoint is higher than previous cycles which provides more operational flexibility to withstand mild transients without initiating automatic protective actions. Although the setpoint is higher, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint are consistent with the safety analysis assumption which has been analytically demonstrated to be adequate to meet the applicable event acceptance criteria. Thus, there is no reduction in a margin of safety.

The inclusion of the additional SMTE uncertainty for indicated N-16 power into the channel statistical allowance will increase the total statistical combination of all uncertainties associated with the channels for the Overtemperature N-16 and Overpower N-16 reactor trip setpoints. The increase in the channel total uncertainty is accounted for in determination of the nominal setpoint presented in Table 2.2-1 for these reactor trip functions. The safety analysis values for the Overtemperature N-16 and Overpower N-16 reactor trip setpoints which use the indicated N-16 power are not affected by this enhancement. The change in the "S" term only affects the determination of channel operability and has no impact on the nominal setpoints presented in the Technical Specification Table 2.2-1. Incorporating the indicated N-16 power SMTE allowance into the statistical treatment of the Overtemperature N-16 and Overpower N-16 reactor trip setpoint does not reduce a margin of safety because the nominal and allowable setpoints continue to be determined in such a way as to assure that the assumptions in the accident analyses are valid.

SUMMARY

The proposed changes to the CPSES Technical Specifications involve using NRC approved (or soon to be approved) licensing analysis methods developed by TU Electric to determine the Technical Specification core safety limits and perform DNB-related analysis for CPSES Unit 1, Cycle 4. The DNB-related analyses are performed by TU Electric using a qualified, state-of-the-art departure from nucleate boiling (DNB) correlation, TUE-1, which has also been approved by the NRC for the CPSES Unit 1, Cycle 4 core configuration. In performing these analyses, the Reactor Coolant System Thermal Design Flow rate is increased by 3.5 percent and the removal of the bias on the system pressure uncertainty due to the thermal non-repeatability of the pressurizer pressure transmitters is credited. Because the core safety limits for CPSES Unit 1, Cycle 4 are recalculated, the Reactor Trip System instrumentation setpoints values for the Overtemperature N-16 reactor trip setpoint which protect the core safety limits are also recalculated. In conjunction with the Overtemperature N-16 reactor trip setpoint calculation, an operational enhancement is added to statistically include the sensor measurement and test equipment (SMTE) allowance associated with the indicated N-16 power into the statistical setpoint determination of the Reactor Trip System Instrumentation trip setpoints.

Using the NRC approved TU Electric methods, the core safety limits are determined such that all applicable limits of the safety analyses are met, particularly the 95/95 DNBR limit. The Technical Specification 3.2.5 limits for the DNB Parameters insure the assumptions in the safety analyses remain valid. Because the applicable event acceptance criteria continue to be met, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

NRC Project Director: Suzanne C. Black

Virginia Electric and Power Company, Docket Nos. 50-280, 50-281, 50-338 and 50-339, Surry Power Station, Units No. 1 and No. 2, Surry County, Virginia and North Anna Power Station, Units No. 1 and No 2, Louisa County, Virginia

Date of amendment request: July 16, 1993

Description of amendment request: The proposed changes would revise the North Anna, Units 1 and 2 (NA-1&2) and Surry 1&2 Technical Specifications (TS) in accordance with the revised 10 CFR Part 20 regulations for radiation protection published in the **Federal Register** on May 21, 1991 and the change in radiological effluent reporting requirements published in the **Federal Register** on August 31, 1992. In addition, the NA-1&2 and Surry 1&2 site map would be changed to make the identification of the unrestricted area for gaseous effluents consistent with NUREG-0472 and Offsite Dose Calculation Manual (ODCM).

The revision of Part 20 to Title 10 of the Code Federal Regulations (10 CFR 20) incorporates advances and developments in radiation protection that have occurred since the original 10 CFR 20 was issued and implements a new philosophy of radiation protection based on the risk assessments and dose methodologies of the International Commission on Radiological Protection 26 and 30. As a result of this rule revision, severaladministrative changes are being made to the TS including reference changes to reflect the new 10 CFR 20 and terminology changes and additions associated with the revised rule.

The proposed changes to the effluent control program section of the TS are in response to the new dose limits to members of the general public. The revision of Appendix B, Table II, Columns 1 and 2, unrestricted Maximum Permissible Concentrations to the effluent concentration values associated with the new dose limits, which are a factor of ten less than current public dose limits, necessitates changes in the liquid and gaseous release rate limits. These changes will provide the operational flexibility necessary to implement the new 10 CFR 20 requirements.

The proposed TS changes dealing with the change in radiological effluent reporting frequency are in response to a recent change in NRC regulations. The requirements in 10 CFR 50.36a have been amended to reduce the frequency for submittal of the Radiological Effluent Release Reports from semiannually to annually.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[Specifically, operation of North Anna Power Station and Surry Power Station in accordance with the Technical Specification changes will not:]

1. Result in a change in the types or amounts of effluents released nor will there be an increase in individual or cumulative radiation exposures. In addition, these changes do not impact the operation or design of any plant structures, systems or components. These changes ensure compliance with 10 CFR 50.36a and 10 CFR 50, Appendix I and result in levels of radioactive materials in effluents being maintained As Low As Reasonably Achievable (ALARA). [Therefore these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

2. Affect the plant design or operation nor do they result in a change to the configuration of any equipment. There will be no change in types or increase in the amount of effluents released offsite. As a result, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve any actual change in the methodology used in the control of radioactive wastes or radiological environmental monitoring. Therefore these changes do not [involve a significant reduction in a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.Local Public Document Room locations: Swem Library, College of William and Mary, Williamsburg, Virginia 23185 and The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: May 10, 1993, supplemented by letter dated May 21, 1993

Description of amendment request: The amendment proposes to change Section 6 (Administrative Controls) section of the Technical Specifications (TS) to modify the composition, organizational assignments, and reporting relationship of the personnel performing the Independent Safety Engineering Group (ISEG) function in the current Nuclear Safety Assurance Division (NSAD). In addition, the proposed change would modify the title of the Quality Assurance (QA) member of the Plant Operations Committee (POC) to reflect the new QA organization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff's evaluation of the licensee's analysis is presented below:

1. Does the amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The changes are administrative in nature and involve no physical alteration of the plant, or changes to setpoints, operating conditions, or operating parameters. The response of the plant to previously evaluated accidents thus is not affected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The administrative nature of the proposed changes do not affect the design, operation, maintenance, or testing of the plant. Thus, no new failure modes are created. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

The proposed changes reflect a planned organizational change that do not change the qualification requirements or competence of the personnel performing the ISEG function. Therefore, these changes do not involve a significant reduction in a margin to safety.

The NRC staff has determined that it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: February 26, 1993

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Section 15.3.7, Section 15.4.6, and Table 15.4.1-2. The revisions will incorporate items that were identified during a comparison of the accident analyses in the Point Beach Nuclear Plant Safety Analysis Report (FSAR) and the Limiting Conditions for Operation (LCO) and surveillance sections of the Point Beach TS. The changes will add systems or equipment required by the accident analyses. The proposed amendments would also change the diesel generator testing requirements by eliminating the daily testing requirement when one diesel generator is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of this facility under the proposed technical specification change will not create a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes add operating conditions and limiting conditions for operation (LCOs) and surveillances for the 120 VAC vital instrument bus system and diesel fuel oil system. This change also proposes a surveillance for the diesel generator room exhaust fans and a revision to eliminate the daily testing requirement when one diesel generator is inoperable. The basis for Section 15.3.7 is also being revised to support the above changes and also to remove an administrative error. With the exception of the proposed removal of the daily diesel generator testing requirements, the above revisions add additional requirements to the Technical Specifications, making the document more restrictive and enhancing the overall operation of Point Beach Nuclear Plant.

The only revision that will relax existing requirements is the proposed revision to eliminate the daily testing of the emergency diesel generators when one diesel generator is inoperable. Rather than test the operable diesel generator daily when one diesel is inoperable, the operable diesel would be tested only once during the seven day period to determine if a common failure mode existed for both diesel generators. If a diesel generator is removed from service for maintenance, the other diesel generator will be tested prior to taking the diesel generator out of service to ensure operability. Although the operable diesel would be tested for operability less often, the initial common-mode failure test would be sufficient to ensure that the remaining diesel was operable and verify that the failure mode which caused inoperability in one diesel generator did not affect the other diesel. Also, testing the operable diesel generator less frequently will reduce the amount of wear induced in the diesel generators which could increase their reliability, and is consistent with NUREG-1366.

The installation of the static transfer switches in the 120 VAC vital instrument bus system was performed in accordance with 10 CFR 50.59. Although not required for the installation of the plant modification, the addition of the LCOs and surveillance for the 120 VAC vital instrument bus system is proposed to further enhance the reliability and operation of the system.

Since there is no physical change to the facility, its systems, or its operation as a result of this technical specification change request, the proposed changes will not create a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of this facility under the proposed technical specification change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes add operating conditions and limiting conditions for operation (LCOs) and surveillances for the 120 VAC vital instrument bus system and diesel fuel oil system. This change also proposes a surveillance for the diesel generator room exhaust fans and a revision to eliminate the daily testing requirement when one diesel generator is inoperable. The basis for Section 15.3.7 is also being revised to support the above changes and also to remove an administrative error. With the exception of the proposed removal of the daily diesel generator testing requirements, the above revisions add additional requirements to the Technical Specifications, making the document more restrictive and enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax existing requirements is the proposed revision to eliminate the daily testing of the emergency diesel generators when one diesel generator is inoperable. This is consistent with recent NRC guidance and supported by the demonstrated high reliability of our diesel generators.

The installation of the static transfer switches in the 120 VAC vital instrument bus system was performed in accordance with 10 CFR 50.59. Although not required for static transfer switch installation, the addition of the LCOs and surveillance for the 120 VAC vital instrument bus system is proposed to further enhance the reliability and operation of the system. The static transfer switches were installed to transfer loads to an alternate AC power source upon an inverter failure or a fault condition that causes instrument bus voltage to drop below a preset level. The alternate AC power source is not classified as safety-related. Failure of this source will not cause an inverter failure or prevent the inverters from supplying their respective instrument buses. In addition, the time allowed for the loads to be powered from the alternate AC power source will be limited to 8 hours, after which time the plant must proceed to hot shutdown.

Since there is no change to the function of plant systems or its operation as a result of this technical specification change request, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed technical specification change will not create a significant reduction in a margin of safety. The proposed changes add operating conditions and limiting conditions for operation (LCOs) and surveillances for the 120 VAC vital instrument bus system and diesel fuel oil system. This change also proposes a surveillance for the diesel generator room exhaust fans and a revision to eliminate the daily testing requirement when one diesel generator is inoperable. The basis for Section 15.3.7 is also being revised to support the above changes and also to remove an administrative error. With the exception of the proposed removal of the daily diesel generator testing requirements, the above revisions add additional requirements to the Technical Specifications, making the document more restrictive and enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax existing requirements is the proposed revision to eliminate the daily testing of the emergency diesel generators when one diesel generator is inoperable. This is consistent with recent NRC guidance and supported by the demonstrated high reliability of our diesel generators. The installation of the static transfer switches in the 120 VAC vital instrument bus system was performed in accordance with 10 CFR 50.59. Although not required for the installation of the plant modification, the addition of the LCOs and surveillance for the 120 VAC vital instrument bus system is proposed to further enhance the reliability and operation of the system.

Since there is no change to the function of plant systems or its operation as a result of this technical specification change request, the proposed changes will not create a significant reduction in a margin of safety. In fact, the addition of the proposed operating restrictions may increase the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: February 26, 1993

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Section 15.3.4 by adding operating conditions and limiting conditions for operation for the atmospheric steam dump valves, crossover steam dump system, turbine stop and governor valves, and the various turbine overspeed protection features. This change also proposes to revise the surveillance requirements in Section 15.4.8 for the auxiliary feedwater system. The bases for Technical Specifications Sections 15.3.4 and 15.4.8 are also being revised to support this change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of this facility under the proposed Technical Specifications change will not create a significant increase in the probability or consequences of an accident previously evaluated. This proposed change will add operating conditions and limiting conditions for operation for the atmospheric steam dump lines, crossover steam dump system, turbine stop and governor valves, and the various turbine overspeed protection features installed at Point Beach Nuclear Plant. This change will also revise the surveillance requirements for the turbine-driven auxiliary feedwater system. The change will additionally add explanatory text to the bases of the associated sections. These proposed revisions will add additional requirements to the Technical Specifications, making the document more restrictive, enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax any existing requirements is the proposed revision of the AFW pump valve testing requirements. This proposed revision would change the requirements to require the tests to be performed quarterly instead of monthly. This surveillance interval is consistent with the testing intervals for the AFW pumps and with ASME Section XI requirements. There is no physical change to the facility, its systems, or its operation. Thus, an increased probability or consequences of an accident previously evaluated cannot occur.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change will add operating conditions and limiting conditions for operation for the atmospheric steam dump lines, crossover steam dump system, turbine stop and governor valves, and the various turbine overspeed protection features installed at Point Beach Nuclear Plant. This change will also revise the surveillance requirements for the turbine-driven auxiliary feedwater pumps. The change will additionally add explanatory text to the bases of the associated sections. These proposed revisions will add additional requirements to the Technical Specifications, making the document more restrictive, enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax any existing requirements is the proposed revision of the AFW pump valve testing requirements. This proposed revision would change the requirements to require the tests to be performed quarterly instead of monthly. This surveillance interval is consistent with the testing intervals for the AFW pumps and with ASME Section XI requirements. There is no physical change to the facility, its systems, or its operation. Thus, a new or different kind of accident cannot occur.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety. This proposed change will add operating conditions and limiting conditions for operation for the atmospheric steam dump lines, crossover steam dump system, turbine stop and governor valves, and the various turbine overspeed protection features installed at Point Beach Nuclear Plant. This change will also revise the surveillance requirements for the turbine-driven auxiliary feedwater pumps.

The change will additionally add explanatory text to the bases of the associated sections. These proposed revisions will add additional requirements to the Technical Specifications, making the document more restrictive, enhancing the overall operation of Point Beach Nuclear Plant. The only revision that will relax any existing requirement is the proposed revision of the AFW pump valve testing requirements. This proposed revision would change the requirements to require the tests to be performed quarterly instead of monthly. This surveillance interval is consistent with the testing intervals for the AFW pumps and with ASME Section XI requirements. There is no physical change to the facility, its systems, or its operation. Thus, a significant reduction in a margin of safety cannot occur. In fact, the additional requirements being proposed for addition to the Technical Specifications may result in an increased margin of safety by assuring these systems function as analyzed in the Point Beach Nuclear Plant Final Safety Analysis Report.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: February 26, 1993 as supplemented on March 9, 1993

Description of amendment request: The amendment would revise present Technical Specification (TS) 15.3.1.A.3 by clarifying the exception for when one decay heat removal method must be in operation. In addition, the licensee proposes to renumber specification 15.3.1.A.3.a.(3) as 15.3.1.A.3.a.(4).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A proposed facility operating license amendment does not present significant hazards consideration if operation of the facility in accordance with the proposed amendment will not:

1. Create 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. Will not create a significant reduction in a margin of safety.

Criterion 1

The residual heat removal (RHR) system at PBNP serves two purposes to the shutdown reactor:

1. The system removes decay heat from the reactor core to allow cooldown of a subcritical unit once reactor coolant system temperature is less than 350 degrees F.

2. Provides a system to ensure mixing of the reactor coolant system volume when the reactor coolant pumps are secured.

The system is not involved in the initiation of any analyzed accidents as documented in the PBNP FSAR. Hence, the changes proposed cannot create an increase in the probability of such events. However, the system is involved in mitigating the consequences of evaluated accidents through the removal of decay heat. The proposed changes will introduce and allow a short time period (1 hour) during normal shutdown operations when all reactor coolant pumps and residual heat removal pumps may be de-energized. While this

relaxation is significant, the provisions for this relaxation, as well as the short period of time allowed, sufficiently address the functions which the RHR system (or operable reactor coolant system loop) provide to a shutdown reactor core when temperature is less than 350 degrees F; that is: 1) no operations are permitted which could cause a dilution of reactor coolant system boron concentration (thus inserting positive reactivity), and 2) maintenance of reactor coolant system temperature such that subcooling of at least 10 degrees F exists, ensuring boiling does not occur in the shutdown core. The brevity of the relaxation, combined with the two restrictive provisions cited, is sufficient to maintain the probability or consequences of previously analyzed accidents as being unaffected.

Criterion 2

The relaxation of the requirement to have one decay heat removal method in operation in no way introduces any new criteria to system operation such that any new or different kind of accident from any accident previously evaluated is created. Securing of the decay heat removal methods under the tight provisions allowed cannot create the possibility of a new or different accident because reactor reactivity remains unaffected and the reactor coolant system is maintained in a subcooled configuration during the brief time allowed.

Criterion 3

As stated above, both the brevity of the relaxation as well as the strict provisions which must be in effect during the brief period of relaxation, support the fact that a significant reduction in a margin of safety will not be introduced. The NRC has previously analyzed and accepted the proposed wording in its generic documents.

Operation of PBNP in accordance with these proposed amendments cannot create an increase in the probability or consequences of an accident previously evaluated, create a new or different kind of accident, or result in a significant reduction in a margin of safety. Therefore, the proposed changes do not present a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 24, 1993

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Section 15.6 to update several position titles. All title changes are administrative only. However, several modifications to the Manager's Supervisory Staff (MSS) duties are proposed to more closely reflect the intent of Revision 5 of the Westinghouse Standard Technical Specifications and remove a redundant review of the Facility Fire Protection Program implementing procedures. In addition, this change request proposes to modify Section 15.6.5 to revise the composition of the MSS membership.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes are administrative in nature. They consist of title changes due to organizational changes and allow assignment of qualified personnel to the MSS as needed to discuss and resolve issues related to the safe and reliable operation of the Point Beach Nuclear Plant (PBNP). The changes will allow the Chairman of MSS to fully utilize the expertise and experience within the Wisconsin Electric Nuclear Power Department for MSS members and will result in more critical and thorough reviews of plant issues and events. In addition, there is no physical change to the facility, its systems, or its operations. Operation of the PBNP in accordance with these proposed amendments cannot create an increase in the probability or consequences of an accident previously evaluated, create a new or different kind of accident, or result in a significant reduction in a margin of safety. Therefore, the proposed changes do not present a significant hazards consideration.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 11, 1993

Description of amendment request: The proposed revisions will modify Technical Specification 15.3.1.G, "Operation Limitations," Specification 3, to reduce the reactor coolant system raw measured total flow rate limit by 2,600 gallons per minute (gpm), change the temperature difference overtemperature and temperature difference overpower setpoints, and change the Reactor Core Safety Limits for Unit 2. These changes must be made to accommodate the RCS flow rate reduction which results from an increase in the number of tubes plugged in the Unit 2 steam generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated. This proposed change reduces the Unit 2 Reactor Coolant System raw measured total flow rate limit by 2,600 gpm. Evaluations performed by Westinghouse and Wisconsin Electric have determined that all the safety analysis requirements are still met at the reduced flow rate limit without increased consequences. A reduction of the RCS flow limit does not affect any parameters that could affect the probability of an accident. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change reduces the Unit 2 Reactor Coolant System raw measured total flow rate limit by 2,600 gpm. Evaluations performed by Westinghouse and Wisconsin Electric have determined that all the safety analysis requirements are still met at the reduced flow rate limit and this change does not create the possibility of a new or different kind of accident. There is no physical change to the facility, its systems, or its operation. Thus, a new or different kind of accident cannot occur.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety. This proposed change reduces the Unit 2 Reactor Coolant System raw measured total flow rate limit by 2,600 gpm. Evaluations performed by Westinghouse and Wisconsin Electric have determined that all the safety analysis requirements are still met at the reduced flow rate limit. The DNBR margin used for this change in the RCS flow limit is margin in excess of the margin of safety for DNBR. The reduction of the overtemperature and overpower [temperature difference] setpoints prevent the possibility of exceeding the core safety limits. Therefore, this reduction in RCS total flow rate limit does not reduce any existing margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: July 16, 1993

Brief description of amendment: The proposed amendment would revise Technical Specifications (TSs) 3/4.2, "Power Distribution Limits," and 3/4.3, "Instrumentation," to relax the requirements for the number and distribution of operable incore detectors. The incore detectors are required to verify that the core power distribution is consistent with the safety assumptions used in the safety analyses and to protect the current power distribution TS limits. The proposed changes would also apply penalties to the values measured by the incore detectors prior to their comparison with TS limits to assure that the TS limits monitored by the incore detectors will continue to be valid.

Date of publication of individual notice in **Federal Register:** July 22, 1993 (58 FR 39253)

Expiration date of individual notice: August 23, 1993

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: March 26, 1993

Brief description of amendment request: The proposed amendment would revise the Technical Specifications to increase the storage capacity of the Spent Fuel Pool to a maximum of 3152 fuel assemblies, including storage capacity for 323 fuel assemblies in a proposed rack that could temporarily be located in the cask loading area of the cask pit during full-core offloading.

Date of individual notice in **Federal Register:** July 30, 1993 (58 FR 40841)

Expiration date of individual notice: August 30, 1993

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated, All of these items are 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 rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 18, 1993

Brief description of amendments: The proposed amendments would revise the basis of the scram and isolation setpoints for the main steamline radiation monitors as defined in NRC Safety Evaluations of January 18 and August 24, 1989. The proposed change would reduce the potential for unwarranted challenges to safety systems during a special test of the Hydrogen Water Chemistry (HWC).

Date of issuance: August 3, 1993

Effective date: August 3, 1993

Amendment Nos.: 143 and 138

Facility Operating License Nos. DPR-29 and DPR-30. The amendments approve the licensee's May 18, 1993, application.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32379)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 19, 1993

Brief description of amendment: The amendment updated the reactor coolant system (RCS) leakage test pressure technical specifications to agree with the requirements of the 1980 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI (through winter 1981 addenda).

Date of issuance: August 2, 1993

Effective date: August 2, 1993

Amendment No.: 167

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30194)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 7, 1993

Brief description of amendment: The amendment corrected typographical errors that were introduced in the original Technical Specifications and in subsequent amendments.

Date of issuance: July 26, 1993

Effective date: July 26, 1993

Amendment No.: 149

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34076).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 21, 1992.

Brief description of amendment: The amendment revised the Technical Specifications to reflect an organization change which consolidates assessments, operations experience reviews, and the Independent Safety Engineering Group (ISEG) functions. The change deletes the ISEG and creates a new section on Independent Technical Reviews.

Date of issuance: July 26, 1993

Effective date: July 26, 1993

Amendment No.: 83

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55580).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 7, 1993

Brief description of amendment: The amendment revised the Technical Specifications by removing reference to the Radioactive Effluent Release Reports being issued on a semiannual basis. The 10 CFR 50.36(a)(2) is now amended to require these reports on an annual basis.

Date of issuance: July 29, 1993

Effective date: July 29, 1993

Amendment No.: 84

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34079)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: April 23, 1993

Brief description of amendments: These amendments change the Technical Specifications 6.2, Organization, related to the Operations Manager qualifications.

Date of issuance: August 4, 1993

Effective date: August 4, 1993Amendment Nos. 155, 149 Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30194)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: February 17, 1993

Brief description of amendment: The amendment 1) increases the minimum fuel storage requirements for the emergency diesel generators (EDGs), 2) revises alternate train testing requirements for the EDGs, 3) revises the monthly EDG load testing requirement, 4) adds a requirement to perform a semi-annual demonstration of the emergency load capability test of the EDGs, 5) revises the Remedial Actions to be taken if more than one of the required electrical sources becomes unavailable when the reactor is critical, 6) removes an unnecessary restriction on 115 kV reserve station power, 7) revises or adds the Basis associated with each item, 1 through 6, above, and 8) makes minor editorial changes.

Date of issuance: August 3, 1993

Effective date: To be implemented within 30 days of issuance

Amendment No.: 140

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25857)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: November 24, 1992, as supplemented June 30, 1993

Brief description of amendment: The amendment revises the Technical

Specifications to utilize a revised correlation for the Flow Biased Scram and Average Power Range Monitors Rod Block functions. The revisions are an integral part of the process computer upgrade that was implemented during the recent refueling outage (Reload 13). The process computer upgrade utilizes the "3D Monicore" software which was supplied as part of the computer upgrade.

Date of issuance: July 26, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 143

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61116)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 15, 1993

Brief description of amendment: The amendment permits the use of new ZIRLO fuel assemblies.

Date of issuance: July 26, 1993

Effective date: July 26, 1993

Amendment No.: 81

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19485)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: May 7, 1992, as revised June 24, 1993.

Brief description of amendments: The amendments (1) relocate the Containment Penetration List from Section 4.4 of the Technical Specifications into plant procedures in accordance with the guidance of Generic Letter 91-08, (2) changes Section 3.6.C of the Technical Specifications to clarify when non-automatic containment isolation valves are required to be operable and what actions are to be taken in response to inoperability of a non-automatic containment isolation valve, and (3) deletes condensate cross-connect valve C-41-1 from Section 3.4.B.1.g of the Technical Specifications.

Date of issuance: July 29, 1993

Effective date: July 29, 1993

Amendment Nos.: 107 and 100

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24674) The June 24, 1993, submittal provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 21, 1993

Brief description of amendment: The amendment revised the Technical Specifications to increase the maximum bypass pressure for the steam generator low-pressure signal trip setting from 550 psia to 600 psia.

Date of issuance: July 26, 1993

Effective date: July 26, 1993

Amendment No.: 153

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34084)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska, 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 27, 1991, as supplemented October 5, 1992, and July 20, 1993.

Brief description of amendments: The proposed amendments revise Technical Specification (TS) 3/4.4.4, "Relief Valves," and (TS) 3/4.4.9.3, "Overpressure Protection Systems," and their associated bases to implement the recommendations of Generic Letter 90-06. These amendments include additional provisions for power operated relief valve (PORV) and block valve reliability and low temperature overpressure protection.

Date of issuance: July 23, 1993

Effective date: July 23, 1993

Amendment Nos.: 81 and 80

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24214)The October 5, 1992, and July 20, 1993 submittals provided clarifying information that did not change the initial proposed no significant hazards determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 23, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: December 18, 1992, telecopy dated January 28, 1993, and letters dated March 25, and May 20, 1993

Brief description of amendments: The amendments changed the Technical Specifications to remove cycle-specific parameter limits in accordance with NRC Generic Letter 88-16 and revised Section 5.3.1 in accordance with NRC Generic Letter 90-02, Supplement 1.

Date of issuance: August 4, 1993

Effective date: August 4, 1993

Amendment Nos.: 126 and 95

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8776)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: January 14, 1991 and March 3, 1992

Brief description of amendments: The amendments revised the Technical Specifications to delete the temperature leak detection system isolation function (ambient and differential) in the Residual Heat Removal pump rooms.

Date of issuance: August 4, 1993

Effective date: August 4, 1993

Amendment Nos.: 127 and 96

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34084)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: June 1, 1993

Brief description of amendments: The amendments changed the Technical Specifications to revise the reporting frequency of the Semiannual Radioactive Effluent Release Report from semiannual to annual pursuant to the revised 10 CFR 50.36a, which the Commission published in the Federal Register on August 31, 1992.

Date of issuance: August 5, 1993

Effective date: August 5, 1993

Amendment Nos.: 128 and 97

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34085)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 28, 1992 and October 19, 1992, as supplemented by letters dated March 16, 1993, April 13, 1993, May 28, 1993, and June 7, 1993, June 23, 1993, July 1, 1993, and July 7, 1993

Brief description of amendments: The amendments extend the interval for certain Technical Specification surveillance requirements to 24 months with an additional 25 percent grace period. The extension of the interval is accomplished for some surveillances by explicitly embedding the term 24 months in the particular line item requirement. For other surveillances, the extension is accomplished by changing the TS Section 1.0 definition of operating cycle or refueling cycle to a maximum of 732 days. A 25 percent grace period beyond the 732 days is allowed.

Date of issuance: August 2, 1993

Effective date: August 2, 1993Amendments Nos.: 179 and 182

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55587)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 9, 1993

Brief description of amendment: Technical Specifications Table 4.1-1 to change the frequency of primary auxiliary building (PAB) area temperature sensor testing to accommodate operating on a 24-month fuel cycle. This change followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Date of issuance: July 28, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 135

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30199)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 9, 1993

Brief description of amendment: The amendment revised Technical Specifications Table 4.1-1 to extend the frequency of turbine building water level sensor testing to accommodate operating on a 24-month fuel cycle. This change followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Date of issuance: July 28, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 136

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30199)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 25, 1993

Brief description of amendment: The amendment revised the Technical Specifications (Appendix A) and the Radiological Environmental Technical Specifications (Appendix B) to incorporate the changes listed below:

(1) The frequency of process and area radiation monitor calibration (specified in Appendix A Table 4.1-1 and Appendix B Tables 3.1-1 and 3.2-1) was changed to accommodate operation on a 24-month cycle.

(2) The frequency of radioactivity recorder calibration (specified in Appendix B Table 3.1-1) was changed to accommodate operation on a 24-month cycle.

These changes followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

In addition, the following administrative changes were incorporated:

(1) Appendix A Table 4.1-1 was changed to identify and specify each radiation monitor by its appropriate tag number and the table was reformatted for consistency.

(2) Appendix B Tables 3.1-1 and 3.2-1 were changed to identify and specify each radiation monitor by its appropriate tag number.

(3) Appendix B Tables 2.1-1 and 3.1-1 were changed to clarify monitoring requirements for the condensate polisher waste release path. In addition, Appendix B Table 2.1-1 was reformatted for consistency.

(4) Appendix A Table 4.1-1 and Appendix B Table 3.1-1 were changed to clearly indicate that the surveillance requirement for monitors R-25/26 and R-23 will remain as once per 18 months.

(5) The Bases for Appendix A Section 3.3 was changed to clarify the control room ventilation radiation monitoring requirements.

Date of issuance: August 4, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 137

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16871)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 18, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) 4.3.B.1 and associated Bases to require verification of control rod coupling integrity each time a control rod is withdrawn to the "full out" position and prior to declaring a control rod operable after work on a control rod or the control rod drive system that could affect coupling. These changes make the James A. FitzPartrick TSs consistent with the guidance provided by the NRC's revised Standard Technical Specifications for General Electric plants (NUREG-1433).

Date of issuance: July 23, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 193

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16229)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 23, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 15, 1993

Brief description of amendment: The amendment makes several changes to Table 4.7-2, "Exception to Type C Tests." Specifically, the changes (1) added system numbers to the valve identification numbers for seven control rod drive containment isolation valves and clarified the penetration arrangement, (2) removed valves 10MOV-57 and 10MOV-67 from the table, (3) added valves 10RHR-729A and 10RHR-729B to the table, and (4) corrected errors introduced in *Amendment No.* 143.

Date of issuance: July 29, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 194

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32391)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 11, 1992, and supplemented by letters dated July 16, 1992, February 2, 1993, and July 2, 1993

Brief description of amendments: The amendments modify the Reactor Trip System, Engineered Safety Features Actuation System, Instrument Sections and associated Bases for Surveillance Test Intervals and Allowed Outage Times. These changes are line-item improvements previously approved by the NRC and documented in safety evaluations for WCAP-10271 and Supplement 1, WCAP-10271, Supplement 2, and Supplement 2, Revision 1. Changes also modify the Semi-Automatic Transfer to Recirculation on Refueling Water Storage Tank Low Level. This Functional Unit is not part of the program covered in the WCAP and was analyzed on a plant-specific basis.

Date of issuance: August 4, 1993

Effective date: As of the date of issuance and to be implemented within 120 days of the date of issuance.Amendment Nos. 142 and 121

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992(57 FR 40220)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: October 6, 1992

Brief description of amendment: The amendment modifies Figures 3.4-2 and 3.4-3 to TS 3/4.4.9, Pressure/ Temperature Limits, Reactor Coolant System, to remove Table 4.4-5, "Reactor Vessel Material Surveillance Program Withdrawal Schedule," and removes the reference to this table in Surveillance Requirement 4.4.9.1.2. The changes to the Pressure/Temperature (P/T) limits provide new heatup and cooldown curves based on the analysis of specimen X of the radiation surveillance program. The request to remove Table 4.4-5 is based on the guidance of Generic Letter 91-01 (GL 91-01), "Removal of the Schedule for Withdrawal of Reactor Vessel Material Specimens from Technical Specifications."

Date of issuance: July 28, 1993

Effective date: July 28, 1993

Amendment No.: 113

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992(57 FR 55590)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: November 20, 1994 [sic 1992]

Brief description of amendments: These amendments revise the Technical Specification 3/4.4.5, "Reactor Coolant System Leakage," to allow the required RCS water inventory balance to be performed within 120 hours of the previous balance when this activity requires interruption of transient evolutions. Previously, performance of a water inventory balance was required every 72 hours.

Date of issuance: August 3, 1993

Effective date: August 3, 1993

Amendment Nos.: 108 and 97

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8784)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 1, 1993; amended June 16, 1993 (TS 93-01)

Brief description of amendments: The amendments incorporate the changes necessary to decrease the frequency of the Radioactive Effluent Release Report from semiannual to annual.

Date of issuance: August 2, 1993

Effective date: August 2, 1993

Amendment Nos.: Unit 1: 169, Unit 2: 159

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19487)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1992.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 4, 1991, as clarified by letters dated March 11, 1992 and March 11, 1993

Brief description of amendment: The amendment revised Technical Specifications 3/4.4.4, 3.4.9.3 and their associated Bases to incorporate changes recommended in Generic Letter 90-06, "RESOLUTION OF GENERIC ISSUE 70, 'POWER-OPERATED RELIEF VALVE AND BLOCK VALVE RELIABILITY,' AND GENERIC ISSUE 94, 'ADDITIONAL LOW-TEMPERATURE OVERPRESSURE PROTECTION FOR LIGHT-WATER REACTORS,' PURSUANT TO 10 CFR 50.54(f)" dated June 25, 1990.

Date of issuance: August 5, 1993

Effective date: August 5, 1993

Amendment No.: 83

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11116)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 10, 1993, as supplemented July 28, 1993

Brief description of amendments: The amendments revise the NA-1&2 TS pertaining to the High Head Safety Injection (HHSI) flow balance tests by removing the uncertainty of flow measurements caused by instrument inaccuracies.

Date of issuance: August 4, 1993

Effective date: August 4, 1993

Amendment Nos.: 171, 151

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19491)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: April 21, 1993

Brief description of amendments: These amendments provide clarification of the design response time of the containment hydrogen analyzers and delete a channel check for the analyzers.

Date of issuance: August 6, 1993

Effective date: August 6, 1993Amendment Nos. 181, 181

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30202)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 6, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 17, January 29, and April 16, 1992

Brief description of amendments: These amendments modify the Technical Specifications to increase the surveillance test intervals for reactor protection and safeguards circuits. The amendments remove requirements to check Analog Rod Position, Rod Position Bank Counters, and Steam Generator Flow Mismatch Channels during a cold shut down condition of the plant, and also clarify the test requirements for the Overpower Delta T function to ensure consistency with the test requirements for the Overtemperature Delta T function.

Date of issuance: July 28, 1993

Effective date: July 28, 1993

Amendment Nos.: 140 and 144

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8788)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 1, 1993

Brief description of amendment: The amendment revises Technical Specification Section 6.9.1.7, Semiannual Radioactive Effluent Release Report, and associated reporting requirements in Technical Specification Sections 3.11 and 6.14 to extend the reporting period from semi-annually to annually.

Date of issuance: August 4, 1993

Effective date: August 4, 1993

Amendment No.:

Amendment No. 65

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34098)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 11th day of August 1993.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 93-19806 Filed 8-18-93; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 030-12231, License No. 13-17124-01 EA 93-022]

Community Hospital South, Indianapolis, IN; Order Imposing Civil Monetary Penalty

I

Community Hospital South, Indianapolis, Indiana (Licensee) is the holder of Byproduct License No. 13-17124-01 first issued by the Nuclear Regulatory Commission (NRC or Commission) on October 7, 1976, and renewed in its entirety on March 31, 1988. The license expired on June 30, 1993, and is currently under timely renewal. The license authorizes the Licensee to use any radiopharmaceutical identified in 10 CFR 35.100, to use any radiopharmaceutical identified in 10 CFR 35.200 except technetium-99m generators, any radiopharmaceutical for therapy identified in 10 CFR 35.300, and any brachytherapy source identified in 10 CFR 35.400, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on November 17, 1992. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 10, 1993. The Notice stated the nature of the violations, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letter dated April 5, 1993. In its response, the Licensee denied Violations I and K, admitted Violations N and S with mitigating circumstances, admitted fully the remainder of the violations, and requested remission of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that with the exception of Violations M, O, and P, which are withdrawn, the violations occurred as stated; that the penalty proposed for the remaining violations designated in the Notice should be mitigated by $1,250 based on reconsideration of the application of the factor in the Enforcement Policy for Prior Opportunity to Identify; and that a civil penalty of $5,625 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered*, That:

The Licensee pay a civil penalty in the amount of $5,625 within 30 days of the date of this Order, by check, draft, electronic transfer, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the

hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations I and K in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation as modified in Section III above that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland, this 11th day of August 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusions

On March 10, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on November 17, 1992, at Community Hospital South, Indianapolis, Indiana (Licensee). Community Hospital South responded to the Notice by letter dated April 5, 1993. In its response, the Licensee denied Violations I and K, admitted Violations N and S with mitigating circumstances, and admitted the remaining violations. In addition, the Licensee believes the NRC's assessment of the civil penalty adjustment factors was based on incorrect information. The Licensee disagreed with the NRC position (set forth in the March 10, 1993, letter transmitting the Notice) on escalating the amount of the base civil penalty for identification (50 percent) and for prior opportunity to identify (100 percent). The Licensee states that extenuating circumstances exist. Further, the Licensee requested remission of the civil penalty because of prior good performance. The NRC's evaluation and conclusions regarding the Licensee's request are as follows:

I. Violations Assessed Civil Penalties

A. Restatement of Violation I

10 CFR 35.22(b)(6) requires that, to oversee the use of licensed material, the Radiation Safety Committee must review annually, with the assistance of the Radiation Safety Officer, the licensee's radiation safety program.

Contrary to the above, from about February 15, 1990, to November 17, 1992, the licensee, through its Radiation Safety Committee, did not review, with the assistance of the Radiation Safety Officer, the licensee's radiation safety program annually.

Restatement of Licensee's Response to Violation I. The annual review of the operations was performed. The personnel exposure assays and the consulting physicist/lab reviews were reviewed at every meeting. The construction of the report was delegated by the Radiation Safety Officer to the Consultant.

NRC's Evaluation of Licensee's Response to Violation I. The Licensee's response refers to certain activities that were reviewed at each Radiation Safety Committee meeting. However, review of these activities does not constitute an "annual review of the radiation safety program." 10 CFR 35.22(b)(6) distinguishes the annual review of the radiation safety program from the other reviews delineated in 10 CFR 35.22(b)(1) through 35.22(b)(5). Several of the required reviews are part of the routine business of the Radiation Safety Committee (e.g. recommendations for maintaining individual and collective doses as low as reasonably achievable (10 CFR 35.22(b)(1)), approval of specified individuals (10 CFR 35.22(b)(2)), and approval of minor changes in radiation safety procedures (10 CFR 35.22(b)(3))). Other reviews are required at quarterly intervals (e.g. a review of a summary of the occupational radiation dose records (10 CFR 35.22(b)(4)), and a review of all incidents involving byproduct material (10 CFR 35.22(b)(5))). However, in addition to these reviews, the Radiation Safety Committee is also required by 35.22(b)(6) to review the radiation safety program annually.

The annual review of the Licensee's radiation safety program by the Radiation Safety Committee is described in Regulatory Guide 10.8, Appendix F, "Model Radiation Safety Committee Charter and Radiation Safety Officer Delegation of Authority." The Licensee committed to Appendix F in Section 10.1 of the application dated February 29, 1988. Additionally, Appendix F is referenced in Condition 15.A of the NRC License. Responsibility No. 7 of Appendix F of Regulatory Guide 10.8 indicates that, "The Committee shall * * * review at least annually the RSO's summary report of the entire radiation safety program to determine that all activities are being conducted safely, in accordance with NRC regulations and the conditions of the license, and consistent with the ALARA program and philosophy. The review must include an examination of records, reports from the RSO, results of NRC inspections, written safety procedures, and the adequacy of the management control system."

The Licensee's response does not indicate that the Committee reviewed the RSO's summary report of the entire radiation safety program to determine that all activities were being conducted safely and in accordance with NRC regulations and the conditions of the license and the ALARA program and philosophy. The Licensee's response also does not indicate that the Radiation Safety Committee made a determination of the adequacy of the radiation safety program on an annual basis.

All of the reviews required by 10 CFR 35.22(b) are conducted for the purpose of maintaining individual and collective occupational doses as low as reasonably achievable (ALARA). To oversee the use of licensed material, the Committee must complete each of these six reviews at the times and occasions indicated by 10 CFR 35.22(b). If the Committee does not complete each of these six reviews, then the Committee has failed to oversee the use of licensed material. Conducting the other reviews required by 10 CFR 35.22(b)(1) through 35.22(b)(5) does not substitute for the annual review required by 10 CFR 35.22(b)(6).

The Licensee's response indicated that the RSO delegated many of the RSO's regulatory responsibilities to the consultant, including documenting the Radiation Safety Committee's annual review. NRC Information Notice No. 90–71, "Effective Use of Radiation Safety Committees to Exercise Control Over Medical Use Programs," describes the responsibilities of the Radiation Safety Committee that includes the annual review of the radiation safety program, responsibilities of the RSO, and use of consultants. If the Radiation Safety Committee does not possess the necessary experience or training to perform the required annual review, then the Licensee may seek qualified assistance from outside consultants. However, it is the Licensee's responsibility to ensure that the review, even if performed by a consultant, and corrective actions meet the regulatory requirements.

Conclusion. The NRC has concluded that the information provided in the Licensee's response does not provide a basis to find that the annual review was performed as required; therefore, the violation occurred as stated.

B. Restatement of Violation K

10 CFR 35.220 requires that a Licensee authorized to use byproduct material for imaging and localization studies possess a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 1000 millirem per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Contrary to the above, as of November 17, 1992, the licensee did not possess a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour.

Restatement of Licensee's Response to Violation K. The survey instruments possessed did not meet the intent of 10 CFR 35.220. The instruments, Victoreen CDV–700 and Victoreen 740F, were identified in various communications with the NRC. Because the range was covered and the NRC had approved amendments listing those instruments, the Licensee stated it believed it was in full compliance.

However, the Licensee stated that immediately following the November 17 inspection, it obtained a survey meter from Community Hospital East that covered the range up to 100 millirem per hour. It also purchased a Ludlum Model 14–C that covered the required range. This instrument had been budgeted for prior to the site survey and was received, calibrated and placed into service on December 12, 1992.

NRC's Evaluation of Licensee's Response to Violation K. The Licensee admits that the survey instruments described in its written correspondence with the NRC did not meet the intent of 10 CFR 35.220. In addition, that correspondence (including the Licensee's renewal application of February 29, 1988) merely lists the survey instruments as "additional equipment" and does not request the staff to approve them for any particular purpose. In reviewing the license, the staff did not approve the instruments as satisfying the requirements of 10 CFR 35.220. Regardless of the Licensee's renewal application submitted to the NRC (dated February 29, 1988) and its assertion of tacit approval of the instrumentation in its possession at the time of submission of the license renewal, 10 CFR 35.999 (effective April 1, 1987) provides, in part, that at the time of license renewal and thereafter the amendments to 10 CFR part 35 shall apply. Therefore, effective April 1, 1987, the Licensee was required to comply with any new requirements found in amended 10 CFR Part 35, in addition to the conditions of the existing license. 10 CFR 35.220 (effective April 1, 1987) required that the Licensee possess a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour. The detection survey instrument possessed by the Licensee at the time of the inspection on November 17, 1992, was only capable of measuring dose rates over the range 0.1 millirem per hour to 50 millirems per hour.

The NRC notes that prior to the NRC inspection, the Licensee had budgeted for the purchase of a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour; however, the Licensee had delayed that purchase for almost one year. The violation was identified by the Licensee's consultant (as described below). Therefore, once the Licensee identified the problem, the Licensee should have corrected the problem by obtaining the instrument on a timely basis. Further, the inspector found it necessary on several occasions during the inspection to remind the Licensee to obtain the required instrumentation. During the inspection, the Licensee borrowed an appropriate survey instrument until one could be purchased.

Conclusion. The NRC has concluded that the information provided in the Licensee's response does not provide a basis to find that the Licensee possessed the required survey instrumentation; therefore, the violation occurred as stated.

C. Restatement of Violation N

10 CFR 35.50(e) requires, in part, that a licensee retain records of dose calibrator tests for accuracy, linearity and geometrical dependence and the records must include the signature of the Radiation Safety Officer.

Contrary to the above, from about February 17, 1989, to November 17, 1992, the licensee's records of dose calibrator tests for accuracy, linearity and geometrical dependence did not include the signature of the Radiation Safety Officer.

Restatement of Licensee's Response to Violation N. Violation admitted with mitigating circumstances. The tests were performed and the results were reviewed by the Radiation Safety Committee. The consulting physicist was authorized by the Radiation Safety Officer to perform the review.

NRC's Evaluation of Licensee's Response to Violation N. The Licensee admitted the violation because the Radiation Safety Officer did not sign the records of dose calibrator quality assurance tests. The NRC recognizes the Radiation Safety Officer as the individual who is responsible for ensuring the safe use of licensed material for the institution. Although certain tasks may be delegated, the Radiation Safety Officer may not delegate responsibility for certain matters specifically assigned by regulation (including the obligation to sign records imposed by 10 CFR 35.50(e)) to another individual. The signature of the Radiation Safety Officer is an indication of acknowledgement of the test results on behalf of the Licensee. Lack of the Radiation Safety Officer's signature is an indication that dose calibrator quality assurance test results were not directly within the knowledge of the Licensee.

Conclusion. The NRC has concluded that the information provided in the Licensee's response does not provide a basis to find that the Radiation Safety Officer signed the records as required; therefore, the violation occurred as stated.

D. Restatement of Violation S

10 CFR 35.70(h) requires, in part, that a licensee retain records of each contamination survey required by 10 CFR 35.70. The records must include, in part, the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters.

Contrary to the above, from January 2, 1992 to November 17, 1992, the licensee failed to retain records of surveys required by 10 CFR 35.70 that included the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters. Specifically, removable contamination was expressed in counts per minute.

Restatement of Licensee's Response to Violation S. The Licensee admitted the violation with mitigating circumstances. The counting efficiency of the Licensee's well counter had been determined and trigger levels established. However, the data from the well counter was stored as counts per minute (cpm) on the well counter tape.

NRC's Evaluation of Licensee's Response to Violations S. Notwithstanding the Licensee's description of its method of counting samples and the form in which the data were recorded, the Licensee did not deny that the data in the records were in incorrect units. In summary, the Licensee admitted the violation.

Conclusion. The NRC has concluded that the information provided in the Licensee's response does not provide a

basis to find that it recorded removable contamination results in disintegrations per minute per 100 square centimeters; therefore, the violation occurred as stated.

E. NRC Withdrawal of Violations M, O, and P

Violation M was for the Licensee's failure to test a sealed source containing 224 microcuries of cesium-137 for leakage at required six month intervals, with no other interval approved by the Commission or an Agreement State. This failure also resulted in Violation O and P because the Licensee had no records of leakage test results and physical inventories containing the signature of the Radiation Safety Officer.

The Licensee stated that at the time of the last NRC inspection on February 16, 1989, the inspector advised it to discontinue doing leak tests on its source because the activity level was below the requirement. This was questioned by the physicist and documented in the Radiation Safety Committee meeting minutes. However, the Licensee stopped doing leak tests on this source based on this advice, and discontinued the preparation of any records for those tests.

Although the Licensee unconditionally admitted Violation M and O, the staff has considered the Licensee's claim that an NRC inspector had advised the Licensee that leak tests were not necessary. Additionally, the staff has reviewed the Licensee's contention that the physical inventory was not signed by the Radiation Safety Officer because the source was below the activity that required a leak test. The staff did provide such advice for leak tests during the February 16, 1989, inspection. In view of that advice, which was erroneous because 10 CFR 35.59(b)(2) was in effect at the time of that inspection, the Licensee discontinued the leak test of its sealed source and preparation of records for those tests as required by 10 CFR 35.59(d). Additionally, the Licensee's Radiation Safety Officer discontinued signing records of physical inventories for this source as required by 10 CFR 35.59(g). While it appears that the Licensee was in violation of 10 CFR 35.59(b)(2) and 35.59(d) from January 17, 1991 through November 17, 1992, and 10 CFR 35.59(g) from February 17, 1989 through November 17, 1992, the Licensee did act in good faith based upon the advice of an NRC inspector.

Subsequent to the inspection, the NRC inspector was in contact with the Licensee's consulting medical physicist. The consultant performed the required leak test and removable radioactivity was not detected. However, the record of that leak test was not signed by the Licensee's Radiation Safety Officer because he had delegated to the consulting medical physicist the authority to sign that record. As stated above with reference to records of dose calibrator tests, the Radiation Safety Officer cannot delegate such authority.

Conclusion. The evidence supports the Licensee's position that during a February 16, 1989, inspection, the NRC inspector provided erroneous advice and the Licensee in good faith discontinued performing the leakage test for its sealed source and preparation of records for those tests. Additionally, the Licensee's Radiation Safety Officer discontinued signing records of leak tests and physical inventories. Therefore, in the staff's discretion, Violations M, O, and P are withdrawn. However, as explained in Section II below, this does not affect either the scope of the Severity Level III problem or the amount of the civil monetary penalty assessed to the problem.

II. Summary of Licensee's Request for Mitigation

The Licensee requests remission of the proposed civil penalty because according to the Licensee, the asserted bases for the increase of the base civil penalty are factually incorrect and extenuating circumstances exist. Acknowledging that violations did occur, the Licensee asserts that it was acting to perform the duties, in substance, expected of it. The Licensee also asserts that it acted promptly to correct the violations.

The License states that it is not fair or desirable to penalize the hospital under the civil penalty adjustment factors of Identification and Prior Opportunity to Identify. The Licensee contends that the NRC inappropriately escalated the civil penalty because not all of the violations were identified by the NRC, the Licensee took corrective action, and the Licensee's medical physicist diligently reviewed and reported on compliance matters. Therefore, any increase in the amount of the civil penalty would discourage a licensee from finding and correcting issues and would be in direct opposition to the NRC's enforcement philosophy of encouraging licensees to identify issues.

The Licensee argues that in most instances, the goals of the NRC's regulations have been accomplished and that the hospital and its employees, especially the consulting physicist, have acted responsibly. The Licensee states that in a few instances there was ignorance of the requirement; however, in most circumstances there was a genuine effort to comply. Therefore, as a result of positive licensee performance, the Licensee requests mitigation by at least 50 percent and as much as 100 percent of the base civil penalty.

The Licensee opposes the 25 percent escalation based on the Correction Action factor. The Licensee argues that xenon-133 procedures were immediately terminated when the Licensee was informed by the NRC inspector on November 17, 1992, of the apparent violation. Additionally, the Licensee believes that the promptness with which it corrected all the violations that involved use of radioactive materials, should be considered a mitigating factor. Therefore, as a result of prompt and immediate corrective actions, the Licensee requests the base civil penalty be reduced by 50 percent. Additionally, the Licensee took exception to a statement in NRC's letter of March 10, 1993, transmitting the Notice of Violation and Proposed Imposition of Civil Penalty that the proposed corrective actions did not include measures to ensure management involvement in radiation safety.

In conclusion, the Licensee states that mitigation of 100 percent of the civil penalty amount is justified as a result of reducing the base civil penalty by 50 percent under licensee performance and 50 percent under corrective action.

NRC Evaluation of Licensee's Request for Mitigation. The Licensee is correct that the NRC Enforcement Policy (Policy) encourages licensees to monitor, supervise and audit activities in order to assure safety and compliance. However, this is only one goal of the Policy. The purpose of the Policy is to ensure compliance, obtain prompt correction of violations, deter future violations and encourage improvement in the performance of a licensee.

The findings of the November 17, 1992, inspection and the discussions with the Licensee's representatives during the February 18, 1993, enforcement conference clearly indicated that the Licensee's Radiation Safety Officer (RSO) was not ensuring that radiation safety activities were performed in accordance with approved procedures and regulatory requirements in the daily operation of the Licensee's byproduct material program, as required by 10 CFR 35.21(a). This was clearly the root cause of all the violations.

Furthermore, the RSO permitted the consulting medical physicist to assume his (the RSO's) duties. The Licensee is still responsible for the radiation safety program, as required by the license, if

the licensee employs a consultant to assist the RSO. In this instance. the consulting medical physicist identified some violations in the radiation safety program and communicated those violations to Licensee management; however, few if any corrective actions were initiated by the RSO or Licensee management. The fact that previously identified violations went uncorrected demonstrates the lack of managerial attention to radiation safety; and, in the aggregate, the violations represent a significant breakdown in the control of NRC licensed activities at Community Hospital South. Therefore, the violations were appropriately categorized as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR part 2, appendix C. The staff's withdrawal of Violations M, O, and P does not negate the above facts or conclusions. Accordingly, the remaining violations represent a Severity Level III problem, and the staff's withdrawal of Violations M, O, and P is not a basis for reduction of the proposed civil penalty.

The Licensee contends that the NRC was inconsistent in applying the civil penalty adjustment factors and the Licensee was penalized because the consulting medical physicist diligently reviewed and reported on compliance matters. However, while the consulting medical physicist identified four violations to management, Licensee management was unresponsive and permitted these four violations to continue uncorrected.

The Licensee believes that it should receive credit for the findings of the consultant medical physicist and that, therefore, the civil penalty adjustment factors of Identification and Prior Opportunity to Identify were misapplied. The NRC disagrees that the Identification factor was misapplied. The Licensee is correct that the cover letter enclosing the Notice of Violation and Proposed Imposition of Civil Penalty incorrectly states that the NRC identified all the violations. In escalating the base civil penalty by 50 percent under the Identification factor, the NRC recognizes that the Licensee's consultant identified four of the violations prior to the NRC inspection (i.e. Radiation Safety Committee did not meet quarterly, ventilation rates were not measured in rooms of xenon-133 usage, need for proper survey instrumentation, and the lack of annual refresher training for ancillary personnel). However, the remaining 13 of the 17 violations (not counting Violations M, O, and P) were identified by the NRC. The NRC Enforcement Policy states, in part, "The purposes of this [Identification] factor is to encourage licensees to monitor, supervise, and audit activities in order to assure safety and compliance." NRC expects licensees to be pro-active in auditing their programs and instituting corrective action when violations are identified. In this case, the NRC identified the majority of the violations as a result of the Licensee's failure to effectively audit their program. Accordingly, 50 percent mitigation under the Identification factor is warranted.

In escalating the base civil penalty by 100 percent under the Prior Opportunity to Identify factor, the NRC considered the fact that the Licensee's consulting medical physicist provided periodic written reports to management that addressed four of the violations; however, management did not correct two of those violations (i.e. ventilation rates were not measured in rooms of xenon-133 usage, and the need for proper survey instrumentation). Additionally, Licensee management failed to plan and take effective corrective steps to correct the remaining violations (i.e. Radiation Safety Committee did not meet quarterly and the lack of annual refresher training for ancillary personnel) within a reasonable time after identification. Moreover, the NRC issued a Notice of Violation to the Licensee dated February 16, 1989, identifying five violations. Two of the violations (i.e., annual refresher training for ancillary personnel was not conducted, and ventilation rates were not measured in rooms of xenon-133 usage) were repeat violations identified during the November 17, 1992, inspection. The License should have identified these violations sooner as a result of the consultant's audit findings, and taken effective and lasting corrective steps within a reasonable time. Therefore, the Licensee had prior opportunity to identify and correct violations which, in part, contributed to the breakdown in the control of licensed activities and represent a lack of attention or carelessness toward licensed responsibilities. However, since you only had a prior opportunity to identify some of the violations contributing to the breakdown in control of your program, the NRC staff has reconsidered its position and finds that, on balance, escalation of 50 percent, as opposed to 100 percent, is appropriate based on the Prior Opportunity to Identify factor.

The Licensee argues that escalation of the base civil penalty by 25 percent for corrective action is not appropriate since the example cited in the Notice describing the continued use of xenon-133 and the failure to perform room ventilation studies is incorrect. The NRC acknowledges that the Licensee discontinued performing xenon-133 studies in the unauthorized location ("Raytheon Room") upon identification of the violation by the NRC. On November 17, 1992, the Licensee changed locations where xenon-133 was administered and resumed the use of xenon-133 for patient studies in the original authorized location (room 1). However, the Licensee failed to resume the performance of measurements of ventilation rates in room 1 until February 1993. Therefore, the same violation for failure to perform measurements of ventilation rates continued in room 1 after NRC identification of the initial problem in the "Raytheon Room". Additionally, the Licensee did not take immediate actions upon discovery of other violations (i.e., need for proper survey instrumentation and the lack of annual refresher training for ancillary personnel) to restore safety and compliance with the requirements. Once the consultant identified the failure to possess proper survey instrumentation, the Licensee did not purchase the instrumentation for almost a year. In addition, up to the time of the enforcement conference, the annual refresher training for ancillary personnel had not been conducted. In regards to these violations, the Licensee did not take prompt, extensive, or lasting corrective action upon their discovery to restore safety and compliance.

Addressing the Licensee's request for mitigation up to 100 percent for good past performance, the NRC Enforcement Policy provides in pertinent part, "License Performance * * *. Notwithstanding good performance, mitigation of the civil penalty based on this factor is not normally warranted where the current violation reflects a substantial decline in performance that has occurred over the time since the last NRC inspection * * *." Even if the Licensee's past performance had been good, this guidance negates the Licensee's request for mitigation. Moreover, the Licensee's past performance has not been good such as to warrant mitigation under this factor. Five violations were identified during the last inspection on February 16, 1989.

Two of those violations had not been corrected at the time of the November 17, 1992, inspection. Those violations were: (1) Annual refresher training was not conducted for employees involved with radiation safety; and (2) ventilation rates in rooms where xenon-133 was

used were not done at six month intervals. Furthermore, the corrective action for a third violation from the February 16, 1989, inspection was not effective. While the Licensee did appoint a nursing representative to serve on the Radiation Safety Committee, the Licensee did not ensure the attendance of that person. As a result, the nursing representative did not attend any meetings of the Radiation Safety Committee following the appointment. Therefore, no mitigation for good past performance is warranted.

Conclusion on Mitigation. The NRC staff has concluded that the information provided in the Licensee's response provides an adequate basis for partial mitigation of the civil penalty. Accordingly, a reduction of the civil penalty in the amount of $1,250 is warranted.

III. NRC Conclusion

The information provided by the Licensee in its Reply and Answer to a Notice of Violation, dated April 5, 1993, described extenuating circumstances for Violations M, O, and P contending that an NRC inspector told the Licensee to discontinue the activities associated with those violations. Such advice was provided to the Licensee regarding Violations M and O. The information provided was erroneous, but the Licensee apparently acted in good faith and discontinued the regulatory actions associated with Violations M, O, and P. Consequently, M, O, and P have been withdrawn. As explained above, withdrawal of Violations M, O, and P does not affect the overall Severity Level III problem associated with the breakdown of the management oversight of licensed activities. However, based on reconsideration of the factor for Prior Opportunity to Identify, a reduction of $1,250 in the amount of the proposed civil penalty is warranted.

In summary, the Licensee's Reply and Answer to a Notice of Violation, including the extenuating circumstances surrounding Violations M, O, and P, did not provide an adequate basis for reduction of the severity level. However, a reduction of $1,250 in amount of the proposed civil penalty is warranted. Consequently, a civil penalty in the amount of $5,625 should be imposed.

[FR Doc. 93–19970 Filed 8–17–93; 8:45 am]
BILLING CODE 7590–01–M

Niagara Mohawk Power Corporation; Nine Mile Point Nuclear Station, Unit 2; Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request by Niagara Mohawk Power Corporation (NMPC) to withdraw a portion of their February 27, 1993, application for a proposed amendment to Facility Operating License NPF–69 for Nine Mile Point Nuclear Station, Unit 2, located in Oswego County, New York.

The proposed amendment involved changes to the Technical Specifications (TSs) to modify the recirculation flow upscale rod block setpoint and permit the use of NRC-approved power correlations other than the GEXL correlation. Changes to the TS Bases were also proposed that would reflect the use of NRC-approved power correlations, incorporate revisions to General Electric Company's approved analytical techniques, update references, and reflect changes made to the Reload Section of the Updated Safety Analysis Report.

On June 18, 1993, the licensee submitted a letter to the NRC requesting withdrawal of the proposed change to the recirculation flow upscale rod block setpoint. The licensee requested withdrawal since it could not at that time provide the Commission with an analytical basis for the proposed change. The recirculation flow upscale rod block performs no safety function and no design basis treatment or accident analysis takes credit for it.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing which was published in the Federal Register on March 31, 1993 (58 FR 16866).

For further details with respect to this action, see the application for amendment dated February 27, 1993, and the licensee's letter of June 18, 1993, which withdrew the portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 11th day of August 1993.

For the Nuclear Regulatory Commission.

John E. Menning,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–19968 Filed 8–17–93; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–410]

Niagara Mohawk Power Corporation, (Nine Mile Point Nuclear Station Unit 2); Exemption

I.

Niagara Mohawk Power Corporation (NMPC or the licensee) is the holder of facility Operating License No. NPF–69, which authorizes operation of Nine Mile Point Nuclear Station, Unit 2 (the Facility or NMP2), at a steady-state reactor power level not in excess of 3323 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Oswego County, New York. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II.

Section III of appendix J to 10 CFR part 50 requires the development of a program to conduct periodic leak testing of the primary reactor containment and related systems and components, and components penetrating the primary containment pressure boundary. The interval between local leak rate tests for Type B tests is specified by section III.D.2 to be no greater than 2 years.

III.

By letter dated May 28, 1993, NMPC requested a one-time only schedular exemption until the end of the 1993 refueling outage (currently scheduled to begin on October 1, 1993) from the requirements of 10 CFR part 50, appendix J, section III.B., regarding Type B tests of expansion bellows in four Traversing Incore Probe containment penetrations (2NMT*Z31A, C, D, and E). The requested exemption would permit continued reactor operation as well as other activities (e.g., maintenance and refueling operations, surveillance tests, etc.) until the end of the 1993 refueling outage. Otherwise, the required testing would require a plant shutdown solely to perform the required leak tests.

IV.

Section III.D.2 of appendix J to 10 CFR part 50 states that Type B tests shall be performed during reactor shutdowns for refueling, at an interval not to exceed 2 years. However, due to an oversight, the expansion bellows in the four penetrations have not been Type B tested to date. These bellows cannot be Type B tested during reactor operations. Therefore, to preclude a reactor shutdown solely to perform the required tests, the licensee has requested a one-time exemption from the leak test requirements of 10 CFR part 50, Appendix J, until the 1993 refueling outage when these bellows will be Type B tested as required by the regulations.

The 2-year interval requirement for Type B testing is intended to be often enough to preclude significant deterioration between tests and long enough to permit the tests to be performed during routine plant outages. Leak rate testing of containment penetrations during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Furthermore, some containment penetrations, including the four subject penetrations, cannot be tested at power. For those penetrations that cannot be tested during power operation, or for which testing at power would yield unnecessary radiation exposure of personnel, the Commission staff believes the increase in confidence of containment integrity following a successful test is not significant enough to justify the hardships and costs associated with a plant shutdown specifically to perform the required tests prior to the 1993 refuelng outage.

V.

The Commission has determined that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2) (ii) and (iii) are present justifying and exemption; namely, that: (1) application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule and (2) compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted.

The underlying purpose of section III.D.2 of appendix J to 10 CFR part 50 is to provide an interval short enough to prevent serious deterioration from occurring between tests and long enough to permit testing to be performed during regular plant outages. For containment penetrations, such as the four subject penetrations, that cannot be tested at power, the increased confidence in containment integrity following successful testing is not significant enough to justify a plant outage solely to perform the tests prior to the 1993 refueling outage. A plant shut down solely to perform the required test would be an undue hardship. The licensee has presented information accepted by the Commission, which gives a high degree of confidence that the components affected by this exemption will not degrade to an unacceptable extent. The details of the NRC staff's review of the licensee's exemption request are discussed in a safety evaluation dated August 11, 1993. Acceptable leakage limits are defined in section III.B.3(a) of appendix J to 10 CFR part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (54 FR 37759).

This Exemption is effective upon issuance and shall expire at the end of the 1993 refueling outage which is currently scheduled to begin on October 1, 1993.

Dated at Rockville, Maryland, this 11th day of August 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–19969 Filed 8–17–93; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32741: International Series Release No. 573]

List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

August 12, 1993.

Foreign private issuers with total assets in excess of $5,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*, as amended by Public Law No. 94–29 (June 4, 1975)] (the "Act").[1]

Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) provides an exemption from registration under Section 12(g) of the Act for a foreign private issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed or is required to distribute to its security holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on NASDAQ.[2] Securities of non-Canadian issuers in compliance with the information-supplying exemption as of October 6, 1983 and quoted in NASDAQ on that date were grandfathered indefinitely.[3] However, the exemption was extended to Canadian securities only until January 1986.

When it adopted Rule 12g3–2 and other rules relating to foreign securities,[4] the Commission indicated that from time to time it would issue lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[5] The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the following list is available in the public files of the Commission.[6] The

[1] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*, as amended by Public Law No. 94–29 (June 4, 1975)].

[2] Securities Exchange Act Release No. 20264 (October 6, 1983).

[3] If, however, the securities are delisted from NASDAQ or the issuer fails to maintain or otherwise meet the requirements of the exemption, the grandfather provision will cease to apply.

[4] Securities Exchange Act Release No. 8066 (April 28, 1967).

[5] The last such list was contained in Securities Exchange Act Release No. 30859 (June 26, 1992).

[6] Inclusion of an issuer on the following list is not an affirmation by the Commission that the issuer has complied or is complying with all the

Continued

Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[7] The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers.[8] Any questions regarding Rule 12g3–2 or the list included herein should be directed to Annemarie Tierney, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549 ((202) 272–3246). Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, DC 20549 ((202) 272–7450).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Company	File No.	Country
A.C.T. Industrial Corporation	82–1071	Canada.
AB Astra	82–3299	Sweden.
ABN AMRO Holding N.V	82–3246	Netherlands.
ADI Technologies	82–3438	Canada.
AFF Automated Fast Foods Ltd	82–1967	Canada.
AI Software, Inc	82–3561	Canada.
Aaron Oil Corp	82–3473	Canada.
Abbey National PLC	82–2898	United Kingdom.
Acepharm, Inc	82–3345	Canada.
Acheron Resources Ltd	82–3025	Canada.
Adastral Resources Ltd	82–2124	Canada.
Adonos Resources Inc	82–2992	Canada.
Adrian Resources	82–3406	Canada.
Advanced Info Ser	82–3236	Thailand.
Aerovias de Mexico, S.A	82–3195	Mexico.
Afmin Holdings Ltd	82–1853	South Africa.
Afrikander Lease, Ltd	82–245	South Africa.
Agarwal Resources Ltd	82–2562	Canada.
Agen Ltd	82–2330	Australia.
Air Canada	82–2548	Canada.
Airpro Industries, Inc	82–3288	Canada.
Alaskon Resources Ltd	82–1888	Canada.
Alban Exploration Ltd	82–1941	Canada.
Albert Fisher Group PLC	82–1020	United Kingdom.
Alcatel N.V	82–3059	Netherlands.
Algoma Steel Corporation Ltd	82–99	Canada.
All North Resources Ltd	82–1646	Canada.
Allegheny Mines Corporation	82–3340	Canada.
Allied Lyons PLC	82–878	United Kingdom.
Almaden Resources Corp	82–2118	Canada.
Alpargatas, S.A.I.C	82–3122	Argentina.
Alta Explorations Ltd	82–695	Canada.
Altai Resources, Inc	82–2950	Canada.
Amalgamated Steel Mills Berhad	82–3318	Malaysia.
Amer Group Ltd	82–1544	Finland.
Amera Industries Corp	82–3263	Canada.
America West Capital Corp	82–3435	Canada.
American Power & Waste Ltd	82–3365	Canada.
Amoy Properties Ltd	82–3410	Hong Kong.
Ampolex Ltd	82–3078	Australia.
Amway Japan Limited	82–3411	Japan.
Anglo American Corp. of S. Africa	82–97	South Africa.
Anglo American Gold Investment Co	82–146	South Africa.
Anvil Resources Ltd	82–1244	Canada.
Apasco, S.A. de C.V	82–3103	Mexico.
Applied Intl. Holding Ltd	82–1867	Hong Kong.
Aquarius Coatings, Inc	82–3517	Canada.
Ares Serono Group	82–1768	Luxembourg.
Argenta Systems, Inc	82–1320	Canada.
Ariel Resources Ltd	82–1705	Canada.
Asea, AB	82–736	Sweden.
Ashgrove Resources Ltd	82–2535	Canada.
Asia Cement Corporation	82–3385	Taiwan.
Asia Fiber Co. Ltd	82–2842	Thailand.
Asia Pacific Resources	82–2663	Canada.

conditions of the exemption provided by Rule 12g3–2(b). The list does identify those issuers that both have claimed the exemption and have submitted relatively current information to the Commission as of July 30, 1993.

[7] Paragraph (a)(4) of Rule 15c2–11 [17 CFR 240.15c2–11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to maintain in its files, and to make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[8] See, *e.g.*, *Hanly* v. *SEC*, 415 F.2d 589 (2nd Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Company	File No.	Country
Astra Holdings Plc	82–2538	United Kingdom.
Athabaska Gold Res. Ltd	82–1906	Canada.
Athena Gold Corp	82–2226	Canada.
Atlas Copco AB	82–812	Sweden.
Atna Resources Ltd	82–1556	Canada.
Attwood Gold Corp	82–1920	Canada.
Auridiam Consolidated N.L	82–3452	Australia.
Aurochs Mining Exploration Inc	82–3041	Canada.
Auspex Gold Ltd	82–2778	Canada.
Australian Consolidated Press Group Ltd	82–3278	Australia.
Australian Hydrocarbons	82–856	Australia.
Australian National Industries Ltd	82–3351	Australia.
Autobyte Technologies, Inc	82–1435	Canada.
Avanticorp International, Inc	82–2059	Canada.
B.A.T. Industries	82–33	United Kingdom.
B.Y.G. Natural Resources Inc	82–2038	Canada.
BAA plc	82–3372	United Kingdom.
BBC Brown Boveri Ltd	82–2871	Switzerland.
BGM Diversified Energy, Inc	82–3516	Canada.
BHF Bank	82–3404	Germany.
BMD Enterprises Ltd	82–1994	Canada.
BSN Groupe	82–3001	France.
BTR, PLC	82–898	United Kingdom.
BWI Resources Ltd	82–2914	Canada.
BY & G Ventures Corporation	82–1342	Canada.
Banca Cremi S.A	82–3396	Mexico.
Banco Nacional de Mexico S.A	82–3420	Mexico.
Banco Rio de la Plata S.A	82–3364	Argentina.
Banco de Galicia y Buenos Aires	82–3384	Argentina.
Bank of East Asia	82–3443	Hong Kong.
Bank of Fukuoka, The	82–1117	Japan.
Bank of Montreal	82–126	Canada.
Bank of Nova Scotia	82–132	Canada.
Bank of Scotland	82–3240	United Kingdom.
BankInter, S.A	82–2972	Spain.
Banque Indosuez	82–3262	France.
Bar Resources Ltd	82–1047	Canada.
Barytex Resources Corp	82–1104	Canada.
Battle Creek Developments Ltd	82–2824	Canada.
Beatrix Mines Ltd	82–1054	South Africa.
Beaufield Resources Inc	82–1557	Canada.
Bergesen d.y. A/S	82–1697	Norway.
Berkeley Govett & Co. Ltd	82–3154	Channel Island.
Bespak Plc	82–3349	United Kingdom.
Big I Developments Ltd	82–1094	Canada.
Biron Bay Resources Limited	82–3239	Canada.
Blue Circle Industries PLC	82–927	United Kingdom.
Blue Range Resource Corporation	82–3302	Canada.
Blyvooruitzicht Gold Mining Co. Ltd	82–69	South Africa.
Body Shop International Plc	82–3534	United Kingdom.
Bombardier	82–3123	Canada.
Bonaventure Resources Ltd	82–2920	Canada.
Booker PLC	82–1531	United Kingdom.
Borealis Exploration Ltd	82–1656	Canada.
Boron Chemicals International Ltd	82–3496	Canada.
Bowater Industries PLC	82–3	United Kingdom.
Bracken Mines Ltd	82–219	South Africa.
Bradsue Resources Ltd	82–1508	Canada.
Braiden Resources Ltd	82–2121	Canada.
Brascan, Ltd	82–4	Canada.
Bravo Resources Inc	82–2560	Canada.
Bre-x Minerals Ltd	82–2750	Canada.
Breckenridge Resources Ltd	82–1647	Canada.
Bresea Resources Ltd	82–1377	Canada.
Bridge Oil Ltd	82–2167	Australia.
Brierly Investments Ltd	82–1093	New Zealand.
Brigadier Resources Ltd	82–1410	Canada.
Britannia Gold Corporation	82–733	Canada.
Brooks Resources Ltd	82–2434	Canada.
Brunswick Mining and Smelting Corp. Ltd	82–2827	Canada.
Bryndon Ventures, Inc	82–1363	Canada.
Buffelsfontein Gold Mining Co., Ltd	82–302	South Africa.
Burmah Castrol PLC, The	82–5	United Kingdom.
Burns Philip & Co. Ltd	82–1565	Australia.

Company	File No.	Country
C.E.L. Industries Ltd	82–3421	Canada.
C.P. Pokphand Co. Ltd	82–3260	Bermuda.
C.R. Provini Financial Services Corp	82–1901	Canada.
CCL Industries Inc	82–2549	Canada.
CIBA-GEIGY Ltd	82–2918	Switzerland.
CML Microsystems PLC	82–3176	United Kingdom.
CS Holdings	82–3477	Switzerland.
CSK Corp	82–781	Japan.
CSR Limited	82–2693	Australia.
Cabo Ventures, Inc	82–1401	Canada.
Cabot Resources Corporation	82–2550	Canada.
Cactus West Explorations Ltd	82–3268	Canada.
Calais Resources, Inc	82–3525	Canada.
Calneva Resources Ltd	82–2738	Canada.
Cambridge Softeck, Inc	82–3307	Canada.
Can Dorado Mines Ltd	82–3232	Canada.
Canada Tungsten Mining Corp. Ltd	82–290	Canada.
Canadian Conquest Explorations Inc	82–2473	Canada.
Canadian Educational Courseware Inc	82–3400	Canada.
Canadian Frobischer Resources	82–3254	Canada.
Canadian Giant Exploration Limited	82–3482	Canada.
Canadian Hydro Developers	82–3347	Canada.
Canadian Imperial Bank of Commerce	82–103	Canada.
Canadian Pioneer Energy Inc	82–3072	Canada.
Canadian Water Corp	82–3206	Canada.
Canfibre Group Ltd	82–2222	Canada.
Canguard Health Technologies Inc	82–1184	Canada.
Cantrell Capital Corporation	82–3218	Canada.
Cape Range Ltd	82–3545	Australia.
Capilano International Inc	82–3094	Canada.
Captive Air International, Inc	82–2367	Canada.
Carlin Gold Co. Inc	82–1770	Canada.
Castle Capital Inc	82–3216	Canada.
Cathay Clemente (Holdings) Limited	82–3457	Cayman Islands.
Cathay Pacific Airlines Ltd	82–1390	Hong Kong.
Cathedral Gold Corp	82–1990	Canada.
Celanese Canada Ltd	82–171	Canada.
Celtic Resources Ltd	82–3204	Canada.
Cemex, S.A	82–2744	Mexico.
Centenary Holdings S.A	82–3070	Luxembourg.
Central Crude Ltd	82–1933	Canada.
Central Norseman Gold Corp. Ltd	82–2953	Australia.
Central Pacific Minerals N.L	82–354	Australia.
Ceramica Carabobo, C.A	82–3097	Venezuela.
Champion Technology Holdings Limited	82–3442	Cayman Islands.
Charter Consolidated PLC	82–233	United Kingdom.
Chase Resource Corp	82–1976	Canada.
Chauvco Resources Ltd	82–3316	Canada.
China Light & Power Co. Ltd	82–1197	Hong Kong.
China Steel Corporation	82–3296	China.
Choice Software Systems	82–3377	Canada.
Christies International plc	82–1180	United Kingdom.
Chubb Group plc	82–3394	United Kingdom.
Ciboney Group Limited	82–3504	Jamaica.
Cigarrera La Moderna SA de CV	82–3419	Mexico.
Ciments Francais	82–3336	France.
Circa Telecommunications Inc	82–3128	Canada.
Citation Gold Corp	82–2990	Canada.
Clarins	82–2960	France.
Clarion Environmental Technologies, Inc	82–3533	Canada.
Cliff Resources Corp	82–3483	Canada.
Coats Viyella PLC	82–1751	United Kingdom.
Coca-Cola Amatil Ltd	82–2994	Australia.
Colony Pacific Explorations Ltd	82–1115	Canada.
Colray Resources, Inc	82–1536	Canada.
Comac Food Group Inc	82–2456	Canada.
Comalco Ltd	82–1092	Australia.
Cominco, Ltd	82–107	Canada.
Commonwealth Gold Corporation	82–2786	Canada.
Commonwealth Richmond Properties Inc	82–2215	Canada.
Compagnie Bancaire	82–3368	France.
Compagnie Generale des Est. Michelin	82–3354	France.
Compagnie de Suez	82–2946	France.
Companhia Energetica Minas Gerais	82–3465	Brazil.

Company	File No.	Country
Companhia Suzano De Papel E Celulose	82-3550	Brazil.
Compania Naviera Perez Companc	82-3295	Argentina.
Compania Sevillana de Electricidad S.A	82-3111	Spain.
Compass Resources Ltd	82-2041	Canada.
Con-Space Communications Ltd	82-3378	Canada.
Concert Industries Ltd	82-1003	Canada.
Consolidated Boulder Mountain Resources	82-1139	Canada.
Consolidated Cambridge Mines Limited	82-3474	Canada.
Consolidated Cottonballs Corporation	82-3376	Canada.
Consolidated Eurocan Ventures Ltd	82-2948	Canada.
Consolidated Manus Industries Inc	82-3225	Canada.
Consolidated Nirvana Industries Ltd	82-1079	Canada.
Consolidated Pemberton Technologies Ltd	82-3524	Canada.
Consolidated Pine Channel Gold Corp	82-2583	Canada.
Consolidated Redding Exploration Corp	82-2757	Canada.
Continental AG	82-1357	Germany.
Continental Caretech Corp	82-3056	Canada.
Continental Precious Minerals Inc	82-3358	Canada.
Controladora Comercial Mexicana	82-3177	Mexico.
Copene Petroquimica do Nordeste S.A	82-3367	Brazil.
Cord Holdings Ltd	82-988	Australia.
Corporacion Financiera del Valle S.A	82-3437	Columbia.
Corporacion Industrial Sanluis S.A	82-2867	Mexico.
Corporacion Mapfre S.A	82-1987	Spain.
Creator Capital, Inc	82-3015	Canada.
Credit Bank A.E	82-3399	Greece.
Credito Italiano S.P.A	82-3185	Italy.
Crew Natural Resources	82-2662	Canada.
Cross Canada Resources Inc	82-2095	Canada.
Cross Lake Minerals Ltd	82-2636	Canada.
CrossRoads Oil Group PLC	82-3182	United Kingdom.
Crystallex International Corporation	82-1701	Canada.
Cuda Consolidated, Inc	82-2445	Canada.
Cumulus Technology Ltd	82-1553	Canada.
Curlew Lake Resources Inc	82-1978	Canada.
Cyclone Capital Corporation	82-2459	Canada.
Cyn Tech Ventures Ltd	82-2675	Canada.
Czar Resources Ltd	82-3136	Canada.
DESC, Socledad de Fomento Industrial	82-3168	Mexico.
DRC Resources Corp	82-713	Canada.
DSM, N.V	82-3120	Netherlands.
Dab Investments Ltd	82-1245	South Africa.
Dai'ei Inc., The	82-230	Japan.
Dairy Farm International Holdings Ltd	82-2962	Hong Kong.
Daiwa Danchi Co., Ltd	82-1218	Japan.
Darius Technology Ltd	82-1267	Canada.
De Beers Centenary AG	82-3069	Switzerland.
De Beers Consolidated Mines, Ltd	82-91	South Africa.
Decade International Development Ltd	82-3374	Canada.
Deelkraal Gold Mining Co. Ltd	82-246	South Africa.
Deep Basin Petroleum Corp	82-2811	Canada.
Delgratia Developments, Ltd	82-3398	Canada.
Delmay Mining Corporation	82-3412	Canada.
Delta Gold N.L	82-1221	Australia.
Demand Technologies Ltd	82-2033	Canada.
Den Danske Bank af 1871 Aktieselskab	82-1263	Denmark.
Denehurst Ltd	82-2334	Australia.
Dentonia Resources Ltd	82-627	Canada.
Derlan Industries Ltd	82-2959	Canada.
Derrick Petroleum Corporation	82-1895	Canada.
Deutsche Bank A.G	82-334	Germany.
Development Bank of Singapore, The	82-3172	Singapore.
Dia Met Minerals Ltd	82-3234	Canada.
Diamond International Industries Inc	82-1314	Canada.
Diasyn Technologies Ltd	82-2295	Canada.
Discovery Distribution Corp	82-3148	Canada.
Discovery West Corporation	82-1046	Canada.
Dixons Group plc	82-3331	United Kingdom.
Dofasco Ltd	82-3226	Canada.
Dominguez & Cia Caracas S.A	82-3429	Venezuela.
Dominio Textile Inc	82-3460	Canada.
Doornfontein Gold Mining Co. Ltd	82-213	South Africa.
Dorel Industries Inc	82-2800	Canada.
Dresdner Bank A.G	82-229	Germany.

Company	File No.	Country
Driefontein Consolidated Ltd	82–124	South Africa.
Dupont Canada Inc	82–19	Canada.
Durban Roodeporte Deep Ltd	82–156	South Africa.
Durum Energy Corporation	82–3346	Canada.
E.R.G. Australia Ltd	82–2372	Australia.
EI Environmental Engineering Concepts	82–1598	Canada.
EVN Energie-Versorgung Nud. Akt	82–3178	Austria.
Eaglecrest Explorations Ltd	82–603	Canada.
East Daggafontein Mines Ltd	82–42	South Africa.
East Midlands Electricity PLC	82–3029	United Kingdom.
East Rand Gold & Uranium Co. Ltd	82–289	South Africa.
East Rand Proprietary Mines, Ltd	82–239	United Kingdom.
Eastern Electricity PLC	82–3040	United Kingdom.
Eastfield Resources Ltd	82–1929	Canada.
Ecstall Mining Corp	82–2647	Canada.
Edinov Corporation	82–3519	Canada.
Egoli Consolidated Mines	82–909	South Africa.
Elan Energy	82–3224	Canada.
Elandsrand Gold Mining Co. Limited	82–266	South Africa.
Elite Industries Ltd	82–2958	Israel.
Elsevier N.V	82–3049	Netherlands.
Emall Limited	82–2951	Australia.
Emerald Isle Resources Inc	82–1479	Canada.
Empaques Ponderosa, S.A. de C.V	82–3151	Mexico.
Emperor Mines Ltd	82–969	Australia.
Empresas La Moderna SA de CV	82–3348	Mexico.
Encor Inc	82–2561	Canada.
Enerwaste Minerals Corporation	82–828	Canada.
Envases Venezolanos, S.A.C.A	82–3294	Venezuela.
Envirotreat Systems, Inc	82–3431	Canada.
Equinox Resources Ltd	82–1152	Canada.
Equus Petroleum Corporation	82–1302	Canada.
Eridania Z.N., S.P.A	82–902	Italy.
Espirito Santo Financial Holding S.A	82–2883	Luxembourg.
Esselte AB	82–1355	Sweden.
Esstra Industries Corporation	82–1371	Canada.
Euro Disneyland S.C.A	82–2907	France.
European Ventures Ltd	82–3491	Canada.
Eurotunnel PLC	82–3000	United Kingdom.
Eurotunnel S.A	82–2999	France.
Even Resources Ltd	82–2493	Canada.
Evergo International Holdings Co. Ltd	82–866	Hong Kong.
Exor Data Inc	82–2733	Canada.
F.H. Faulding & Company Limited	82–2882	Australia.
FCA International Ltd	82–1310	Canada.
FNI Fashion Network	82–2511	Canada.
Faber Group Berhad	82–3505	Malaysia.
Fairfield Minerals Ltd	82–1784	Canada.
Fairhaven International Ltd	82–650	Bermuda.
Fairmont Resources, Inc	82–3492	Canada.
Fairway Industries Ltd	82–1962	Canada.
Falcon Point Resources Ltd	82–1713	Canada.
Fastlane International Enterprises, Inc	82–1334	Canada.
Federal Energy Corporation Ltd	82–3352	Canada.
Fenway Resources Ltd	82–2303	Canada.
First Australian Resources N.L	82–3494	Australia.
First Entertainment Corporation	82–3484	Canada.
First Guardian Petroleum Corp	82–2354	Canada.
First Pacific Co. Ltd	82–836	Hong Kong.
Fisons PLC	82–202	United Kingdom.
Fletcher Challenge Canada Ltd	82–668	Canada.
Fomento Economics Mexicana	82–3009	Mexico.
Footwall Explorations Ltd	82–2177	Canada.
Foresthill Resources Inc	82–3500	Canada.
Formation Capital Corp	82–2783	Canada.
Forte Plc	82–3416	United Kingdom.
Fotex Elso Amerikai Magyar Fotosz	82–3286	Hungary.
Four Seasons Hotels	82–3312	Canada.
Franz Capital Corp	82–2574	Canada.
Free State Consolidated Gold Mines	82–44	South Africa.
Free State Dev. & Invest. Corp. Ltd	82–296	South Africa.
Freegold Recovery Inc	82–1225	Canada.
Fuji Photo Film Co., Ltd	82–78	Japan.
G.B. Holdings Ltd	82–2192	Singapore.

Company	File No.	Country
GKN PLC	82–1042	United Kingdom.
Galleon Mining Ltd	82–3258	Canada.
Garden Lake Resources Ltd	82–3489	Canada.
Gemstar Resources Ltd	82–3493	Canada.
Genbel Investments Ltd	82–235	South Africa.
Gencor Ltd	82–311	South Africa.
General Electric Company PLC, The	82–3121	United Kingdom.
Genesys Pharma Inc	82–3523	Canada.
Geo-Data International Ltd	82–2115	Canada.
Gerle Gold Ltd	82–1209	Canada.
Glencairn Explorations Ltd	82–2640	Canada.
Glendale Resources, Inc	82–2353	Canada.
Glimmer Resources, Inc	82–1970	Canada.
Global Teleworks Corporation	82–3375	Canada.
Globe Resources, Inc	82–849	Australia.
Gold Fields Property Co., Ltd	82–214	South Africa.
Gold Fields of South Africa Ltd	82–204	South Africa.
Gold Greenlees Trott PLC	82–2884	United Kingdom.
Gold Mines of Kalgoorlie Ltd	82–2076	Australia.
Golden News Resources Inc	82–3450	Canada.
Golden Peaks Resources Ltd	82–3343	Canada.
Golden Rainbow Resources Inc	82–3449	Canada.
Golden Star Resources	82–1275	Canada.
Golden Trump Resources Ltd	82–797	Canada.
Golden Unicorn Mining Corporation	82–3532	Canada.
Goldnev Resources	82–1080	Canada.
Goldpac Investments Ltd	82–1167	Canada.
Goldrush Casino & Mining Corporation	82–3323	Canada.
Goodman Fielder Wattie Ltd	82–2009	Australia.
Govett Strategic Investment Trust PLC	82–287	United Kingdom.
Graham Gold Mining Corp	82–2978	Canada.
Grand America Minerals Ltd	82–3392	Canada.
Grand Hotel Holdings Ltd	82–3408	Hong Kong.
Grande Portage Resources Ltd	82–1767	Canada.
Granduc Mines Ltd	82–3124	Canada.
Grasim Industries Ltd	82–3322	India.
Great Eastern Mines Ltd	82–732	Australia.
Greater Lenora Resources Corp	82–837	Canada.
Greenwood Environmental, Inc	82–2195	Canada.
Grootvlei Proprietary Mines Ltd	82–222	South Africa.
Gruma S.A. de C.V	82–3434	Mexico.
Grupo Carso, S.A. de C.V	82–3175	Mexico.
Grupo Embotellador de Mexico	82–3413	Mexico.
Grupo Financiero Banamex Accival	82–3325	Mexico.
Grupo Financiero Bancomer S.A. de C.V	82–3273	Mexico.
Grupo Financiero Invermexico SA de CV	82–3447	Mexico.
Grupo Financiero Mexival	82–3321	Mexico.
Grupo Financiero Prime Internacional	82–3548	Mexico.
Grupo Gigante, S.A. de C.V	82–3142	Mexico.
Grupo Industrial Maseca, S.A. de C.V	82–3215	Mexico.
Grupo Sidek, S.A. de C.V	82–2598	Mexico.
Grupo Simec, S.A. de C.V	82–3132	Mexico.
Grupo Situr, S.A. de C.V	82–3187	Mexico.
Grupo Synkro, S.A. de C.V	82–2847	Mexico.
Grupo Syr, S.A. de C.V	82–3305	Mexico.
Grupo Televisa, S.A. de C.V	82–3213	Mexico.
Grupo Video Visa, S.A. de C.V	82–3193	Mexico.
Guardian Communication Industries Inc	82–857	Canada.
Guinness PLC	82–1478	United Kingdom.
Gwalia Resources Ltd	82–2126	Australia.
H. Jager Developments Inc	82–2818	Canada.
HSBC Holdings PLC	82–683	United Kingdom.
Habsburg Resources Inc	82–891	Canada.
Haddington Resources Ltd	82–2024	Canada.
Hang Lung Development Co. Ltd	82–1439	Hong Kong.
Hang Seng Bank Ltd	82–1747	Hong Kong.
Hanna Pacific Steel Co. Ltd	82–2435	Canada.
Harbour Petroleum Company Ltd	82–3427	Canada.
Hardman Resources N.L	82–3472	Australia.
Harmony Gold Mining Co. Ltd	82–238	South Africa.
Hars Systems, Inc	82–1870	Canada.
Harvard Capital Corp	82–2415	Canada.
Helikopter Service A.S	82–3135	Norway.
Henderson Land Development Co. Ltd	82–1561	Hong Kong.

Company	File No.	Country
Highgrade Ventures Ltd	82–2257	Canada.
Highveld Steel & Vanadium Corp. Ltd	82–596	South Africa.
Hillsdown Holdings PLC	82–1407	United Kingdom.
Hindalco Industires Ltd	82–3428	India.
Hokuriku Bank Ltd	82–1045	Japan.
Hol-Lac Gold Mines Limited	82–3529	Canada.
Hollinger Inc	82–117	Canada.
Hong Kong & China Gas Co. Ltd	82–1543	Hong Kong.
Hong Kong Gold Corp	82–3459	Canada.
Hong Kong Land Holdings Limited	82–2964	Hong Kong.
Hopewell Holdings Ltd	82–1547	Hong Kong.
Horace Small Apparel Plc	82–3341	United Kingdom.
Huhtamaki Oy	82–2925	Finland.
Hydromet Corporation Limited	82–3543	Australia.
Hysan Development Co. Ltd	82–1617	Hong Kong.
Hyundai Motor Company	82–3423	Korea.
I.M.P.A.C.T. Minerals Inc	82–3233	Canada.
ILM Resources Ltd	82–1207	Canada.
IRSA Inversiones Y Represetaciones S.A	82–3537	Argentina.
IVS Intelligent Vehicle Systems Ltd	82–2929	Canada.
Iatco Industries Inc	82–2793	Canada.
Iberdrola I, S.A	82–3382	Spain.
Idaho Consolidated Metals Corp	82–3166	Canada.
Image Data International Corporation	82–2700	Canada.
Imasco Ltd	82–118	United Kingdom.
Impala Platinum Holdings Limited	82–359	South Africa.
Imperial Metals Corp	82–1032	Canada.
Industrias de Papel Simao S.A	82–3383	Brazil.
Infocorp Computer Solutions Ltd	82–3513	Canada.
Insular Explorations Ltd	82–1827	Canada.
Insulpro Industries Inc	82–3281	Canada.
Interactive Communications Corp	82–3054	Canada.
Interfirst Resources Inc	82–2302	Canada.
Interlock Consolidated Enterprises	82–3359	Canada.
Internacionale de Ceramica S.A. de C.V	82–2873	Mexico.
International Brace Resources Inc	82–1014	Canada.
International Capri Resources Ltd	82–2460	Canada.
International Consort Industries, Inc	82–993	Canada.
International Container Terminal Serv	82–3453	Philippines.
International Mahogany Corporation	82–2375	Canada.
International Nederlanden Groep N.V	82–3458	Netherlands.
International Northair Mines Ltd	82–305	Canada.
International PCBX Systems Inc	82–3527	Canada.
International R.S.V. Resource Corp	82–3366	Canada.
International Slocan Developments Ltd	82–3414	Canada.
International Tessa Capital Corporation	82–3530	Canada.
International Ticker Tape Resources Ltd	82–3373	Canada.
International Tower Hill Mines Ltd	82–3248	Canada.
International UNP Holdings Ltd	82–2731	Canada.
Intermova Resources Ltd	82–3499	Canada.
Iris Resources, Inc	82–1215	Canada.
Isras Investment Company Ltd	82–3243	Israel.
Izone International Ltd	82–782	Canada.
J. Sainsbury PLC	82–913	United Kingdom.
James Hardie Industries Ltd	82–972	Australia.
Japan Airlines Company Ltd	82–122	Japan.
Jardine Matheson Holdings	82–2963	Hong Kong.
Jardine Strategic Holdings Ltd	82–3085	Bermuda.
Jarvis Resources Ltd	82–962	Canada.
Jason Mining Ltd	82–1257	Australia.
Jefferson Smurfit Group PLC	82–1311	Ireland.
Jericho Resources Ltd	82–2976	Canada.
Jettra Resources Ltd	82–3405	Canada.
Jilbey Exploration Ltd	82–1629	Canada.
John Labatt Ltd	82–1103	Canada.
Johnson Electric Holdings Ltd	82–2416	Canada.
Jonpol Explorations Ltd	82–1989	Canada.
Joutel Resources Ltd	82–502	Canada.
Julia Mines N.L	82–1666	Australia.
Kawasaki Steel Corporation	82–3389	Japan.
Kensbrook Development Corporation	82–3390	Canada.
Keppel Corporation Limited	82–2564	Singapore.
Kestrel Resources Ltd	82–2890	Canada.
Kettle River Resources Ltd	82–666	Canada.

Company	File No.	Country
Key Anacon Mines Ltd	82–23	Canada.
Keylock Resources Inc	82–3271	Canada.
Kia Motors Corp	82–3205	Korea.
Kidston Gold Mines Ltd	82–2351	Canada.
Kimberly Clark De Mexico	82–3308	Mexico.
Kingfisher PLC	82–968	United Kingdom.
Kinova Holdings Corporation	82–3558	Canada.
Kinross Mines Ltd	82–220	South Africa.
Kirin Brewery Co. Ltd	82–188	Japan.
Kloof Gold Mining Co., Ltd	82–205	South Africa.
Kobe Steel Ltd	82–3371	Japan.
Koninklijke Van Ommeren Ceteco N.V	82–1217	Belgium.
Koninklijke Wessanen N.V	82–1306	Netherlands.
Kopel (Drive Yourselves) Ltd	82–3137	Israel.
L'Oreal	82–735	France.
LMX Resources Ltd	82–2139	Canada.
La Rock Mining Corporation	82–1486	Canada.
Ladbroke Group PLC	82–1571	United Kingdom
Lafarge Coppee	82–3369	France.
Land Lease Corporation Limited	82–3498	Australia.
Landstar Properties Inc	82–2240	Canada.
Langtec Capital Corporation	82–2385	Canada.
Lansing Enterprises, Inc	82–2019	Canada.
Laser Friendly, Inc	82–3538	Canada.
Laura Ashley Holdings PLC	82–1356	United Kingdom.
Le Groupe Videotron Ltee	82–3269	Canada.
Legion Resources Ltd	82–2556	Canada.
Leslie Gold Mines Ltd	82–223	South Africa.
Lessonware Ltd	83–3370	Canada.
Lion Land Berhad	82–3342	Malaysia.
Listed Ventures Inc	82–3230	Canada.
Lodestar Explorations Inc	82–3110	Canada.
London Electricity PLC	82–3037	United Kingdom.
Lonrho PLC	82–191	United Kingdom.
Lournic Resources Ltd	82–2670	Canada.
Lucas Gold Resources Corp	82–2297	Canada.
Luxor Industrial Corporation	82–822	Canada.
Lydenburg Platinum Ltd	82–312	South Africa.
MBF Holdings Berhad	82–3469	Malaysia.
MIM Holdings Ltd	82–173	Australia.
Maesa Petroleum, Inc	82–1208	Canada.
Magnatron International Corp	82–2975	Canada.
Major General Resources Ltd	82–2996	Canada.
Malayan United Ind. Berhad of Malaysia	82–2586	Malaysia.
Mandarin Oriental International Ltd	82–2955	Hong Kong.
Mango Resources Ltd	82–2454	Canada.
Manhattan Minerals Corp	82–3328	Canada.
Mantex S.A.I.C.A.-S.A.C.A	82–3241	Venezuela.
Manweb PLC	82–3036	United Kingdom.
Maple Leaf Springs Water Corporation	82–3432	Canada.
Marks and Spencer PLC	82–1961	United Kingdom.
Marubeni Corp	82–616	Japan.
Mavesa S.A	82–3397	Venezuela.
Maximusic North American Corporation	82–2140	Canada.
Maxwell Energy Corporation	82–3061	Canada.
McCulloch's Canadian Beverages, Inc	82–3512	Canada.
Medya Holdings AS	82–3515	Turkey.
Melinga Resources Ltd	82–2745	Canada.
Merit Technologies Ltd	82–1414	Canada.
Metall Mining Corporation	82–3481	Canada.
Metana Minerals N.L	82–2175	Australia.
Metra Corp	82–933	Finland.
Micrologix Biotech, Inc	82–3179	Canada.
Mikado Resources Ltd	82–1298	Canada.
Mill City Gold Mining Corp	82–3076	Canada.
Minefinders Corp. Ltd	82–2227	Canada.
Minera Rayrock Inc	82–3471	Canada.
Minerex Resources, Ltd	82–946	Canada.
Minerva Gold Mines Ltd	82–3275	Canada.
Minnova Inc	82–3475	Canada.
Minorco	82–206	Bermuda.
Minotaur Explorations Ltd	82–2448	Canada.
Minvita Enterprises Ltd	82–2161	Canada.
Mirage Resource Corporation	82–1838	Canada.

Company	File No.	Country
Miramar Mining Corp	82–1566	Canada.
Mirror Group Newspapers PLC	82–3114	United Kingdom.
Mishibishu Gold Corp	82–2682	Canada.
Mitsubishi Kasei Corp	82–1191	Japan.
Molinos Rio de la Plata S.A	82–3180	Argentina.
Molson Companies Ltd	82–2954	Canada.
Morgan Crucible Company	82–3387	United Kingdom.
Mortcorp Enterprises Inc	82–3255	Canada.
Motion Works Corp	82–3250	Canada.
Mount Burgess Gold Mining Co. N.L	82–1235	Australia.
Mountain Province Mining Corporation	82–2540	Canada.
Mountain West Resources Inc	82–1201	Canada.
Multinational Resources, Inc	82–1095	Canada.
Mutual Resources Ltd	82–1171	Canada.
N.V. Amev	82–3118	Netherlands.
NTC Capital Corporation	82–2157	Canada.
NV Koninklijke Nederlandse Vlie. Fok	82–3014	Netherlands.
NV Verenigd Bezit VNU	82–2876	Netherlands.
Nacasa Ventures Inc	82–939	Canada.
Naneco Minerals Ltd	82–2618	Canada.
National Mutual Asia Ltd	82–3426	Hong Kong.
National Power PLC	82–3060	United Kingdom.
Navarra Resources Corp	82–3077	Canada.
Naxos Resources Ltd	82–2588	Canada.
Nestle S.A	82–1252	Switzerland.
Nevada North Resources Inc	82–1665	Canada.
Nevada Star Resources Corp	82–3088	Canada.
New Age Ventures Inc	82–3344	Canada.
New Claymore Resources Ltd	82–3433	Canada.
New World Developments Co. Ltd	82–2971	Hong Kong.
Newcrest Mining Ltd	82–3267	Australia.
Newhawk Gold Mines Ltd	82–739	Canada.
Nintendo Co. Ltd	82–2544	Japan.
Nippon Shokubai Kagaku Kagyo Co. Ltd	82–1484	Japan.
Nissan Motor Co., Ltd	82–207	Japan.
Nlugini Mining Ltd	82–1230	New Guinea.
Noble Metal Group Inc	82–3220	Canada.
Nokia Corporation	82–1490	Finland.
Noranda Forest Inc	82–3173	Canada.
Normandy Resources N.L	82–1975	Australia.
Noront Resources Ltd	82–2304	Canada.
North American Nippon Technologies Corp	82–3048	Canada.
North Broken Hill Peko Ltd	82–2531	Australia.
North West Water Group PLC	82–2813	United Kingdom.
Northern Electric Plc	82–3039	United Kingdom.
Northern Orion Explorations Ltd	82–3153	Canada.
Northfield Minerals Inc	82–2065	Canada.
Northfork Ventures Ltd	82–3062	Canada.
Northumbrian Water Group Plc	82–2802	United Kingdom.
Norweb Plc	82–3038	United Kingdom.
OMV Aktiengesellschaft	82–3209	Austria.
Octagon Industries, Inc	82–3310	Canada.
Oil City Lubricants Ltd	82–1260	Canada.
Oil Search Limited	82–3456	Papua New Guinea.
Olds Industries Inc	82–3461	Canada.
Olympus Optical Company Ltd	82–3326	Japan.
Omron Corp	82–1170	Japan.
Onword Learning Systems Inc	82–2930	Canada.
Orange Free State Investments Ltd	82–1220	South Africa.
Orbit Oil and Gas Ltd	82–3107	Canada.
Orenda Forest Products Ltd	82–934	Canada.
Orthotronics Medical Technologies Inc	82–2479	Canada.
Osito Ventures Limited	82–2238	Canada.
Osprey Mortgage Securities Ltd	82–3441	Isle of Jersey.
P.T. Gadjah Tunggal	82–3201	Indonesia.
PIC Prospectors International Corp	82–2039	Canada.
PWA Corp	82–3203	Canada.
Pacific Century Explorations Ltd	82–2120	Canada.
Pacific Copperfields Inc	82–3235	Canada.
Pacific Northern Ventures Ltd	82–3333	Canada.
Pacific Talc Ltd	82–3159	Canada.
Pact Resources N.L	82–1386	Australia.
PanContinental Mining Ltd	82–1366	Canada.
PanGlobal Enterprises, Inc	82–3223	Canada.

Company	File No.	Country
Parallax Development Corp	82–1854	Canada.
Park Meditech Inc	82–3249	Canada.
Pechiney International	82–3350	France.
Pelsart Resources N.L	82–484	Australia.
Pentos PLC	82–2592	United Kingdom.
Peregrine Investments Holdings Ltd	82–3466	Hong Kong.
Pernod Ricard S.A	82–3361	France.
Peugeot S.A	82–3531	France.
Pioneer International Ltd	82–2701	Australia.
Pittencrieff PLC	82–3415	United Kingdom.
Placer Pacific Ltd	82–1952	Australia.
Ponderosa Industrial S.A. de C.V	82–2880	Mexico.
Poseidon Gold Ltd	82–2875	Australia.
Power Corp. of Canada	82–137	Canada.
Power Financial Corp	82–1716	Canada.
PowerGen PLC	82–3066	United Kingdom.
Premier Consolidated Oilfields PLC	82–2617	United Kingdom.
President Enterprises Corp	82–3424	Taiwan.
Primo Gold Ltd	82–3335	Canada.
Princeton Mining Co	82–1243	Canada.
Promatek Industries Ltd	82–1351	Canada.
Provigo Inc	82–2570	Canada.
Prudential Corporation PLC	82–1477	United Kingdom.
Pure Gold Resources, Inc	82–3520	Canada.
Quadrum S.A. de C.V	82–2863	Mexico.
Quattro Resources Ltd	82–2625	Canada.
Queenstake Resources Ltd	82–565	Canada.
Quillo Technologies, Inc	82–1960	Canada.
Quinto Mining Corp	82–475	Canada.
RJK Explorations Ltd	82–2629	Canada.
Racal Electronics Plc	82–481	United Kingdom.
Ranchmen's Resources Ltd	82–2615	Canada.
Rand Mines Ltd	82–304	South Africa.
Randex Ltd	82–224	United Kingdom.
Randfontein Estates Gold Mining	82–267	South Africa.
Rank Organisation Ltd., The	82–17	United Kingdom.
Rayrock Yellowknife Resources Inc	82–378	Canada.
Reako Explorations Ltd	82–1286	Canada.
Redland PLC	82–2156	United Kingdom.
Reed International Plc	82–2856	United Kingdom.
Regeena Resources, Inc	82–3560	Canada.
Reliance Industries Ltd	82–3300	India.
Repola Ltd	82–3161	Finland.
Resorts World Berhad	82–3229	Malaysia.
Response Biomedical Corporation	82–1365	Canada.
Rhonda Mining Corporation	82–3418	Canada.
Rich Mineral Corp	82–2832	Canada.
Richmont Mines Inc	82–2940	Canada.
Ridgeway Petroleum Corporation	82–1819	Canada.
Riley Resources	82–2159	Canada.
Riva Petroleum Inc	82–2945	Canada.
Roche Holdings Ltd	82–3315	Switzerland.
Rockford Technology Corp	82–2223	Canada.
Rockwealth International Resource Corp	82–2723	Canada.
Rocraven Resources Ltd	82–493	Canada.
Rolls-Royce PLC	82–2821	United Kingdom.
Roper Resources Inc	82–2020	Canada.
Rosenthal A.G	82–1648	Germany.
Rothmans International Ltd	82–84	United Kingdom.
Royal Bank of Canada	82–796	Canada.
Royal Nedlloyd Group NV	82–1056	Netherlands.
Rustenburg Platinum Holdings Ltd	82–241	South Africa.
Ryde Industries Inc	82–2326	Canada.
S.A. Brewing Holdings Ltd	82–2692	Australia.
STET Societa Finanziaria Telefonica PA	82–1073	Italy.
Sabre Marketing Corp	82–3214	Canada.
Safeguard Ventures Inc	82–3071	Canada.
Saga Petroleum A.S	82–2869	Norway.
Saint Helena Gold Mines Ltd	82–232	South Africa.
Sakura Bank Ltd	82–3055	Japan.
Samantha Explorations N.L	82–323	Australia.
Samoth Capital Corp	82–2931	Canada.
Samsung Electronics Co. Ltd	82–3109	Korea.
San Andreas Resources Corporation	82–3313	Canada.

Company	File No.	Country
San Miguel Corp	82–306	Philippines.
Sandoz Ltd	82–3156	Switzerland.
Sandvik AB	82–1463	Sweden.
Santos Ltd	82–34	Australia.
Sanyo Electric Co. Ltd	82–264	Japan.
Sanyo Securities Co. Ltd	82–1857	Japan.
Saragon Resources Ltd	82–3338	Canada.
Sasol Ltd	82–631	South Africa.
Scottish Hydro-Electric PLC	82–3099	Scotland.
Scottish Power PLC	82–3100	Scotland.
Sears Roebuck de Mexico S.A. de C.V	82–3261	Mexico.
Sechura Inc	82–1278	Canada.
Seeboard PLC	82–3033	United Kingdom.
Sega Enterprises Ltd	82–3439	Japan.
Seine River Resources, Inc	82–2942	Canada.
Selkirk Springs International	82–2526	Canada.
Semi-Tech (Global) Company Ltd	82–3337	Bermuda.
Serenpet Inc	82–3362	Canada.
Sharp Corp	82–1116	Japan.
Shinawatra Computer Co. Ltd	82–3140	Thailand.
Shiseido Company Ltd	82–3311	Japan.
Shun Tak Holdings	82–3357	Hong Kong.
Siderurgica Venezolana "Sivensa"	82–3080	Venezuela.
Siebe, Plc	82–2142	United Kingdom.
Siemens Aktiengesellschaft	82–73	Germany.
Sikaman Gold Resources Ltd	82–1651	Canada.
Silent Witness Enterprises Inc	82–3464	Canada.
Silver Eagle Resources Ltd	82–2450	Canada.
Silver Ridge Resources	82–3012	Canada.
Silver Talon Mines Ltd	82–3051	Canada.
Silver Tusk Mines Ltd	82–723	Canada.
Silverspar Energy Corporation	82–478	Canada.
Simint Spa	82–3270	Italy.
Singapore Land Ltd	82–2194	Singapore.
Sino Land Co. Ltd	82–1868	Hong Kong.
Skyline Gold Corporation	82–1449	Canada.
Slumber Magic Adjustable Bed	82–2057	Canada.
Smedvig A.S	82–3551	Norway.
SoCal Capital Corporation	82–3298	Canada.
Societe Generale	82–3501	France.
Sol Petroleo S.A	82–3448	Argentina.
Solvay & Cie S.A	82–2691	Belgium.
Sons of Gwalia N.L	82–1039	Australia.
Sorata Developments Inc	82–3208	Canada.
South African Breweries Ltd	82–303	South Africa.
South African Land & Expl. Co., Ltd	82–59	South Africa.
South China Morning Post	82–3327	Hong Kong.
South Roodepoort Main Reefs Area Ltd	82–930	South Africa.
South Wales Electricity PLC	82–3031	United Kingdom.
South Western Electricity PLC	82–3030	United Kingdom.
Southern Electric PLC	82–3032	United Kingdom.
Southern Pacific Petroleum N.L	82–353	Australia.
Southern Water PLC	82–2797	United Kingdom.
Southvaal Holdings Ltd	82–197	South Africa.
Southward Energy Ltd	82–3005	Canada.
Springboard Resources Ltd	82–3292	Canada.
St. Philips Resources Inc	82–3152	Canada.
Star Valley Resources Corp	82–2418	Canada.
Stateside Energy Corporation	82–549	Canada.
Statoil	82–3444	Norway.
Stelco Inc	82–141	Canada.
Stilfontein Gold Mining Co. Ltd	82–301	South Africa.
Stina Resources Ltd	82–2062	Canada.
Stormin Resources Inc	82–2803	Canada.
Stralak Resources Ltd	82–976	Canada.
Stratabound Minerals Corporation	82–3284	Canada.
Stratcomm Media Ltd	82–1778	Canada.
Strategic Technologies Inc	82–1548	Canada.
Sumitomo Metal Industries Ltd	82–3507	Japan.
Summit Resources Ltd	82–2922	Canada.
Sun Entertainment Holding Corporation	82–1776	Canada.
Sun Free Enterprises Ltd	82–2822	Canada.
Sun Hung Kai Properties Ltd	82–1755	Hong Kong.
Suncor Inc	82–3257	Canada.

Company	File No.	Country
Sundance Resources Ltd	82–1412	Canada.
Sutton Group Financial Services Ltd	82–2795	Canada.
Svenska Cellulosa Aktiebolagot SCA	82–763	Sweden.
Sway Resources Inc	82–3476	Canada.
Swire Pacific Ltd	82–2184	Hong Kong.
Synex International Inc	82–862	Canada.
T&H Resources Ltd	82–2669	Canada.
T&N PLC	82–1011	United Kingdom.
T.E.N. Private Cable Systems Inc	82–1563	Canada.
TI Group PLC	82–2697	United Kingdom.
TME Resources Inc	82–1200	Canada.
TNT Limited	82–2910	Australia.
Tai Cheung Holdings Limited	82–3528	Canada.
Tamara Resources, Inc	82–1214	Canada.
Tan Range Exploration Corp	82–3446	Canada.
Tarron Industries Ltd	82–1881	Canada.
Tate & Lyle PLC	82–905	United Kingdom.
Techtana Capital Ltd	82–1848	Canada.
Teijin Seiki Co. Ltd	82–1493	Japan.
Tele Radio Systems	82–3330	Canada.
Telecom Argentina–Stet France Telecom	82–3259	Argentina.
Telecommunicacoes Brasileiras S.A	82–3355	Brazil.
Telefonica de Argentina S.A	82–3227	Argentina.
Telesis Computer Networking Inc	82–3386	Canada.
Telesis Industrial Group	82–2977	Canada.
Television Broadcasts Ltd	82–1072	Hong Kong.
Telstra Corporation Limited	82–3562	Australia.
Templar Energy Ltd	82–3463	Canada.
Tenajon Resources Corp	82–2032	Canada.
Teollisuuden Voima Oy	82–2973	Finland.
Teranet IA Inc	82–3244	Canada.
Terra Health Corporation	82–3356	Canada.
Tesco Plc	82–3277	United Kingdom.
Teuton Resources Corp	82–1394	Canada.
Texas Dome Resource Corp	82–3425	Canada.
The Wharf (Holdings) Ltd	82–3291	Hong Kong.
Thermo Tech Technologies, Inc	82–1114	Canada.
Thios Resources Inc	82–1909	Canada.
Thorn EMI Ltd	82–373	United Kingdom.
Tiomin Resources Inc	82–3430	Canada.
Toba Gold Resources	82–2966	Canada.
Tolltreck Systems Limited	82–3478	Australia.
Tomahawk Resources Ltd	82–2909	Canada.
Tomra Systems A/S	82–3334	Norway.
Topper Gold Corp	82–2694	Canada.
Toronto Dominion Bank	82–142	Canada.
Toyobo Co., Ltd	82–1172	Japan.
Toyota Motor Co., Ltd	82–208	Japan.
Trafalgar House PLC	82–1894	United Kingdom.
Trans America Industries Ltd	82–1980	Canada.
Treminco Resources Ltd	82–1384	Canada.
Trimel Corp	82–3108	Canada.
Trimin Resources Inc	82–1833	Canada.
Trinity International Holdings PLC	82–3043	United Kingdom.
Trio Gold Corp	82–2127	Canada.
Triquanta Investments Limited	82–3511	Canada.
Trove Investment Corp	82–2476	Canada.
Troymin Resources Ltd	82–3503	Canada.
Trust Company of Australia Ltd	82–1443	Australia.
Tusk Minerals, Inc	82–3297	Canada.
Twin Star Energy Corp	82–2213	Canada.
Tycoon Ventures Inc	82–3468	Canada.
UNI Storebrand A.S	82–3141	Norway.
USA Video Corporation	82–1601	Canada.
Unibanco Uniao de Bancos Brasileiros SA	82–3353	Brazil.
Unisel Gold Mines Ltd	82–236	South Africa.
Unitech PLC	82–2412	United Kingdom.
United Biscuits PLC	82–3079	United Kingdom.
United Keno Hill Mines Ltd	82–61	Canada.
United Overseas Bank	82–2947	Singapore.
United Overseas Land Ltd	82–2180	Singapore.
United Rayore Gas Ltd	82–747	Canada.
Universal Trident Industries Ltd	82–3026	Canada.
Vaal Reefs Exploration & Mining Co. Ltd	82–56	South Africa.

Company	File No.	Country
Valerie Gold Resources	82–3339	Canada.
Valley Oil & Gas Corp	82–1991	Canada.
Vananda Gold Ltd	82–1883	Canada.
Velcro Industries, N.V	82–145	Neth. Ant.
Venezuelan Gold Fields Ltd	82–1789	Canada.
Vexco Laboratories Inc	82–3486	Canada.
Viceroy Resources Corporation	82–1193	Canada.
Vickers PLC	82–1359	United Kingdom.
Victoria Petroleum N.L	82–322	Australia.
Victoria Resource Corporation	82–2888	Canada.
VitaMed Biopharmaceuticals Ltd	82–3096	Canada.
Vlakfontein Gold Mining Co. Ltd	82–217	South Africa.
Volkswagen AG	82–2188	Germany.
Vortex Energy & Minerals Ltd	82–3462	Canada.
Vtech Holdings Limited	82–3565	Bermuda.
Wace Group PLC	82–2369	United Kingdom.
Wayside Gold Mines Ltd	82–1606	Canada.
Welback Holdings Limited	82–3556	Bermuda.
Welkom Gold Holdings Ltd	82–57	South Africa.
West Rand Consolidated Mines Ltd	82–314	South Africa.
Western Areas Gold Mining Co. Ltd	82–268	South Africa.
Western Canadian Land Corporation	82–1446	Canada.
Western Copper Holdings Ltd	82–3422	Canada.
Western Deep Levels, Ltd	82–58	South Africa.
Western Premium Resources Corporation	82–3287	Canada.
Westgroup Corporations Inc	82–2833	Canada.
Westpine Metals Ltd	82–3116	Canada.
Westward Explorations Ltd	82–3027	Canada.
Westwin Ventures Inc	82–2349	Canada.
White Knight Resources Ltd	82–2850	Canada.
White Plains Resources Corporation	82–2887	Canada.
Wildrose Ventures, Inc	82–3542	Canada.
Williams Creek Explorations Ltd	82–3146	Canada.
Windarra Minerals Ltd	82–561	Canada.
Windsor Court Holdings Inc	82–3495	Canada.
Winkelhaak Mines Ltd	82–221	South Africa.
Wolters Kluwer N.V	82–2683	Netherlands.
Woodside Petroleum Ltd	82–2280	Australia.
Woolworths Limited	82–3544	Australia.
World Organics, Inc	82–2769	Canada.
World Wide Minerals Ltd	82–2444	Canada.
Worthing Industries Inc	82–3253	Canada.
Xenova Group Plc	82–3554	United Kingdom.
Yellow Point Mining Corporation	82–1349	Canada.
Yellowjack Resources Ltd	82–1765	Canada.
York Centre Corp	82–2816	Canada.
Yorkshire Electricity Group PLC	82–3034	United Kingdom.
Yorkshire Water PLC	82–2782	United Kingdom.
Young-Shannon Gold Mines Ltd	82–2928	Canada.
Z Landerbank Austria AG	82–3407	Austria.
Zapopan N.L	82–2997	Australia.
Zicton Gold Ltd	82–2749	Canada.
Zodiac Hurricane Marine Inc	82–1281	Canada.

[FR Doc. 93–19994 Filed 8–17–93; 8:45 am]
BILLING CODE 8010–01–P

[Release No. 34–32738; File No. SR–GSCC–92–18]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Amending Rules on Financial Reporting Requirements

August 11, 1993.

On December 28, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–92–18) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] relating to amendments to rules on financial reporting requirements. Notice of the proposal was published in the **Federal Register** on March 16, 1993.[2] No comment letters were received.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31974 (March 10, 1993, 58 FR 14299.

I. Description

A. Background

The failure in 1990 of Drexel Burnham Lambert, Inc. led to various legislative and regulatory changes. Among them were the amendments adopted by the Commission to its uniform net capital rule, Rule 15c3–1,[3] to require broker-dealers to notify the Commission prior to certain withdrawals of their equity capital.[4] The amendments addressed the

[3] 17 CFR 240.15c3-1 (1992).

[4] Securities Exchange Act Release No. 28927 (February 28, 1991), 56 FR 9124.

Commission's concern that significant amounts of equity capital could be withdrawn from a broker-dealer between reporting periods without notification to the Commission or to the broker-dealer's examining authority if the withdrawal did not cause the broker-dealer's net capital to decline below certain levels established under the rule. Such capital withdrawals might indicate that the broker-dealer is experiencing financial difficulty, that its equity is being improperly appropriated for the benefit of its owners, and/or that its owners are being favored to the detriment of customers and other creditors.

The purpose of the proposed rule change is to enhance GSCC's financial responsibility standards and to provide greater symmetry between those standards and the Commission's uniform net capital rule by amending GSCC's rules to incorporate for GSCC members the notice provisions of paragraph (e)(1) of the uniform net capital rule.

B. Rule 15c3–1(e)(1)

Generally, Rule 15c3–1(e)(1) prohibits (1) the withdrawal of the broker-dealer's equity capital by action of a stockholder or a partner or by redemption or repurchase of shares of stock by the broker-dealer's affiliates or through the payment of dividends or any similar distribution and (2) the making of any unsecured advance or loan to a stockholder, partner, sole proprietor, employee, or affiliate if such withdrawal, advance, or loan exceeds certain percentages of the broker-dealer's excess net capital unless the broker-dealer provides notice to the Commission, its designated examining authority, the Commodity Futures Trading Commission ("CFTC") if the broker-dealer is registered with the CFTC.[5]

II. Discussion

Sections 17A(b)(3)(A) and (F)[6] of the Act require that a clearing agency be organized and its rules be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with these requirements.

GSCC 's proposed rule change requires any member broker-dealer to inform GSCC of any Rule 15c3–1(e)(1) notification that the member is required to give and requires the member to furnish a copy of such notice to GSCC on the same day the notice is given to the Commission. This will serve to alert GSCC that a member may be experiencing financial difficulty so that GSCC may investigate the situation and take appropriate steps to protect itself and other members from any risk it discovers. Thus, the notice requirement should help GSCC to assure the safeguarding of securities and funds in GSCC's custody or control or for which it is responsible.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–92–18) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19878 Filed 8–17–93; 8:45 am]

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[5] Rule 15c3–1(e)(1) requires that a broker-dealer must give written notice (i) two business days before making such withdrawals of equity capital or before making such advances or loans if those withdrawals, advances or loans exceed in any thirty day period thirty percent of the broker-dealer's excess net capital and (ii) within two business days after any such withdrawals, advances, or loans if those withdrawals, advances, or loans exceed in any thirty day period twenty percent of the broker-dealer's excess net capital.

[6] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[7] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32739; File No. SR–MBS–93–05]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a New Fee and Trade Input Standard

August 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 26, 1993, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–93–05) as described in Items I, II, III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes new trade input compliance standards and adopts a fee for the failure of a participant to comply with the new trade input compliance standards.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to establish new trade input compliance standards and adopt a fee for the failure of a participant to comply with the new trade input compliance standards. The new stardard requires that, during August and September of 1993, no more than 10% of any participant's account trade input for the month be submitted on trade date +1 ("T+1"), regardless of processing pass, and, beginning in October of 1993, such amount be limited to 5% of each account's input.[2] Failure to adhere to the new standard will result in a $500 charge to the participant for each account in non-compliance.

MBS believes that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act,[3] and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statements on Burden on Competition

MBS does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[2] Participant trade reassignment accounts will be exempt from the compliance program.

[3] 15 U.S.C. 78q–1(b)(3)(D) (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were solicited from participants, however, none were received. In addition, MBS' New Products/Services Committee has recommended adoption of the new trade input compliance standards.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, because the proposed rule change establishes a due, fee, or other charge imposed by the self-regulatory organization and constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning he foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to File No. SR–MBS–93–05 and should be submitted by [insert date 21 days after the date of publication in the **Federal Register**].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–19814 Filed 8–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32740; File No. SR–NASD–92–52]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Public Availability of Arbitration Awards

August 12, 1993.

On December 2, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19 (b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder.[2] The rule change amends Part III, section 41(f) of the NASD Code of Arbitration Procedure (the "Code") to make all arbitration awards, their contents, and the names of arbitrators publicly available.[3]

Notice of the proposed rule change, together with the substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 32150, April 15, 1993), and by publication in the **Federal Register** (58 FR 21494, April 21, 1993). No comment letters were received. For the reasons discussed below the Commission is approving the NASD's rule change as proposed.

Currently, public customer arbitration awards issued on or after May 10, 1989 are publicly available, but with the names of the arbitrators deleted. The NASD's Arbitration Department provides parties to a pending arbitration with copies of awards previously rendered by the arbitrators selected to decide their cases. Industry arbitration awards have not been made available to the public.

The proposed rule change was prompted by several factors. First, the current system of deleting arbitrators' names from awards for some but not all requestors has become burdensome to both the parties and the NASD's Arbitration Department staff. Second, all other securities industry self-regulatory organizations ("SRO") make public customer awards publicly available, without deletion of arbitrators' names.[4]

In its rule filing with the Commission, the NASD is proposing to amend section 41(f) of part III of the Code to delete the reference to awards involving public customers, the result of which is to make all awards publicly available; delete the requirement of removing arbitrators' names from publicly-available awards; and delete the provision of obtaining awards by the arbitrators chosen to hear a particular case involving a public customer, since all awards would now be available.[5]

Once the rule is implemented, the parties will be provided with a list of all publicly available awards rendered by each arbitrator. The list will detail the case name and number, the date of the award and whether the arbitrator concurred or dissented.[6]

The Commission finds that including the names of the arbitrators in publicly-available awards is a positive step to increase public access to the arbitration process. Public access to full awards is not likely to have any adverse impact on

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] The NASD will implement this rule change on October 1, 1993. For public customer cases, the rule change will apply to awards rendered on or after May 10, 1989. For industry cases, including employment disputes, the rule change will apply to awards rendered on or after October 1, 1993.

[4] The award rule in the Uniform Code of Arbitration, adopted by the Securities Industry Conference on Arbitration, a group of representatives from each self-regulatory organization that administers an arbitration program, a representative of the securities industry, and four representatives of the public, states only that summary information contained in the awards will be made publicly available in accordance with the policies of the sponsoring SRO. The Uniform Code was developed principally for the administration of public customer cases, and its award provision does not directly address industry arbitrations.

[5] The arbitration code of the New York Stock Exchange ("NYSE") takes a different approach to the disclosure of arbitration awards, and gives public customers the option of requesting that their names be removed before the awards are made public. See *e.g.*, NYSE Rule 627(f). The NASD believes that the names of all parties, including members, associated persons, and customers, should be publicly disclosed and therefore does not propose to provide the option of deleting customer's names.

[6] Parties will be advised that they may obtain copies of awards by contacting the NASD's Rockville office. Under the proposed rule change, awards would be indexed by arbitrator so that requestors can obtain the awards in which they are interested. A party to a pending arbitration would receive, at no cost, either the last five awards rendered by each arbitrator regardless of when rendered or all of the awards rendered in the prior 12-month period, whichever compilation of awards is greater. Any additional awards requested by a party will be provided at a cost of $5.00 per award, up to a maximum of $70 per case. Persons other than parties to a proceeding who request an award will be charged $5.00 per award, with no ceiling. See letter to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, from Suzanne Rothwell, Associated General Counsel, NASD, dated August 2, 1993.

arbitrators, or to reduce their willingness to serve in the future. In its filing with the Commission, the NASD submitted a letter to the Commission stating that a memorandum was sent to all active arbitrators, numbering about 7,000, to provide them with information about the planned disclosure of their names on awards to the parties.[7] The NASD did not receive any comments from the arbitrators on the upcoming disclosure of their names on awards. Further, since 1989 the NYSE has disclosed the names of arbitrators.

The proposed rule change is consistent with section 15A(b)(6) of the Act[8], which requires that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of investors and the public interest. The proposed rule will promote the public interest by increasing the information available on arbitration awards and reducing the time needed to make information available to the public customer and other requestors of awards. The proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore, ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–92–52 be, and thereby is approved, effective October 1, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19877 Filed 8–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19623; 812–8160]

National Multi-Sector Fixed Income Fund, et al.; Application

August 12, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: National Multi-Sector Fixed Income Fund, Inc., National Total Return Fund, National Stock Fund, National Income and Growth Fund, National Federal Securities Trust, National Securities Tax-Exempt Bonds, Inc., National Bond Fund, National Worldwide Opportunities Fund, National Asset Reserve, National's California Tax-Exempt Bonds, Inc., NSR Distributors, Inc. (the "Distributor"), and National Securities & Research Corporation (the "Adviser").

RELEVANT ACT SECTIONS: Conditional, amended order requested under section 6(c) for exemption from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants, on behalf of themselves, any other open-end management investment companies that in the future may be in the same "group of investment companies" as defined in rule 11a–3 (the "Funds"), and any entity controlling, under common control with or controlled by the Distributor or the Adviser that may in the future serve as, respectively, the Funds' distributor or investment adviser, seek a conditional, amended order that would permit the Funds (a) to issue an unlimited number of classes of securities representing interests in the same portfolio, and (b) to assess a contingent deferred sales charge ("CDSC") on redemptions of shares of some of the classes, and to waive the CDSC in certain cases.

FILING DATE: The application was filed on November 13, 1992, and amended on February 2, 1993, April 16, 1993, and July 15, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 7, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons 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, National Securities & Research Corporation, Two Pickwick Plaza, Greenwich, Connecticut 06830, Attn: Lisa M. Hurley, Esq.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, and Elizabeth G. Osterman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each of the Funds is an open-end management investment company registered under the Act, and is either a Maryland corporation or a Massachusetts business trust. The Adviser provides investment advisory and administrative services to each of the Funds. Dillon, Read International Asset Management, a registered investment adviser, is the subadviser of National Worldwide Opportunities Fund. The Distributor acts as principal underwriter of the Funds' shares, and has a dealer arrangement with unaffiliated broker-dealers pursuant to which such firms sell the shares of the Funds.

2. The SEC issued an order in 1991 (the "Existing Order"),[1] pursuant to which the Funds may offer two classes of shares ("Class A" and "Class B") representing interests in the same portfolio, and impose and, under certain circumstances, waive a CDSC on the redemption of such shares.

3. The Funds offer Class A shares at net asset value plus a front-end sales load. Class A shares are also subject to a rule 12b–1 plan providing for a combined distribution and servicing fee at an annual rate of up to .30 percent of the average daily net asset value of the class.

4. Three of the Funds offer Class B shares at net asset value subject to a CDSC, as described below. Class B shares are also subject to a rule 12b–1 plan providing for a combined distribution and servicing fee at an annual rate of up to 1 percent of the average daily net asset value of the class. Class B shares automatically convert to Class A shares after a specified period of years.

5. Applicants propose to establish a multiple class distribution system (the "Multi-Class Distribution System") to enable each of the Funds to offer an unlimited number of classes of shares that would be subject to a front-end sales load, a CDSC, a rule 12b–1 plan providing for a distribution fee and/or service fee, a combination of the above, or none of the above. Classes of shares subject to a rule 12b–1 plan and a CDSC

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[7] See letter to Christopher J. Michailoff, Attorney, Over-the-Counter Regulation, Division of Market Regulation, SEC, from Suzanne Rothwell, Associate General Counsel, NASD, dated April 14 1993.

[8] 15 U.S.C. 78o–3.

[9] 17 CFR 200.30–3(a)(12).

[1] Investment Company Act Release Nos. 18429 (Dec. 3, 1991) (notice) and 18465 (Dec. 31, 1991) (order).

are referred to herein as "Deferred Option" classes. Applicants will comply with the NASD's Rules of Fair Practice that would subject asset-based distribution charges to regulation as sales loads.

6. Under the proposed Multi-Class Distribution System, the Funds would continue to offer Class A shares. They would also offer a third class of shares ("Class C"). Under the proposed arrangement, Class B shares would no longer be sold.

7. The Funds would offer Class C shares at net asset value subject to a CDSC, as described below. Class C shares also would pay a combined distribution and servicing fee at an annual rate of up to 1 percent of the average daily net assets of the class pursuant to a rule 12b–1 plan.

8. Investment income and unrealized and realized gains or losses will be allocated daily to each class of shares based on the percentage of net assets of the outstanding or dividend eligible shares, as appropriate, in each class of a Fund at the beginning of each day. Operating expenses [2] will be allocated daily to each class of shares based on the percentage of the Fund's net assets in each class at the beginning of the day. Expenses that have a greater cost for one class than another (*i.e.*, rule 12b–1 fees and possibly transfer agent fees) will be charged separately to each class.

9. Shares of one class automatically may convert to another class with lower ongoing distribution fees after a specified period of time, as disclosed in a Fund's prospectus. Class B shares currently convert to Class A shares. Applicants intend that Class C shares also will convert to Class A shares, although if a Fund were to continue to offer Class B shares after the creation of Class C shares, that Fund's Class C shares would not have conversion feature.

10. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares or Class C shares are also, respectively, Class B shares or Class C shares, except that, for purposes of conversion, they will be considered held in a separate sub-account. Each time a shareholder's Class B shares or Class C shares, other than those in the sub-account, convert to Class A, a *pro rata* portion of the shares in the sub-account also will convert to Class A.

11. The conversion feature is subject to the availability of an opinion of counsel or Internal Revenue Service private letter ruling to the effect that such conversion of shares does not constitute a taxable event under federal income tax law, and may be suspended if such a ruling or opinion is not available.

12. Applicants reserve the ability to convert shares of any class to shares of another, consistent with the standards, policies, conditions, and representations set forth in the application regarding the conversion of Class B and Class C shares to Class A shares. Such ability to convert shares will be subject to the terms fully disclosed in a Fund's registration statement current at the time of sale.

13. It is anticipated that each class of shares may be exchanged for shares of the same class in another Fund to the extent that the shareholder would have been eligible to purchase the shares acquired in the exchange. The exchange privileges will comply with rule 11a–3 under the Act.

14. Applicants expect that the CDSC applicable to Class B shares will vary from 2 percent to 5 percent for redemptions made during the first year after purchase to 1 percent for redemptions made during the fourth year after purchase. Applicants expect that the CDSC applicable to Class C shares will be 1.5 percent for redemptions made during the first year after the initial purchase. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase or at the time of redemption. The CDSC of any particular Fund or class thereof may be higher or lower than that described in the application. The CDSC schedule will comply, to the extent applicable, with the requirements of article III, section 26(d) of the NASD's Rules of Fair Practice.

15. The CDSC will not be imposed on redemptions of shares purchased more than six years prior to their redemption. The CDSC will not be imposed on shares derived from the reinvestment of dividends or capital gains distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC period.

16. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares derived from reinvestment of dividends and capital gains distributions, and finally of other shares held by the shareholder for the longest period of time. This will result in the charge, if any, being imposed at the lowest possible rate. Redemption requests placed by a shareholder who owns both Class A shares and Class B or Class C shares subject to a CDSC will be satisfied first by redeeming the Class A shares, unless the shareholder has made a specific election to redeem the Class B or Class C shares.

17. Applicants propose to waive the CDSC (a) on redemptions made within one year following the death or disability, as defined in Section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder; (b) in connection with (i) a lump sum or other distribution following retirement, or, in the case of an individual retirement account ("IRA"), Keogh Plan, or custodial account pursuant to section 403(b)(7) of the Code, after the shareholder has attained age 59½, or any redemption resulting from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code, or from the death or disability of the employee, or (ii) in the alternative, in connection with a distribution following retirement under a tax-deferred retirement plan, or attaining age 70½ in the case of an IRA, Keogh Plan, or custodial account pursuant to section 403(b) of the Code, or resulting from the tax-free return of an excess contribution to an IRA; (c) in connection with redemptions of shares purchased by active or retired officers, directors or trustees, partners and employees of the Funds, the Adviser, the Distributor, or their subsidiaries, by members of the immediate families of such persons, by dealers having a sales agreement with the Distributor, or any affiliated broker-dealer, or by any trustee or custodian of any qualified retirement plan or IRA established for the benefit of any person or entity covered in waiver categories (a) through (c), by any state, county, or city, or any instrumentality, department, authority, or agency thereof which is prohibited or limited by applicable investment laws from paying a sales-related charge, or by trust companies and bank trust departments which hold shares in a fiduciary capacity; (d) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (e) in connection with redemptions by shareholders holding shares of a Fund worth over $1 million immediately prior to redemption; (f) in connection with redemptions effected by advisory accounts managed by the Adviser or its

[2] Operating expenses include fees paid to the Adviser and all other expenses such as custody fees, professional fees, and printing charges.

affiliates; (g) in connection with redemptions by tax-exempt employee benefit plans resulting from the enactment or promulgation of any law or regulation pursuant to which continued investment in the Funds would be improper, provided that such waiver is subject to applicants' right to require a concurring opinion of counsel; and (h) in connection with redemptions effected by registered investment companies in connection with the combination of the investment companies with a Fund by merger, acquisition of assets, or by any other transaction.

18. If the Funds waive or reduce the CDSC, such waiver or reduction will be applied uniformly to all offerees in the specified class. If the Directors/Trustees of a Fund determine to discontinue the waiver or reduction of the CDSC, the disclosure in the Fund's prospectus will be appropriately revised. Any shares purchased prior to the termination or reduction of such waiver will be able to have the CDSC waived or reduced as provided in the Fund's prospectus at the time of the purchase of such shares.

19. The Funds may provide a *pro rata* credit, to be paid for the Distributor, for any CDSC paid in connection with a redemption of shares followed by a reinvestment effected within 365 days, or shorter, of the redemption.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed Multi-Class Distribution System might be deemed: (a) To result in the issuance of a "senior security" within the meaning of section 18(g), and thus prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i). Applicants also seek an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d), and rule 22c-1, to the extent necessary to permit the imposition and waiver of a CDSC on redemptions of Fund shares.

2. Applicants believe that the proposal will permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. Applicants assert that, under the proposed Multi-Class Distribution System, the Funds will save the organizational and other continuing costs that would be incurred if the Funds were required to establish new separate investment portfolios.

3. Applicants believe that the Multi-Class Distribution System does not raise any of the concerns that prompted the SEC to recommend the adoption of section 18 (*i.e.*, underfunded debt, preference stocks, and convertible securities). The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds, since all such shares will participate *pro rata* in all of a Fund's appreciation, income and expenses, with the exception of the differing rule 12b-1 fees and any differing transfer agency costs payable by each class. Applicants contend that mutuality of risk will be preserved with respect to each class of shares in a Fund.

4. Applicants assert that the proposed capital structures of the Funds will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders, because the investment risks of each Fund will be borne equally by all of its shareholders. Moreover, the proposed capital structures will not enable insiders to manipulate the expenses and profits among the various classes of shares, because the Funds are not organized in a pyramid fashion, all expenses and profits of a Fund, other than the differing class expenses, will be borne *pro rata* by class, and all shareholders will have equal voting rights, except concerning matters relating to a particular rule 12b-1 plan.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) the impact of the respective rule 12b–1 plan payments made by each of the classes of shares of a Fund, any higher incremental transfer agency costs attributable solely to the Deferred Option shares of a Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 distribution plan, except as provided in condition 4 below; (c) the different exchange privileges of each class of shares; (d) the fact that only certain classes will have a conversion feature; and (e) the designation of each class of shares of a Fund.

2. The Directors/Trustees of each of the Funds, including a majority of the Independent Directors/Trustees, shall have approved the Multi-Class Distribution System, prior to the implementation of the Multi-Class Distribution System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Multi-Class Distribution System will reflect in detail the reasons for determining that the proposed Multi-Class Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the SEC staff.

3. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between or among the interests of the classes of shares offered. The Directors/Trustees, including a majority of the Independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Adviser and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares (the "Target Class") under the plan, existing shares of a class of shares that converts into the Target Class shares after a period of time (the "Purchase Class") will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Directors/Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Directors/Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing

Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors/Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by the Adviser and the Distributor. The Purchase Class shares sold after the implementation of the proposal may convert into the Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

5. The Directors/Trustees of the Funds will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale of a particular class of shares will be used to justify any distribution fee charged to that class. Expenditures not related to the sale of a particular class will not be presented to the Directors/Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors/Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that fee payments made under rule 12b–1 plans relating to each respective class of shares, will be borne, exclusively by that class and any incremental transfer agency costs relating a particular class of shares will be borne exclusively by such class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes and the proper allocation of income and expenses between the classes has been reviewed by an expert (the "Independent Examiner") who has rendered a report to applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, and Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses between such classes of shares, and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition 7 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective action if this representation is not concurred in by the Independent Examiner, or appropriate substitute Independent Examiner.

9. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different levels of compensation for selling one particular class of shares over another in a Fund.

10. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Multi-Class Distribution System will be set forth in guidelines which will be furnished to the Directors/Trustees.

12. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

13. Applicants acknowledge that the grant of the amended exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

14. The conversion of one class of shares to another class of shares will be done on the basis of the relative net asset value of the two classes without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based

sales charge and service fee to which they were subject prior to the conversion.

15. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19993 Filed 8–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19624; 812–8208]

The New England Funds, et al.; Application

August 12, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The New England Funds (the "New England Trust"), TNE Funds Trust (the "TNE Trust") (the New England Trust and TNE Trust are collectively referred to herein as "Trusts"), TNE Investment Services Corporation (the "Distributor"), and TNE Investment Services, L.P. (the "Successor Distributor").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), 22(d) and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order pursuant to section 6(c) of the Act to permit the Trusts and any other registered open-end investment management company for which the Distributor serves as principal underwriter to issue and sell multiple classes of securities of each of the Trusts' now existing or hereafter created series (each such series, a "Fund"), and to permit the imposition and waiver of a contingent deferred sales charge ("CDSC") on certain redemptions of shares.

FILING DATE: The application was filed on December 8, 1992, and amended on April 14, 1993, June 25, 1993, and July 29, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Any interested person 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 September 7, 1993, and should be accompanied by proof of service of applicants in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o TNE Investment Services Corporation, 399 Boylston Street, Boston, Massachusetts 02166.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Trusts is registered under the Act as an open-end management investment company. The New England Trust currently consists of nine series, and the TNE Trust currently consists of seven series. The Distributor, a wholly-owned subsidiary of New England Investment Companies, Inc., is a registered broker-dealer and serves as the principal underwriter for both Trusts. Under separate administrative services agreements, the Distributor also acts as administrator for several of the Funds, furnishing those Funds with personnel, office space, facilities, and equipment necessary for the conduct of their affairs. The Successor Distributor will succeed to all of the business and operations of the Distributor as part of a larger reorganization of New England Investment Companies, Inc. and its subsidiaries that is expected to occur later in 1993 (the "Reorganization"). The order is sought on behalf of the Successor Distributor as well as the Distributor, and the statements and representations made with respect to the Distributor will apply to the Successor Distributor upon consummation of the Reorganization. No change in the actual control or management of the Funds' principal underwriter will result from the Reorganization.

2. Each of the Funds currently offers one class of shares ("Class A"), except for the TNE International Equity Fund, which offers a second class of shares ("Class C") pursuant to a Commission order.[1]

3. Applicants seek an exemption under sections 18(f)(1), 18(g), and 18(i) to permit each of the Funds to issue and sell four classes of shares ("Class A," "Class B," "Class C," and "Class D"). Applicants also seek an order to permit the Funds to issue additional classes of shares, the terms of which may differ from the Class A, Class B, Class C and Class D shares. Shares of different classes may be sold under different sales arrangements, and may have different exchange privileges and minimum investment amounts. In addition, applicants seek relief for any other registered open-end investment management company for which the Distributor or the Successor Distributor serves as principal underwriter and which may in the future offer separate classes of shares on substantially the same terms set forth in the application and subject to the conditions set forth in the application.

4. Class A shares will be offered at net asset value plus a front-end sales load. The sales load typically will be at a rate in the 3% to 6.5% range, and will be subject to reductions for larger purchases and under right of accumulation and letter of intent purchase arrangements. In addition, the Class A shares will bear ongoing service and/or distribution fees under a plan adopted by the relevant Fund pursuant to rule 12b–1. Each such rule 12b–1 plan will provide for payment to the Distributor of a "service fee" (as such term is defined in section 26 of Article III of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the "NASD Rule")), at an annual rate not exceeding .25% of the average daily net asset value of the Class A shares. In the case of certain Funds, the rule 12b–1 plan may also provide for the payment to the Distributor of an additional amount (currently not expected to exceed .10% of Class A average daily net asset value) as an "asset-based sales charge" as defined in the NASD Rule. Each Fund's Class A rule 12b–1 plan will relate solely to its Class A shares.

5. Class B shares will be offered at net asset value without a front-end sales load, but subject to a CDSC, as described below. In addition, the Class B shares will bear ongoing service and/or distribution fees under a plan adopted by the relevant Fund pursuant to rule 12b–1. Each Fund's Class B rule 12b–1

[1] The New England Funds, Investment Company Act Release Nos. 19067 (Oct. 28, 1992), (notice) and 19118 (Nov. 24, 1992) (order).

plan will have terms substantially the same as those of its Class A rule 12b–1 plan, except that, in addition to the .25% annual service fee, the Class B shares may bear an asset-based sales charge of up to .75% of Class B average net assets annually. Each Fund's Class B rule 12b–1 plan will relate solely to its Class B shares.

6. Class C shares will be offered at net asset value without a sales load. In addition, the Class C shares will not bear rule 12b–1 distribution or service fees. Class C shares will bear certain other expenses that may be lower than the comparable expenses borne by shares offered to retail investors. These expenses are of three types: (1) Administrative services fees, (2) transfer agency fees, and (3) Blue Sky and prospectus costs. Class C shares will be offered only to certain qualified institutional investors that wish to make very large investments. Investors eligible to purchase Class C shares are expected to include tax-qualified employee benefit plans, endowments, foundations and tax-exempt organizations, and certain insurance company separate accounts.[2]

7. Class D shares will be offered at net asset value without a front-end sales load, but subject to a CDSC as described below. In addition, the Class D shares will bear ongoing service and/or distribution fees under a plan adopted by the relevant Fund pursuant to rule 12b–1. Each such rule 12b–1 plan will provide for payment of a service fee at an annual rate not exceeding .25% of the average daily net asset value of the Class D shares and an asset-based sales charge of up to.75% of Class D average net assets annually. Each Fund's Class D rule 12b–1 plan will relate solely to its Class D shares.

8. In the case of certain Funds, the administrative services fee may be charged at a higher annual percentage rate of the average daily net assets of the Class A, Class B, and Class D shares than of the Class C shares. This fee will be payable to the Distributor pursuant to an administrative services agreement with each Fund, in consideration of certain administrative personnel, facilities and services furnished by the Distributor, including shareholder relations services and oversight and supervision of the activities of the Fund's transfer agent. These services do not include investment advisory services or distribution services, which are provided separately under the Fund's investment advisory and distribution agreements with the relevant investment adviser and the Distributor. Class A, Class B and Class D shareholders will be offered an array of services that are not available to Class C shareholders, such as automatic investment plans, systematic withdrawal plans, an automatic dividend diversification program and, in the case of Class A shares, rights of accumulation, sales load discounts for quantity purchases and letter of intent purchase arrangements.

9. The total asset value of all outstanding shares of all classes will be computed on a pro rata basis for each Fund regardless of class, and all expenses incurred by a Fund will be allocated among the classes of shares based on the relative aggregate net asset value of each class, except for rule 12b–1 plan fees, administrative services fees, transfer agency fees and Blue Sky and prospectus costs (collectively), "Identifiable Class Expenses"). Because of the differing Identifiable Class Expenses among the classes of shares, it is expected that the net income attributable to, and the dividends payable on, Class B and Class D shares will be lower than the net income attributable to, and the dividends payable on, Class A, which in turn will be lower than the net income attributable to, and the dividends payable on, Class C shares.

10. In general, Class B shares will convert automatically into Class A shares after a specified period (currently expected to be eight years) following the purchase date. Class B shares acquired by exchange from Class B shares of another Fund will convert into Class A shares based on the time of initial purchase. Class B shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shared will convert into Class A shares at the same time as the shares with respect to which they were purchased are converted. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling from the Internal Revenue Service or an opinion of counsel that such conversion will not constitute taxable events for federal tax purposes. There can be no assurance that such ruling or opinion will be available, and the conversion of Class B shares to Class A shares will not occur if such ruling or opinion is not available. In such event, Class B shares would continue to be subject to higher expenses than Class A shares for an indefinite period.

11. Applicants expect that shares of each Fund may be exchanged for shares of the same respective class in any other Fund without payment of an additional sales charge. In addition, applicants expect that shares of each class will be exchangeable for shares of money market funds in the TNE fund group which are not covered by the application. All expenses of shares of any class of any Fund will be effected in accordance with all applicable provisions of rule 11a–3 under the Act.

12. Applicants also seek an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(b) of the Act and rule 22c–1 thereunder to permit the Funds to assess a CDSC on redemptions of certain classes of shares, and to permit the Funds to waive the CDSC on redemptions of certain shares.

13. Class B and Class D shares may be subject to the imposition of a CDSC if such shares are redeemed within a particular period of time after their purchase. Class D shares would be subject to a CDSC of up to 1.0% on shares redeemed during the first year after purchase, and no CDSC would apply thereafter. Class B shares would be subject to a variable rate CDSC (declining over time) for a period of several years after purchase. Any CDSC adopted for Class B, Class D, or any future class of shares will comply with the requirements of section 26(d) of Article III of the NASD's Rules of Fair Practice.

14. No CDSC would be imposed with respect to: (a) redemptions of shares which were purchased more than a specified number of years prior to the redemptions; (b) shares derived from the reinvestment of distributions; or (c) the amount which represents an increase in the value of the shareholder's account resulting from capital appreciation. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

15. In determining the applicability and rate of any CDSC, it will be assumed that redemption is made first of shares representing reinvestment of dividends and capital gain distributions, and then of other shares held by the shareholder for the longest period of time. This will result in the charge, if

[2] The minimum initial investment amount for Class A, Class B and Class D shares currently is expected to be $2,500. The minimum initial investment amount for Class C shares currently is expected to be $1,000,000 ($2,000,000 for certain investors), although no specified minimum investment amount will apply to investments by certain insurance company separate accounts and certain tax-qualified employee benefit plans. These amounts may be changed from time to time, but it is anticipated that, even if the specific amounts change, the Class A, Class B and Class D shares would continue to have a low minimum investment, while Class C shares would have a much higher minimum investment.

any, being imposed at the lowest possible rate. In addition, redemption requests placed by shareholders who own shares of more than one class will be satisfied first by redeeming the shareholder's shares of the class or classes not subject to a CDSC, unless the shareholder has elected specifically to redeem shares which are subject to a CDSC.

16. The CDSC would be waived for the following redemptions: (a) following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year after death or disability of a shareholder, (b) in connection with distributions pursuant to systematic withdrawal plan established by a Fund, and (c) in connection with redemptions of shares that constitute retirement plan distributions which are permitted to be made without penalty pursuant to the Code, other than tax-free rollovers or transfers of assets. If the Funds waive or reduce the CDSC, such waiver or reduction will be applied uniformly to all offerees in the category specified.

17. Under a previous Commission order, applicants may impose a CDSC on purchases of Class A shares of $1 million or more which are not subject to an initial sales charge.[3] Except for Class A shares covered by this previous order, no CDSC will be imposed on any shares covered by the application that are issued prior to the date of the order granting the exemptive relief requested. If a Fund ceases waiving or reducing the CDSC for any of the reasons set forth above, the disclosure in that Fund's prospectus will be revised appropriately. In the event a Fund ceases waiving or reducing the CDSC, an investor who purchased Fund shares prior thereto will not be affected by such action, but will enjoy the same waiver rights or reduced CDSC in effect on the day the investor purchased the shares.

Applicants' Legal Analysis

1. Applicants request an exemptive order under section 6(c) to permit the proposed issuance and sale of multiple classes of shares representing interests in the Funds that might be deemed: (a) to result in the issuance of a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i). Applicants also seek an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of shares of the Funds, and to permit the Funds to waive the CDSC with respect to redemptions of certain shares.

2. Applicants believe that the issuance and sale by the Trusts of multiple classes of shares will better enable the Trusts to meet the competitive demands of today's financial services industry. The proposed arrangement would permit the Trusts both to facilitate the distribution of shares of the Funds in the institutional and retail marketplaces, and to offer retail investors a choice between different sales load structures. As a result, both retail and institutional shareholders would potentially reap the benefits associated with higher Fund net asset levels. In comparison, applicants contend that no such benefits would result if they organized separate Funds for the retail and institutional marketplaces, and for front-end and deferred load retail purchases.

3. Applicants assert that the requested relief does not present the concerns which section 18 was designed to address because the proposed arrangement does not involve borrowings, or affect the Funds' existing assets or reserves. Applicants further assert that the proposed arrangement will not increase the speculative character of the shares of the Funds because all such shares will participate pro rata in all of a Fund's income and expenses, with the exception of the Identifiable Class Expenses (which will disproportionately reduce the net income of the respective classes). In addition, applicants contend that under the proposed arrangement mutuality of risk will be preserved with respect to each class of shares in a Fund because all classes will represent interests in a single pool of assets presenting the same investment risk to all shareholders of the Fund, regardless of class.

4. Applicants assert that investors will not be given misleading impressions as to the safety or risk of the shares of any class, and the nature of such shares will not be rendered speculative. All classes of shares will be redeemable at all times, no class of shares will have any preference or priority over the other classes of shares of the particular Fund in the usual sense (i.e., no class will have a distribution or liquidation preference with respect to particular assets of a Fund and no class will be protected by any reserve or other account), and the similarities (and, with respect to the Identifiable Class Expenses and rule 12b–1 plan voting rights, the dissimilarities) of the classes will be disclosed in the Trusts' prospectuses.

5. The Funds' capital structures under the proposed arrangement will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders, since the investment risks of each Fund will be borne equally by all of its shareholders. The Funds' capital structures under the proposed arrangement will not enable insiders to manipulate the expenses and profits among the classes of shares since the Funds are not organized in a pyramid fashion. In addition, all of the expenses and profits of a particular Fund, except the Identifiable Class Expenses, will be borne by each class of shares on the basis of its relative aggregate net assets, and all shareholders of each Fund will have equal voting rights (except with respect to matters pertaining to the Class A, Class B and Class D distribution plans).

6. Applicants further contend that the proposed arrangement does not raise concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value the securities of the Funds. Moreover, applicants will take appropriate steps to ensure that any performance information for any class of shares of the Funds that are disclosed in the Trusts' registration statements, shareholder reports and any advertising materials, including newspaper advertisements, are fairly disclosed. In addition, any information provided by applicants to any newspaper or similar listing of the Funds' net asset values and public offering prices will identify clearly to which class such information relates.

Conditions to Relief

If the requested relief is granted, applicants agree to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will relate solely to:

(a) The impact of the respective rule 12b–1 plan payments made by each class of shares (or the absence of any such distribution or service fees), and any Identifiable Class Expenses that may be imposed upon a particular class of shares and which are limited to:

(i) transfer agency fees attributable to a specific class of shares;

(ii) printing and postage expenses related to preparing and distributing

[3] The New England Funds, et al., Investment Company Act Release Nos. 17629 (Oct. 30, 1990) (notice) and 17677 (Nov. 27, 1990) (order).

materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class;

(iii) Blue Sky registration fees incurred by a class of shares;

(iv) SEC registration fees incurred by a class of shares;

(v) administrative services fees payable under each class's respective administrative services agreement, if any; and

(vi) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order;

(b) Voting rights on matters which pertain to rule 12b–1 plans, except as provided in condition 2 below;

(c) The different exchange privileges of the various classes of shares;

(d) The designation of each class of shares of a Fund and;

(e) Conversion features that may be available to various classes.

2. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a class of shares under the plan into which another class will convert (the "Target Class"), shares of the class that will convert (the "Purchase Class") will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares (the "New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 6, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by the investment adviser and the Distributor. The Purchase Class shares sold after the implementation of the proposal may convert into the Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

3. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in the NASD Rule, if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they are subject prior to the conversion.

4. The Trustees of the relevant Trust, including a majority of the Independent Trustees, will approve the Multiple Class System prior to the implementation of the Multiple Class System by a particular Fund. The minutes of the meetings of the Trustees regarding their deliberations with respect to the approvals necessary to implement the Multiple Class System will reflect in detail the reasons for the Trustees' determination that the Multiple Class System is in the best interests of both the Funds and their respective shareholders.

5. The initial determination of the Identifiable Class Expenses that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees of the relevant Trust, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by a Fund to meet Identifiable Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

6. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Fund's investment adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Fund's investment adviser and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

7. The Trustees of the Trusts will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of the relevant class of shares will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that fee payments made under the rule 12b–1 plans relating to a particular class of shares, will be borne exclusively by such class and except that any Identifiable Class Expenses may be borne exclusively by the applicable class(es) of shares.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among such classes have been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to section 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to make), will be available for inspection by the

Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among such classes of shares and this representation will be concurred with by the Expert in the initial report referred to in condition 9 above and will be concurred with by the Expert, of an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 9 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

11. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

12. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multiple Class System will be set forth in guidelines which will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expense or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares separately.

15. The applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 distribution plans in reliance on the exemptive order.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (November 2, 1988), as currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19992 Filed 8–17–93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–19620; File No. 812–8376]

PFL Life Insurance Company, et al.

August 11, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: PFL Life Insurance Company ("PFL Life"), PFL Wright Variable Annuity Account (the "Separate Account") and Wright Investors' Services Distributors, Inc. ("WISD").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.[1]

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain flexible premium group and individual variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on April 29, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 September 7, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Craig D. Vermie, Esq., PFL Life Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 272–3045, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. PFL Life is a stock life insurance company incorporated in Iowa and principally engaged in the sale of life insurance and annuity policies.

2. The Separate Account was established under the laws of Iowa by PFL Life to support the Contracts and has filed a registration statement under

[1] Applicants represent that the application will be amended during the Notice Period to include certain representations not included in the original application.

the 1940 Act as a unit investment trust.[2] The Separate Account has several subaccounts, the assets of which are invested solely in corresponding portfolios of the Wright Managed Blue Chip Series Trust (the "Trust").

3. The Trust is an open-end management investment company and has filed a registration statement under the 1940 Act.

4. WISD is registered under the Securities Exchange Act of 1934 as a broker-dealer and will serve as the distributor and principal underwriter of the Contracts.[3]

5. The Contracts are flexible premium variable annuity contracts issued either as individual policies or as a group policy with certificates thereunder issued to individuals. The certificates and individual contracts are substantially identical. Premium payments for the Contracts may be allocated to one or more of the subaccounts of the Separate Account or to the general account of PFL Life (the "Fixed Account"). The Contracts provide for a series of annuity payments beginning on the annuity commencement date. There are annuity payment options available on both a fixed and a variable basis. A death benefit is payable on the death of an annuitant prior to the annuity commencement date (the "Death Benefit"). The Death Benefit is the greater of (a) the Annuity Purchase Value, or (b) premium payments (net of withdrawals) plus 5.0% annual interest.

6. PFL Life deducts an annual administrative charge of the lesser of two percent of Annuity Purchase Value[4] or $30 per year. This charge is used to compensate PFL Life for the administrative services provided under the Contracts. The annual administrative charge will not be increased[5] and PFL Life does not anticipate any profit from this charge.

7. Annuity Purchase Value may be transferred between subaccounts and to or from the Fixed Account. PFL Life currently imposes no charge for any transfer but reserves the right to impose a $25 charge for the thirteenth and each subsequent transfer during a contract year. PFL Life does not anticipate any profit from this charge.

8. PFL Life will deduct the aggregate premium taxes paid on behalf of a particular Contract on the annuity commencement date, upon withdrawal of the entire Contract, or upon payment of the death benefit. In the future, PFL Life may deduct charges from the Separate Account or the Contracts for federal, state, or local taxes other than premium taxes.

9. PFL Life imposes a daily charge to compensate it for bearing mortality and expense risks in connection with the Contracts. The charge is at an effective annual rate of 1.00% of the value of the net assets in the Separate Account; approximately one-third of that amount is attributable to mortality risks and the remaining two-thirds is attributable to expense risks. The rate of the charge is guaranteed not to increase. The mortality and expense risk charge applies prior to the annuity commencement date and, if a variable payment option is selected, after the annuity commencement date.

10. The mortality risk assumed by PFL Life arises from its obligation to make annuity payments regardless of how long all annuitants or any individual annuitant may live. PFL Life also assumes a mortality risk in connection with its contractual Death Benefit guarantee.

11. The expense risk assumed by PFL Life is the risk that PFL Life's actual administrative costs will exceed the amount received from administrative charges.

12. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will be borne by PFL. Conversely, if the charge exceeds the amount necessary to cover costs, any excess will be profit to PFL Life. PFL Life currently anticipates a profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Account under the Contracts.

3. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks undertaken by PFL Life and within the range of industry practice with respect to comparable annuity products. Applicants base this representation on PFL Life's analysis of publicly available information about similar industry products, taking into consideration current charge level, the existence of charge level guarantees, and guaranteed annuity rates. PFL Life represents that will maintain a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and the results of, its comparative survey.

4. The cost of distributing the Contracts is paid from the general account of PFL Life, which may include profits from the mortality and expense risk charge. PFL Life represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and Contract owners. The basis for such conclusion will be set forth in a memorandum, available to the Commission upon request.

5. PFL Life represents that the Separate Account will only invest in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any such plan.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Separate Account under the Contracts meet the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

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[2] Applicants represent that the application will be amended during the Notice Period to make this representation.

[3] Applicants represent that the application will be amended during the Notice Period to make this representation.

[4] Annuity Purchase Value is defined as premiums paid, minus any partial withdrawals or transfers, plus or minus any applicable excess interest adjustment on prior withdrawals or transfers, plus accumulated gains and losses in the Separate Account, plus accumulated interest in the Fixed Account, and minus any applicable charges, premium taxes and transfer fees. Applicants represent that the application will be amended during the Notice Period to include this definition.

[5] Applicants represent that the application will be amended during the Notice Period to make this representation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19813 Filed 8–17–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement for the Newark International Airport Ground Access Automated People Mover—Northeast Corridor Connection Project

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of intent.

SUMMARY: The Eastern Region of the FAA announces:

The FAA, acting as "Lead Agency," intends to prepare an Environmental Impact Statement (EIS) for a proposal by the Port Authority of New York and New Jersey, acting as "Sponsor," to develop the Newark International Airport (EWR) Ground Access Automated People Mover—Northeast Corridor Connection Project (Newark Airport APM–NEC Connection Project). The Study Area generally encompasses the transportation corridor between the cities of Newark and Elizabeth and, in more detail, an area in the vicinity of Newark International Airport.

The major transportation facilities within the Study Corridor include NJ Route 1&9, NJ Route 22, Interstate 78, the New Jersey Turnpike (Interstate 95), Consolidated Rail Corporation (Conrail), National Rail Passenger Corporation (Amtrak), and New Jersey Transit Corporation (NJ Transit) Rail Lines, the Newark City subway system and NJ Transit bus service. Major project elements may include grading, filling, paving, erection and construction of new transportation facilities (including rolling stock, controls, maintenance equipment, etc.) within the Study Area, or improvement of existing transportation facilities within the Study Area.

The EIS scoping process will consist of two public scoping meetings to allow for public comments and an Interagency Scoping Meeting to obtain comments from cognizant Federal, State and Local agencies. The Public meetings will be held in the cities of Newark and Elizabeth and the Interagency Meeting will be held at One World Trade Center, New York, NY. Additionally, involved and interested agencies and persons may submit written comments representing concerns and issues they believe should be addressed in the EIS.

The initial public scoping meeting will begin at 3 pm on September 13, 1993 at the Robeson Center Multi-Purpose West Room (2nd Floor), Rutgers University—Newark Campus, 350 Martin Luther King Boulevard, Newark, NJ. All persons wishing to present oral comments must register at the scoping meeting. Registration will begin at 2 pm and close at 8 pm. All persons registered by the close of registration will be heard. Oral comments will be limited five (5) minutes per speaker.

The second public scoping meeting will begin at 3 pm on September 14, 1993 at the Theatre Facility at the Union County College—Elizabeth Campus, 12 West Jersey Street, Elizabeth, NJ. All persons wishing to present oral comments must register at the scoping meeting. Registration will begin at 2 p.m. and close at 8 p.m. All persons registered by the close of registration will be heard. Oral comments will be limited to five (5) minutes per speaker. In recognition of the representation of their constituency, public officials at either Public Meeting will be allowed to speak at the first opportunity after they register.

WRITTEN COMMENTS: In addition written comments may be submitted to Mr. Anthony P. Spera, Manager, Planning and Programming Branch, Airports Division, AEA–610, Federal Aviation Administration Eastern Region Office, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430, (718) 553–1245. In order for written comments to be considered they must be received by Mr. Spera on or before September 14, 1993. Questions concerning the EIS or the process being applied by the FAA should also be directed to Mr. Spera.

SUPPLEMENTARY INFORMATION: Pertinent information, data, opinions and comments obtained throughout the course of the scoping process will be used in the preparation of the EIS. The purpose of this Notice of Intent is to inform the public and local, State and Federal government agencies that an EIS will be prepared and to provide those interested with the opportunity to present their opinions, comments, information or other relevant observations concerning the environmental impacts related to implementation of this proposal.

A draft copy of the Scoping Document can be obtained for review from Mr. Anthony P. Spera at the above-referenced address.

Implementation of the Newark Airport APM–NEC Connection Project would improve airport accessibility by connecting Newark International Airport to the regional transportation networks serving Manhattan and New Jersey. The project, by reducing travel time, will increase travel reliability, improve air quality and reduce automobile vehicle miles traveled. Major actions to be addressed in the EIS include the following three (3) alternatives.

Alternative 1—Newark Airport APM–NEC Connection

The Newark Airport APM–NEC Connection Project would connect EWR with the nearby Amtrak and NJ Transit rail transit systems by constructing a proposed new Rail Station to be located in the vicinity of Haynes Avenue on the Northeast Corridor (NEC) and extending the on-airport Automated People Mover (APM), currently under construction on EWR, from EWR Parking Lot E to the proposed new Rail Station. This project would provide exclusive airport service for both air passengers and airport employees.

Study Area

The study area in which the potential APM alignments can be sited is described below. For the purposes of the EIS, the impacts associated with each of the developed system alignments will be included in the effort, and once a preferred alignment is determined, one or more additional public information meetings will be held to allow for comment on the selected preferred alignment. This will ensure that the final specific route and alignment for the Newark Airport APM–NEC Connection will have been addressed in the EIS.

Potential APM Extension Route Alignment Study Area

The APM Extension Route Alignment Study Area generally will comprise an area that is (a) between the APM station in EWR Parking Lot E and the proposed Rail Station at the NEC in the vicinity of Haynes Avenue, (b) bounded on its western side by northwestern portions of Lot 5090 Blocks 36 and 44* (the Anheuser Busch and Square Corp. properties respectively), and (c) bounded on its eastern side by the southwestern portion of Block 5088 Lot 132* (the 146 Haynes Corp. property). [* as indicated on tax maps filed at the City of Newark Tax Surveyors Office, Newark City Hall, Newark, NJ.]

Alternative routes and alignments within the Study Area will be developed and a preferred alignment

selected based upon engineering feasibility, constructibility, ridership potential, and environmental considerations.

Independent of the Newark APM–NEC Connection Project, New Jersey Transit Corporation (NJ Transit) is expected to undertake efforts for the preparation of two EIS's for a Newark-Elizabeth Rail Link and a Newark City Subway Maintenance Building. These potential projects could impact the ridership of the Newark Airport APM–NEC Connection Project and would consist of: (1) A new light rail system to serve portions of Newark from Broad Street to The Government Center and continue, via the remainder of the Newark-Elizabeth right-of-way from Broad Street to Midtown, Elizabeth, with a station-stop at the Newark Airport APM–NEC Connection; and/or (2) Construction of a subway yard and maintenance and repair shop in Newark. The study will include the potential cumulative impacts of these two proposals on the Newark APM–NEC Connection Project.

Alternative 2—Traffic System Management

A Traffic System Management (TSM) plan would include low cost operational improvements to the existing transportation access systems. These TSM options would include increased Airlink and/or other bus services, added stops on bus routes or new routes serving the airport area, including Haynes Road connections, and/or incorporate increased NJ Transit and local bus operations.

Alternative 3—No Build ("No Action")

This alternative evaluates the results of providing no improvements to the existing airport access system. Access to Newark International Airport is currently provided by, but not necessarily limited to the following:

1. Vehicular access via major highways including I-78, the New Jersey Turnpike and U.S. Routes 1&9 and Route 22.

2. Franchise bus/limo/service.

From Manhattan:

—NJ Transit express bus service (from Port Authority Bus Terminal (PABT) at 40th Street to EWR;
—Olympia Trails Express bus service from World Trade Center (WTC), Grand Central Station (GCS) or NY Penn Station (NYPenn) to EWR;
—Gray Line Air Shuttle Mini Bus (from Midtown Manhattan) to EWR;
—Path Subway (from WTC), NJ Transit or Amtrak Trains into Newark Penn Station (NJPenn), then Airlink/NJ Transit bus from NJPenn to EWR.

From Queens:

—NJ Transit bus sevice or local bus/subway into NYPenn or GCS, then Olympia Trails Coach Bus Service, to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR;
—local bus/subway into PABT, NYPenn or GCS, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Bronx:

—local bus/subway into Penn Station or GCS, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Staten Island:

—NJ Transit bus service to EWR.

From New Jersey:

—Trans Coach Lines bus service to EWR;
—NJ Transit bus service to EWR, from NJ Penn;
—Princeton Airport Shuttle Service to EWR from Middlesex & Mercer Counties.

From Pennsylvania:

—Princeton Airport shuttle service to EWR from Yardley, PA;
—Transbridge Coach Lines bus service to EWR from Easton, Bethlehem and Allentown, PA;
—NJ Transit to NJ Penn Station, then Airlink Bus to EWR.

From Connecticut:

—Rail or bus to GCS or NYPenn, then Olympia Trails Coach Bus Service, to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Westchester:

—Rail or bus to GCS or NYPenn, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Long Island:

—Classic Airport Rideshare to EWR (on demand);
—Long Island Railroad (LIRR) to NYPenn, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

From Upstate New York:

—NJ Transit Bus Service to EWR;
—Metro North to GCS or NYPenn, then Olympia Trails Coach Bus Service to EWR or NJ Transit or PATH to NJPenn then Airlink/NJ Transit bus from NJPenn to EWR.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony P. Spera, Federal Aviation Administration, Eastern Region Office, AEA–610, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Telephone (718) 553–1245.

Issued in Jamaica, New York, on August 6, 1993.

Anthony P. Spera,

Manager, Planning and Programming Branch, Airports Division, Federal Aviation Administration, Eastern Region Office, Jamaica, New York.

[FR Doc. 93–19822 Filed 8–17–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and 14 CFR part 158.

DATES: Comments must be received on or before September 17, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA. 90261, or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA. 94010–1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Denis R. Horn, General Manager of the Monterey Peninsula Airport District at the following address: Monterey Peninsula Airport District, Highway 68 and Olmsted Road, P.O. Box 550, Monterey, CA. 93940.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monterey Peninsula Airport District under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District office, 831 Mitten Road, room 210, Bulingame, CA. 94010–1303, telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 14, 1993, the FAA determined that the application to impose and use a PFC submitted by the Monterey Peninsula Airport District was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 13, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: January 1, 1994
Proposed charge expiration date: May 30, 2000
Total estimated PFC revenue: $3,960,855

Brief description of the proposed projects:

The six impose and use project elements for which the Monterey Peninsula Airport District requests authority to collect PFC revenue and use are: Security Access Control, Storm Drain Rehabilitation, Taxiway/Apron Rehabilitation, Environmental Assessment-Westside Airport Access Road to Garden Road, Airport Signage System, and Westside Access Connection to Garden Road.

The six impose only project elements for which Monterey Peninsula Airport District requests authority to collect PFC revenue are: Residential Soundproofing Phase 2–5, Terminal Renovation/Improvement, Environmental Impact Report New Northside Ground Access Road, New Northside Ground Access Road (Phase 1), Old Northside Road Relocation, and Terminal Road Improvements (Phase 1).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled/Intermittent Part 135 Air Taxis.

Any person may inspect the application, in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA. 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monterey Peninsula Airport District.

Issued in Hawthorne, California, on July 14, 1993.

Herman C. Bliss,

Western-Pacific Region, Manager, Airports Division.

[FR Doc. 93–19821 Filed 8–17–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Utah County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of the intent to prepare an Environmental Impact Statement (EIS) for a proposed highway project in Utah County, Utah. If the study and analysis conclude that all appropriate FHWA/UDOT criteria for a Finding of No Significant Impact (FONSI) are met then the document may be converted from an EIS to a FONSI.

FOR FURTHER INFORMATION CONTACT: Bill Gedris, U.S. Department of Transportation, Federal Highway Administration, 2520 West 4700 South, Salt Lake City, Utah 84118, telephone (801) 963–0183; or R. James Naegle, Utah Department of Transportation, 4501 S. 2700 W., Salt Lake City, Utah 84119, telephone (801) 965–4160; or Alan Mecham, Utah Department of Transportation, District Six Office, 825 N. 900 W., Orem, Utah 84057, telephone (801) 227–8001.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare an environmental impact statement (EIS) for the proposed project located in Provo, Utah which includes:

(a) The widening of I–15 from the State Highway 75 interchange to north of the Center Street interchange (approximately 4.5 miles);

(b) Reconstruction of the I–15/University Avenue interchange;

(c) The addition of a new connector road which will connector 1860 South to U.S. Highway 89 (approximately 0.9 miles);

(d) Any needed modifications to 1860 South, from University Avenue to U.S. Highway 89, and University Avenue, from I–15 to East Bay Boulevard, to accommodate present and future traffic needs.

The improvements mentioned are necessary to provide for the existing and projected traffic demand. Alternatives under consideration include:

(1) No action;

(2) Transportation System Management (TSM) which includes low cost improvements such as mass transit, signal optimization, ridesharing, etc.;

(3) A build alternative that provides for an east access from the interchange and improves traffic flow on I–15, University Avenue and 1860 South.

A public scoping meeting will be held to help establish the purpose, scope, framework and approach for the study. Members of the public and interested Federal, State, and local agencies are invited to comment on the proposed project. Comments may be made either orally at the meeting or in writing within 30 days of the meeting. After a draft EIS has been prepared a public hearing will be held. Public notice will be given of the time and place of the scoping meeting and public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction is used. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 6, 1993.

Donald P. Steinke,

Division Administrator, FHWA, Salt Lake City, Utah.

[FR Doc. 93–19911 Filed 8–17–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. NCI 3257]

Motorcycle Helmets Manufactured by Chico of Ft. Lauderdale, Inc.; Public Proceeding Scheduled

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of public meeting.

SUMMARY: NHTSA will hold a public meeting on September 15, 1993 regarding an initial determination that certain motorcycle helmets manufactured by Chico of Ft. Lauderdale, Inc. fail to comply with Federal Motor Vehicle Safety Standard No. 218.

FOR FURTHER INFORMATION CONTACT:
John Lee, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; 202–366–5299.

SUPPLEMENTARY INFORMATION: Pursuant to section 152(a) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1412(a), NHTSA's Associate Administrator for Enforcement has made an initial determination that certain motorcycle helmets manufactured by Chico of Ft. Lauderdale, Inc. (Chico), do not comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, "Motorcycle Helmets," 49 CFR 571.218. Compliance tests performed for NHTSA indicate that Chico's "Florida's Choice" "LBL" and "LBL Winner" model helmets do not meet the impact attenuation, penetration, and retention system requirements of FMVSS No. 218 and therefore would not provide adequate protection to users in the event of a crash. In addition, the "LBL Winner" helmets fail to comply with the labelling requirements of the Standard.

A public proceeding will be held at 10 a.m., on September 15, 1993 in room 2230, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, at which time the manufacturer will be afforded an opportunity to present data, views, and arguments to establish that the helmets covered by this initial determination comply with FMVSS No. 218.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Elaine Beale, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, room 6111, 400 Seventh Street, SW., Washington, DC 20590, 202–366–2832, before the close of business on September 13, 1993. Written comments must be submitted to the same address on or before September 15, 1993.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in its Technical Reference Library, room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Authority: 15 U.S.C. 1412; delegation of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: August 12, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–19920 Filed 8–17–93; 8:45 am]
BILLING CODE 4910–59–M

Research and Special Programs Administration

Pipeline Safety User Fees

This notice announces changes that the Research and Special Programs Administration (RSPA) will be implementing to the fiscal year 1993 pipeline safety user fee. As stated in the pipeline safety user fee provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("The Act") (Pub. L. 99–272; April 7, 1986), The Act authorizes the assessment and collection of user fees to fund the activities conducted under the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended, (49 app. U.S.C. 1671 et seq.) Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA), as amended, (49 app. U.S.C. 2001 et seq.). RSPA assesses each operator of regulated interstate and intrastate natural gas transmission pipelines and hazardous liquid pipelines a share of the total Federal pipeline safety program costs in proportion to the number of miles of pipeline each operator has in service. The fee schedule for LNG facilities is based on the number of plants and total storage capacity. The fees to be assessed in 1993 for each category are described below.

In accordance with the provisions of The Act, Departmental resources were taken into consideration and total program costs for fiscal year 1986 through fiscal year 1990 were apportioned on the basis of 80 percent for gas program activities and 20 percent for liquid program activities. In fiscal year 1991, as a result of increased allocation of resources to the hazardous liquid program, RSPA calculated the user fees on the basis of 75 percent for gas program activities, and 25 percent for liquid program activities. For fiscal year 1993, RSPA is calculating the user fees on the basis of 75 percent for gas program activities and 25 percent for liquid program activities from October 1, 1992 (the beginning of the Federal fiscal year) through June 30, 1993. However, from July 1, 1993 through September 30, 1993, the user fee will be calculated on the basis of 60 percent for gas program activities and 40 percent for liquid program activities. This increase in the amount of the fee apportioned to hazardous liquid pipeline operators reflects enactment of the Pipeline Safety Act of 1992 (Pub. L. 102–508; October 24, 1992), which mandates that RSPA place an increased emphasis on environmental protection.

For fiscal year 1993, the pipeline safety user fee assessments will be mailed to pipeline operators on or about August 16, 1993. Based on the allocation, stated above, the fee for natural gas transmission pipelines will be $37.92 per mile and $17.37 per mile for hazardous liquid pipelines (the 1992 user fee for gas transmission pipelines was $43.64/mile and for hazardous liquid pipelines $17.88/mile). There is no change in the rates for LNG:

Total storage capacity	Assessment/plant
<10,000	=$1,250
10,000–100,000	=$2,500
100,000–250,000	=$3,750
250,000–500,000	=$5,000
>500,000	=$7,500

In accordance with the regulations of the Department of the Treasury, user fees will be due 30 days after the date of the assessment. Interest, penalties, and administrative changes will be assessed on delinquent debts in accordance with 31 U.S.C. 3717.

Issued in Washington, DC, on August 12, 1993.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 93–19887 Filed 8–17–93; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 17, 1993.

Dated: August 11, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 38 CFR 18.442(e), Transition Plan
2. The transition plan is a recordkeeping requirement set up to monitor compliance to provide accessibility for the handicapped where grants for Federal financial assistance has been received.
3. State or local governments—Businesses or other for-profit—Non-profit insitutions—Small businesses or organizations
4. 477 hours
5. 7 minutes disclosure burden—4 hours recordkeeping burden
6. Not applicable
7. 116 respondents

[FR Doc. 93–19935 Filed 8–17–93; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
August 18, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

Colorado River Indian Irrigation Project; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Colorado River Indian Irrigation Project

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: The purpose of this document is to give the public notice of the amount of the operation and maintenance assessment rate and excess water charge for the Colorado River Indian Irrigation Project for 1994 and how the assessment will be billed. The assessment is based on an estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including the actual costs for labor, materials, equipment, services equipment replacement and reserves to cover emergency expenses.

The basic annual 1994 assessment rate for operation and maintenance will be $27.00 per assessable acre for the first 5 feet of water. The charge for water in excess of this annual water apportionment will be $8.00 per acre foot.

The energy costs for pumped water will not be paid by the Project but will be billed directly to those receiving pumped water by the electric utility.

DATES: This assessment rate will become effective January 1, 1994.

ADDRESSES: All comments concerning the 1994 Operation and Maintenance Assessment rate and excess water charge for the Colorado River Indian Irrigation Project must be in writing and addressed to the Superintendent, Colorado River Agency, Bureau of Indian Affairs, Parker, Arizona 85344.

FOR FURTHER INFORMATION CONTACT: Area Director, Phoenix Area Office, Bureau of Indian Affairs, One North First St., Phoenix, Arizona 85001, telephone number (602) 379–6600.

SUPPLEMENTARY INFORMATION: Authority to issue this document is vested in the Secretary of Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of change in the irrigation operation and maintenance assessment rate and excess water charge is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order Number 3150, section 7b, and in accordance with the Code of Federal Regulations, title 25, § 171.1, which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment rates for the Colorado River Indian Irrigation Project for calendar year 1994 and subsequent years.

The Colorado River Indian Tribes (CRIT) and water users were notified of the proposed changes in the operation and maintenance assessment rates at the March 18, 1993, CRIT Irrigation Committee Meeting.

The current operation and maintenance assessment rate of $22.00 was established in December, 1983. At full use of the apportioned 5 acre-feet, the unit cost of water has increased from $4.40 to $5.40 per acre-foot. The costs of labor, materials, power, equipment and energy have continued to increase each year until costs now exceed revenue from current assessments and have nearly depleted reserves. The basic operation and maintenance assessment for a given year is calculated by using the estimated cost of Project operation for that calendar year divided by the assessable acreage.

Colorado River Indian Irrigation Project 1994 Annual Operation and Maintenance Assessment Rate and Excess Water Charges

Basic Assessments: The basic assessment rate against the land to which water can be delivered under the Colorado River Indian Irrigation Project, Arizona for operation and maintenance of the Project, is hereby fixed at $27.00 per assessable acre. The assessment is due whether water is used or not. Payment of this assessment will entitle the water user to up to 5 acre-feet of water per year per assessable acre of land.

Excess Water Charge: If and when available, water in excess of the basic allotment may be delivered upon written request to the Superintendent by landowners or users at the rate of $8.00 per acre foot or fraction thereof. The excess water charge is payable at the time of written request for such water and must be paid prior to delivery.

Pumped Water Energy Charges: The energy costs for pumped water will not be paid by the Project but will be billed directly to those receiving pumped water by the electric utility.

Effective Period: The assessments and water charges above shall become effective for Calendar Year 1994 and continue in effect until further notice.

Payment: Irrigation water will not be delivered until the annual basic operation and maintenance assessments are paid. Payment of the annual basic assessment may be made in two installments if the leaseholder's accounts are in good standing. On January 1 of each year, the first half of the assessment shall become due and payable. This entitles the water user to not more than one-half of the annual basic water apportionment prior to July 1. The second half of the assessment will be due and payable on July 1 and shall entitle the water user to the remaining basic water apportionment. Water delivery will not be continued for any tract after July 1 of any year unless and until the remaining half of the basic water assessment has been paid.

Interest and Penalty Fees: An interest penalty of one percent per month, or fraction thereof, from January 1 until paid, shall be added to all assessments and charges which are not paid on or before January 1 and July 1 of each year, respectively.

No Water: Water will not be delivered to any tract of land in succeeding years until full payment of the previous years' operation and maintenance assessments, inclusive of penalties, has been made or unless arrangements have been made under CFR 25 (Indians) Part 171—Operation and Maintenance, § 171.17a (1) and (2).

Part-Year Assignments and Leases: When new assignments or leases of Project lands become effective, and when basic assessments have not been paid in full for the half of the calendar year the new lease covers, the assignee or lessee will be required to pay in full the unpaid portion of the annual basic assessment for that half year, plus any interest and penalty fees before any water is delivered. If only half the assessment is paid, only half the basic apportionment will be delivered. All part-year assignees and lessees shall be charged for excess water at the current rate of $8.00 when water ordered is in excess of one-half of the annual water apportionment in that half-year.

Certification: No water will be delivered for use on Project lands under lease until the Superintendent has certified that the lessee has paid the required operation and maintenance assessments.

Water Users Responsibility for Water After Delivery: The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in a suitable condition for delivery of irrigation water. Water users are to maintain their ditches and fields in accordance with land lease agreements.

Distribution and Apportionment: All project water is considered a common water supply in which all assessable lands of the project are entitled to share equally. Such water will be distributed

to the lands of the project as equitably as physical conditions permit.

Dated: August 2, 1993.

Woodrow W. Hopper Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–19916 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
August 18, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

San Carlos Indian Irrigation Project O&M Assessment Rates, Arizona; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Carlos Indian Irrigation Project O&M Assessment Rates, Arizona

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of assessment rate change.

SUMMARY: The purpose of this document is to give the public notice of the 1994 assessment rate of $35.00 per acre for operating and maintaining the Joint Works of the San Carlos Indian Irrigation Project. The assessment rate is based on an estimate of the cost of normal operation and maintenance of the irrigation project divided by the project acreage. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including labor, materials, equipment and services for irrigation canals, dams, flow control gates, pumps and other facilities.

DATES: This annual assessment rate is for Fiscal Year 1994, and subsequent years, and will become effective October 1, 1993.

ADDRESSES: All comments concerning the proposed O&M Assessment Rate for the San Carlos Indian Irrigation Project must be in writing and addressed to the Superintendent, San Carlos Agency, Bureau of Indian Affairs, Coolidge, Arizona 85228.

FOR FURTHER INFORMATION CONTACT: Area Director, Phoenix Area Office, Bureau of Indian Affairs, One North First St., Phoenix, Arizona 85001, telephone (602) 379–6600.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This Notice of rate change in the irrigation operation and maintenance rates is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs, by the Secretary of Interior in Secretarial Order Number 3150, section 7b, and in accordance with the Code of Federal Regulations, title 25, § 171.1, which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment rates for the San Carlos Indian Irrigation Project for Fiscal Year 1994, and subsequent years.

The basic assessment rate was set at $29.95 for fiscal year 1993. The initial estimate of costs in FY1994 would require an assessment rate of $56.50 (an increase of 89%). The lowest rate the Bureau of Indian Affairs can fulfill its minimum obligations with is $35.00 (an increase of 17%).

Major changes in organizational structure are taking place at the Project resulting from Public Law 102–231, the bill that calls for divestiture of the Power Division. In addition, the divestiture changes the source of power to operate Project wells from internal (with no profit component) to external. There will be two providers and the Western Area Power Administration has raised their rates for power delivered to these providers. Many meetings have been held between parties affected by these changes. The Bureau of Indian Affairs is seriously concerned that the rate established will be too low to cover "normal" operation and maintenance costs. Project water users have reluctantly agreed to the rate change as one they will barely be able to pay.

Assessment Rate

Pursuant to the Act of Congress approved June 7, 1924 (43 Stat. 476) and supplementary acts, the Repayment Contract of June 8, 1931, as amended, between the United States and San Carlos Irrigation and Drainage District, and in accordance with applicable provision of the Order of the Secretary of the Interior of June 15, 1938, the basic assessment rate for the operation and maintenance of the Joint Works of the San Carlos Irrigation Project for Fiscal Year 1994 is hereby fixed at $35.00 for each assessable acre of land.

Payment: The assessment is due and payable on or before the 15th of May prior to the fiscal year the assessment is for, as provided for in the Act of Congress of June 7, 1924 (43 Stat. 475–476) as implemented by the Repayment Contract between the United States and the San Carlos Irrigation and Drainage District (as supplemented on November 12, 1935 and May 29, 1947), and the Secretarial Order defining the Joint, District and Indian Works of the San Carlos Federal Irrigation Project; Turning Over Operation and Maintenance of District Works to the San Carlos Irrigation and Drainage District.

Duty of Water: Payment of the assessment will entitle the water user to their proportionate share of available water.

Dated: August 2, 1993.

Woodrow W. Hopper, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–19917 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
August 18, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Salt River Indian Irrigation Project, Arizona; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Salt River Indian Irrigation Project, Arizona

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: The purpose of this document is to give the public notice of the amount of the assessment for operating and maintaining the Salt River Indian Irrigation Project for 1993 and how the assessment will be billed. The assessment is based on an estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including pumped water, and maintaining the facilities for the year.

The Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 became effective approximately December 9, 1991. As of that date, all water for irrigation on the Salt River Reservation belongs to the Community. In prior years, assessments were against specific parcels of land because the water rights were associated with those parcels.

The Community has elected not to have the Salt River Project manage the on reservation system; therefore, the Bureau of Indian Affairs will continue to operate the Salt River Indian Irrigation Project to deliver the Community's water below the Arizona Canal (within the capability of the Project distribution system) as directed by the Community. The Bureau of Indian Affairs will collect funds from water users sufficient to operate the Project in calendar year 1993 and pay certain fees for stored water accrued in calendar year 1992.

The assessment rate is $42.50 per acre for leased land and entitles the water user to 3.75 acre feet of water per acre. Spill water will be delivered without additional charge. Excess water (beyond the 3.75 acre feet per acre when no spill water is available) will be delivered for $8.50 per acre foot if it is surface water and $42.00 per acre foot for groundwater (pumped from wells). The acreage used to determine the assessment rate includes the 9,229 acres currently leased for farming.

Enrolled Community members or their spouses irrigating their own property (10 acres or less) will be charged $2.00 per acre foot. They will not be charged the basic assessment rate. Municipal and industrial surface water rates will be $10.00 per acre foot. Churches will be charged $1.00 per acre foot. Groundwater, if required by these customers, will be $42 per acre foot.

DATES: The annual assessment became effective January 1, 1993.

ADDRESSES: All comments concerning the O&M Assessment Rate for the Salt River Indian Irrigation Project must be in writing and addressed to the Superintendent, Salt River Agency, Bureau of Indian Affairs, Scottsdale, Arizona 85256.

FOR FURTHER INFORMATION CONTACT: Area Director, Phoenix Area Office, Bureau of Indian Affairs, One North First St., Phoenix, Arizona 85001, telephone (602) 379–6600.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of change in the irrigation operation and maintenance assessment and water delivery rates is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order Number 3150, Section 7b, and in accordance with the Code of Federal Regulations, Title 25, Part 171.1, which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment and water delivery rates for the Salt River Indian Irrigation Project for calendar year 1993 and subsequent years.

The basic 1992 assessment rate was $50 per acre foot to leased lands and entitled each water user to 3 acre feet per acre. Spill water was available early in the year, so the project was able to deliver all water requested. The acreage used to determine the assessment rate was 7,849 acres. The rate for spill water was charged at $9 per acre foot. The rate for excess water was $35 per acre foot. Enrolled Community members were charged $10 per acre foot with no basic assessment charge.

The 1992 basic operation and maintenance charges were calculated by using the estimated cost of Project operation for calendar year 1992 divided by the acreage leased to water users for commercial farming.

Basic Assessment: The basic 1993 operation and maintenance rate assessed against the leased farmland in the Salt River Irrigation Project to which water can be delivered through the irrigation project works is hereby fixed at $42.50 per acre for delivery of 3.75 acre feet of water per acre. Irrigation water will not be delivered until the basic operation and maintenance assessments are paid. Payment of the basic assessment may be made in two installments if the leaseholder's past accounts are in good standing. The first half ($21.25 per acre) by March 29, 1993, and the second half by July 1, 1993. The rate for excess water will be $8.50 per acre foot. Spill water will not be charged against the apportionment of 3.75 acre feet per acre this year.

Community Members: Enrolled members of the Community and their spouses who farm their own land will not be subject to the basic assessment rate. They may purchase water at the rate of $2.00 per acre foot. Payment will be required at the time of the order.

Municipal and Industrial: The rate for delivery of water for Municipal and Industrial purposes is hereby fixed at $10.00 per acre foot. The rate for delivery of water to churches is $1.00 per acre foot. Pumped water, if required, will be delivered for $42.00 per acre foot.

Interest and Penalty Fees: Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulation, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, Part 3.8, Debt Collection Procedures.

Delivery of Water: Delivery of water shall be made to all tracts of land for which the basic assessment and/or water delivery rates are paid as set for the year 1993.

Dated: August 6, 1993.

Linda L. Richardson,

Deputy Commissioner of Indian Affairs.

[FR Doc. 93–19919 Filed 8–17–93; 8:45 am]

BILLING CODE 4310-02-P

federal register

Wednesday
August 18, 1993

Part V

Environmental Protection Agency

40 CFR Part 165
Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 165

[OPP–190002; FRL–4628–9]

Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy Statement.

SUMMARY: Section 19(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), states that after December 24, 1993, a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the Administrator determines that the State is carrying out an adequate program to ensure compliance with regulations promulgated under the authority of section 19(f)(1). The Agency has not yet promulgated regulations under section 19(f)(1) and is unlikely to do so by December 24, 1993. To avoid having the provisions of section 19(f)(2) adversely impact the States and EPA, the Agency is publishing this policy which sets forth a process whereby the Agency will make an interim determination of adequacy for those States with primary use enforcement responsibility and/or certification programs. This determination would be based on an initial commitment by a State to conduct a number of activities which will position the State to have an adequate program in place by the time compliance with the regulations promulgated under section 19(f)(1) is required. After the section 19(f)(1) regulations are promulgated, the Agency will establish criteria for evaluating State programs under FIFRA section 19(f)(2) to ensure that they in fact do have and continue to have adequate compliance programs for regulations promulgated under section 19(f). The criteria and process for this will be published in the **Federal Register** for public comment after the regulations under section 19(f)(1) are promulgated.

EFFECTIVE DATE: This policy is effective August 18, 1993.

ADDRESSES: Submit written comments identified by the document control number (OPP–190002), by mail to: Public Information Branch, Field Operations Division, Office of Pesticide Programs (H7506–C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Public Docket, room 1128, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. All written comments will be available for public inspection in the Public Docket at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Office of Compliance Monitoring (EN–342W), 401 M St., SW., Washington DC 20460, telephone (703) 308–8383, facsimile (703) 308–8218.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

FIFRA section 19(f)(1)(A) states that not later than 3 years after the effective date of the subsection [December 24, 1988], the Administrator shall, in consultation with the heads of other interested Federal agencies, promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal. Section 19(f)(1)(B) states that the regulations may: (1) Specify, for each major type of pesticide container, procedures and standards providing for, at a minimum, triple rinsing or the equivalent degree of pesticide removal; (2) specify procedures that can be implemented promptly and easily in various circumstances and conditions; (3) provide for reuse, whenever practicable, or disposal of rinse water and residue; and (4) be coordinated with requirements for the rinsing of containers imposed under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

FIFRA section 19(f)(2) states that 5 years after the effective date of the subsection [December 24, 1993], a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the Administrator determines that the State is carrying out an adequate program to ensure compliance with regulations promulgated under the authority of section 19(f).

The residue removal regulations for refillable and nonrefillable containers are scheduled to be proposed in 1993 as new subparts of 40 CFR part 165. The statute states that the Administrator must make a determination that a State has an adequate program to assure compliance with regulations promulgated under 19(f) by December 24, 1993, or the State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11. Although the Agency did not meet the statutory deadline under section 19(f)(1)(A) for promulgation of regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal, the deadline under section 19(f)(2) for the Administrator to determine that States have an adequate enforcement program for these residue removal regulations remains in effect in the absence of an amendment to the statute.

FIFRA does not specifically address what should happen if EPA fails to meet the statutory deadline for promulgating regulations under section 19(f)(1). Section 19(f)(2) on its face suggests that Congress intended the provisions as strong encouragement for States to develop and implement enforcement programs for the residue removal regulations in a timely manner. This reading of section 19(f)(2) would be consistent with the other FIFRA provisions governing the Federal/State scheme of pesticide enforcement. Nothing in section 19(f) indicates that Congress intended to punish the states for EPA's failure to meet the deadline for promulgation of regulations. EPA believes that it should not construe section 19(f) so as to prejudice public interests because of the negligence or failure of EPA. The Policy Statement creates "an interim determination of adequacy" as a best effort to come close to Congressional intent in section 19(f)(2) and to avoid States losing their primary enforcement and certification authority after December 24, 1993.

This policy provides guidance on the procedures and criteria EPA will follow to make an interim determination of adequacy for States with primary use enforcement responsibility and/or certification programs. This determination will be based on the existence of an adequate program in an individual State for enforcement of existing pesticide laws and a written commitment by the State to undertake activities in three areas.

The interim determination is temporary and would expire 2 years after promulgation of the final rule under section 19(f)(1). Thereafter, States would have to have a program to assure compliance with the section 19(f) regulations. Two years is the period Congress originally intended to allow States to develop and implement programs for enforcement of the new residue removal requirements. EPA does not believe that Congress intended to penalize States for the Agency's delay in issuing the final rule by allowing States less time to establish their programs. EPA also believes that 2 years will be

needed for the States to develop and implement their programs after the regulations are promulgated. Also 2 years is consistent with anticipated dates for compliance with the regulations proposed under section 19(f)(1).

The activities a State is to commit to in writing include (1) review of the proposed section 19(f) regulations, identification of any changes to State laws that would be necessary for enforcement of the regulations, and development of an estimated timeline for making those changes; (2) development and submission to EPA of a strategy, within 12 months of promulgation of the final rule under section 19(f)(1), for implementing an enforcement program for the section 19(f) requirements; and (3) conducting a program to inform the regulated community of the requirements of the rule, after the final rule is promulgated. States that undertake these above activities will be doing what they can reasonably be expected to do at this time. Additionally, they will be taking the necessary steps so that they can be carrying out an adequate program for enforcement of the new requirements within 2 years of promulgation of the final rule. EPA will judge the evidence, on a case by case basis, to determine whether a State has committed to undertake activities necessary to develop a compliance program.

After the regulations under section 19(f)(1) are promulgated, the Agency will establish criteria for evaluating State programs to ensure that they in fact do have and continue to have adequate compliance programs for regulations promulgated under section 19(f). The criteria and process for this will be published in the **Federal Register** after the regulations under section 19(f)(1) are promulgated. Submission of a commitment by a State does not waive any rights a State has to comment on or challenge the requirements proposed under the authority of section 19(f) nor is it a commitment to actually change State law.

Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this policy is not a "major" policy because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices.

B. Paperwork Reduction Act

This policy and associated information collection request (ICR) amend a previously approved ICR (OMB Clearance No. 2070–0113) and imposes additional burden hours as a result. The information collection requirements in this policy have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 40 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1547.01) and a copy may be obtained from Chief, Information Policy Branch, PM–223, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Public reporting burden for collection of information under this policy is estimated to average 3 hours per response, including time for reviewing the policy and drafting a commitment letter.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Dated: August 6, 1993.

Carol M. Browner,
Administrator.

Policy for Making an Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs

Section 19(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), states that after December 24, 1993, a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the Administrator determines that the State is carrying out an adequate program to ensure compliance with section 19(f).

A. Current Programs

States which have primary enforcement responsibility prior to December 24, 1993, have programs in place to ensure compliance with current pesticide laws. In States without primacy, EPA enforces the Federal pesticide laws. In either case, there is a current program for enforcement of residue removal requirements which will be effective until compliance with the section 19(f) regulations is required. For most of the section 19(f)(1) regulations, EPA plans to propose a compliance date of 2 years. Other requirements may have later compliance dates.

B. Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs

To obtain an EPA interim determination under FIFRA section 19(f)(2) that the State program is adequate for the period between December 24, 1993 and 2 years after the promulgation of the final rule under section 19(f)(1), a State should submit a written commitment as described below:

(a) *Who should submit a written commitment.* Any State wishing to continue to exercise its primary enforcement authority under section 26, or certify applicators under section 11, should submit a written commitment to carry out the activities specified in paragraph (b) below. The commitment should be signed by the designated State Lead Agency.

(b) *What should be submitted.* A State should submit a written commitment to:

(1) Review the proposed regulations under section 19(f)(1) of FIFRA within 3 months of proposal to determine if the State can enforce the provisions under its existing State laws and regulations. This time period for review is the same as the comment period for the proposed regulation. If the comment period is extended, the review period for the States would be similarly extended.

(2) Identify significant changes which would be necessary to State laws and regulations in order to effectively enforce the proposed EPA regulations and develop an estimated timetable to effect these changes.

(3) Reevaluate, within 6 months after the final regulations are promulgated, the preliminary evaluation as set out in paragraphs (b)(1) and (2) above.

(4) Develop and submit to EPA an adequate strategy for implementing a program for enforcement of the section 19(f) regulations within 12 months of promulgation, if, after reviewing the section 19(f) final regulations the State decides to develop and maintain an enforcement program. The implementation strategy would have to address the following elements:

(A) Communicating the requirements of the final rule with the affected regulated community, e.g., registrants, dealers, and users,

(B) Establishing cooperative relationships with other State agencies, where applicable, and

(C) Developing a compliance monitoring strategy based on EPA's compliance monitoring strategy.

(5) Conduct the outreach/communication program under paragraph (b)(4)(A) above after the final rule has been promulgated, during the period before the first compliance date for the rule. States do not have to wait for their implementation strategy to be completed to conduct their program. (OMB Control No. 2070–0113)

(c) *Where to submit the written commitment.* The written commitment should be submitted by the State to the appropriate EPA Region, to the office which handles pesticide enforcement and administers the State cooperative enforcement agreement. Regions will submit the written commitment to EPA Headquarters, Office of Compliance Monitoring for inclusion in the Public Docket.

(d) *When to submit.* The written commitment should be submitted within 60 days after publication in the **Federal Register** of this policy in order to assure expedited processing. EPA will accept commitments after this date, but commitments submitted after 60 days may be processed at a later date. EPA will try to process all submissions by December 24, 1993.

(e) *Determination of completeness.* Upon receipt, the EPA Regional office will review the State submission for completeness and forward it to EPA Headquarters for inclusion in the Public Docket and to serve as the basis for the Administrator's determination. An interim determination of adequacy of the State's compliance program must be made by the Administrator, to allow the continuation of a State's primary enforcement authority under section 26 and certification authority under section 11 after December 24, 1993.

(f) *Incomplete submissions.* Incomplete submissions will be returned to the State with an explanation why the submission is incomplete. A State may complete the submission and return it to the Regional office for reprocessing. Incomplete submissions may result in delays in processing the submission prior to December 24, 1993.

(g) *Commitments submitted after 60 days.* Failure to submit a written commitment within 60 days of promulgation of the policy may result in the Administrator not being able to make an interim determination of adequacy prior to December 24, 1993. In the event of no affirmative determination being made by December 24, 1993, the State's primary enforcement authority under section 26 and ability to certify applicators under section 11 would be automatically suspended by operation of section 19(f)(2) until the Administrator makes a determination of adequacy.

(h) *Notification of EPA's determination.* EPA will inform the State of its determination through publication in the **Federal Register** of a list of States that the Administrator has determined under this process to be carrying out an adequate enforcement program. However, for States that fail to submit a timely commitment, notice of EPA's determination may be provided by a letter to the State from the Administrator followed by publication in the **Federal Register** at a later date.

(i) *Expiration of interim determination of adequacy.* The Administrator's interim determination of adequacy expires 2 years after publication of the final rule issued under the authority of section 19(f)(1).

C. Continued Determinations of Adequacy

When regulations are promulgated under the authority of section 19(f)(1), EPA will develop, and publish in the **Federal Register**, any additional criteria necessary for evaluation of a State program to adequately enforce the provisions of the new rules and provide timeframes for addressing the criteria.

[FR Doc. 93–19827 Filed 8–17–93; 8:45 am]

BILLING CODE 6560–50–F

federal register

Wednesday
August 18, 1993

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved addendum to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Pari-Mutuel Racing Addendum to the Gaming Compact Between the Devils Lake Sioux Tribe and the State of North Dakota, which was enacted on April 8, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 3, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19922 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Wednesday
August 18, 1993

Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Tohono O'odham Nation and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19923 Filed 8–17–93; 8:45 am]

BILLING CODE 4310-02-M

Federal Register

Wednesday
August 18, 1993

Part VIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the White Mountain Apache Tribe and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19924 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–M

Federal Register

Wednesday
August 18, 1993

Part IX

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Ak-Chin Indian Community and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19925 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
August 18, 1993

Part X

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Cocopah Indian Tribe and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT:

Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19926 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
August 18, 1993

Part XI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved The Fort McDowell Mahave-Apache Indian Community of Arizona and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19927 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
August 18, 1993

Part XII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Pascua Yaqui Tribe of Arizona and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19928 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
August 18, 1993

Part XIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tonto Apache Tribe and the State of Arizona Gaming Compact of 1993, which was enacted on July 6, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 11, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19929 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
August 18, 1993

Part XIV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Yavapai-Apache Nation and State of Arizona Gaming Compact of 1993, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 11, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19930 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–01–M

federal register

Wednesday
August 18, 1993

Part XV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Agreement Between the Yavapai Prescott Indian Tribe and the State of Arizona concerning Class III Gaming, which was enacted on June 24, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 11, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19931 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
August 18, 1993

Part XVI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Gila River Indian Community and State of Arizona Gaming Compact of 1993, which was enacted on July 6, 1993.

DATES: This action is effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 11, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–19932 Filed 8–17–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
August 18, 1993

Part XVII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 5, et al.
Food Labeling for Human Consumption; Rules, Proposed Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5 and 101

[Docket Nos. 91N-0384, 84N-0153, and 91N-0317 et. al.]

RIN 0905-AD08 and 0905-AB68

Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Foods; Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is modifying its regulations on nutrient content claims and nutrient content claims used with a standardized term. In January of 1993, the agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments." The document gave interested persons an opportunity to comment on technical issues not raised in earlier comments pertaining to nutrient content claims. This document addresses the comments that the agency received in response to that document that identified technical matters or specific provisions that resulted in unintended technical consequences and that were not raised in earlier comments.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Constance B. Henry, Center for Food Safety and Applied Nutrition (HFS-156), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993, FDA published a final rule entitled "Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food" (58 FR 2302) (hereinafter referred to as "nutrient content claims final rule"). That final rule, among other things, defined nutrient content claims (also known as "descriptors") and provided for their use on food labels; defined specific nutrient content claims that included the terms "free," "low," "good source," "high," "reduced," "less (or fewer)," "more," and "light" or "lite;" established values for these terms for various nutrients; and established procedures for the submission and review of petitions regarding the use of nutrient content claims.

In that same issue of the **Federal Register**, FDA also published a final rule entitled "Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term" (58 FR 2431) (hereinafter referred to as "the general standard"). This final rule provided a general definition and standard of identity for foods named using a nutrient content claim, such as "fat free" or "light," in conjunction with a traditional standardized name (for example "reduced fat sour cream").

II. Technical Issue Comments

A. Nutrient Content Claims, General Principles

In the **Federal Register** of January 6, 1993, FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (58 FR 2066) (hereinafter referred to as the "implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters such as inconsistencies or unintended consequences of specific provisions not raised in earlier comments. In order to ensure consideration of any comments, interested persons were to certify that their comments were so limited. FDA further advised that if the comments identified any technical provisions of the final rules that FDA agrees should be changed, FDA would take action to modify those provisions. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

Following publication of the nutrient content claims final rule, FDA received approximately 50 letters containing one or more comments from industry, consumers, and other interested persons. Of these submissions, 25 included technical issue comments as described in the implementation final rule. The other submissions raised matters that merely require clarification or that are beyond the scope of technical concerns and would require further rulemaking. FDA is responding below to the specific technical issues that the comments raised. Those issues that are beyond the scope of this document or that are otherwise not relevant to this rulemaking are not discussed below. These matters should be the subject of separate rulemaking or petitions to the agency (e.g., a definition for a new term). In addition, FDA has included in this document technical changes that it is making after reconsideration of the regulations on its own initiative or in response to informal questions. Because the changes FDA is making in these final rules are technical in nature and are based on a full prior opportunity for comments, the agency finds that further opportunity for public comment on them is unnecessary.

Minimum Type Size

1. In several sections in the nutrient content claims final rule, the agency prescribed minimum type size requirements for a variety of required declarations (e.g., § 101.13(g) (21 CFR 101.13(g)) for referral statements). However, the agency did not specify minimum type size requirements for certain other required information (e.g., § 101.13(j)(2)(iv) accompanying information), even though a one-sixteenth inch minimum was discussed in the preamble for these provisions. The agency was relying on the general provisions in § 101.2(c) (21 CFR 101.2(c)) which specifies the minimum acceptable type size for required labeling information. However, § 101.13 and the other regulations for nutrient content claims in subpart D of part 101 (21 CFR part 101) are not listed in § 101.2(b), which identifies the sections to which § 101.2(c) is applicable. The agency has received numerous inquiries about the fact that there is no codified minimum type size for some of the labeling information required under the nutrient content claims regulation.

FDA has determined that there remains a need to specify the minimum type size for this type of information. Therefore, the agency is modifying § 101.2(b) to include §§ 101.13, 101.54, 101.56, 101.60, 101.61, 101.62, and 101.65 among those sections for which a minimum type size for required label information is specified. For consistency, the agency is also modifying § 101.2(f) to include §§ 101.13, 101.54, 101.56, 101.60, 101.61, 101.62 and 101.65. Finally, because § 101.25 was removed by the nutrient content claims final rule,

reference to this section is being deleted from § 101.2(b) and (f). In effect, label information required by the nutrient content claims regulations, but whose type size is not otherwise specified, will be required to be in letters and/or numbers no less than one-sixteenth of an inch in height unless otherwise specified by § 101.2(c).

Type Size and Style

2. In § 101.13(f) of the nutrient content claims final rule, the agency required that a nutrient content claim be in type size and style no larger than two times that of the statement of identity.

Some comments stated that the words "and style" must have been a typographical error. They said that because type style is not related to type size these words did not make sense in the sentence and should be dropped.

While the agency agrees that the words "and style" are used in an awkward manner in § 101.13(f), the agency believes that the concept that is the basis of the requirement remains important. There is a great variety of print styles available for use in labeling. Some of these styles, like Helvetica 95 Black, are very bold and prominent. Others, like Helvetica 25 Ultra Light, are thin and much less prominent. The purpose of the phrase "and style" as used in § 101.13(f) was to ensure that a claim not have undue label prominence compared to the statement of identity by virtue of the style of type used. However, because this phrasing has presented some confusion, the agency is modifying the provision to require that a claim not have an unduly prominent style when compared to the statement of identity. Accordingly, FDA has revised § 101.13(f) to state that a nutrient content claim shall be in type size no larger than two times the statement of identity and shall not be unduly prominent in type style compared to the statement of identity.

The agency advises that in implementing § 101.13(f), after taking into account the relative difference in the size of the claim compared to the size of the statement of identity, claims that are noticeably more prominent because of a difference in style will not be considered in compliance with this requirement.

Referral Statements on the Information Panel

3. Section 403(r)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act), which was added by the Nutrition Labeling Education Act of 1990 (the 1990 amendments), requires that all products making a nutrient content claim bear the referral statement "See ———— for nutrition information," with the blank filled in with the identity of the panel on which nutrition labeling is located. Section 101.13(g)(2) states that if the nutrient content claim appears on more than one panel, the referral statement may be omitted from the panel that bears the nutrition information.

A question has been raised as to whether the referral statement is required on the information panel if the claim does not appear on any other panel, or whether it may also be omitted if the claim appears only on the information panel.

The preamble to the nutrient content claims final rule (58 FR 2302 at 2306, comment 6) states that under § 101.13(g)(2) the referral statement is not required when a claim appears on the information panel. As reflected by this response, the agency intended that the referral statement not be required on the panel that bears nutrition information. However, because the wording of § 101.13(g)(2) is apparently unclear, the agency is modifying § 101.13(g) to specifically state that the referral statement is not required on the panel that bears nutrition information. Although this modification creates an apparent redundancy in the regulation, FDA is willing to accept redundancy in this instance in the interest of clarity.

Substitute Referral Statement on Small Packages Bearing Claims

4. In the final rule on nutrition labeling, the agency provided in § 101.9(a) (21 CFR 101.9(a)) that if a nutrient content claim was made on a product label, the product would have to bear nutrition labeling without regard to whether it was exempt from mandatory nutrition labeling for some other reason (e.g., the small business exemption). In addition, as noted above, section 403(r)(2)(B) of the act requires that all products that make nutrient content claims bear in immediate proximity to the claim the referral statement "See ———— for nutrition information," with the blank filled in with the identity of the panel on which nutrition labeling is located. Finally, the mandatory nutrition labeling regulation provides in § 101.9(j)(13)(i) that foods in small packages that have a total surface area available to bear labeling of less than 12 square inches (sq in) and that make no nutrient content claims and provide no other nutrition information, may provide an address or telephone number that a consumer can use to obtain the required nutrition information.

As discussed in the document for nutrition labeling, published elsewhere in this issue of the **Federal Register**, the agency has learned through inquiries informal questions that some products, many intended for individual use with meals in restaurants, have extremely small areas available to bear labeling information (less than 3 sq in), and thus do not have sufficient space available to bear the normal nutrition labeling information required when a nutrient content claim is made. In the nutrition labeling technical corrections document published elsewhere in this issue of the **Federal Register**, the agency has modified § 101.9(j)(13)(i)(B) to permit individual serving-size packages of food for use in restaurants and similar situations to use the minimum type size allowed under § 101.2(c)(5) of one thirty-second inch for nutrition labeling, provided that the packages comply with the requirements of that regulation, including that they have a total area available to bear labeling of 3 sq in or less. If a package still cannot comply with this requirement, manufacturers are advised to write the agency requesting alternative means of compliance in accordance with § 101.9(g)(9).

The agency recognizes that in many of these situations, there will not be sufficient space available for the specified referral or disclosure statement. For some packages, there will be a single panel of available label space. In such circumstances, no referral statement is necessary because, as explained in the previous comment, the claim is on the same panel as the nutrition information. However, in those circumstances in which the claim is on a panel other than the one containing the nutrition information, the agency believes that it is reasonable to permit the referral statement to be one thirty-second inch in height as permitted in § 101.2(c)(5). Therefore, the agency is modifying § 101.13(g)(1) to permit products that comply with § 101.2(c)(5) to have a referral statement in the minimum type size of one thirty-second inch.

Because other type size requirements in § 101.13 and in regulations in subpart D refer to § 101.13(g) for their size requirement, this modification will have the effect of changing the minimum type size to one thirty-second inch for all declaration provisions referring to § 101.13(g). For consistency, the agency is also modifying § 101.13(d)(2), which requires a disclaimer statement for substitute foods and requires the same relative type size but does not reference § 101.13(g) and § 101.13(i)(2), which requires a disclaimer statement on certain percent and amount claims, to permit the information to appear in type

of one thirty-second inch in appropriate circumstances. The agency is also modifying 101.13(g) for clarity and consistency with § 101.13(d)(2).

In those rare circumstances where the product is not able to comply with this modified requirement, any request for alternative means of compliance in accordance with § 101.9(g)(9) should include a suggestion for a referral statement to be used to identify the location of nutrition labeling.

Accompanying Information on Small Packages

5. In § 101.13(j)(2) and in the relevant sections in the various nutrient content claims regulations in subpart D of part 101, the agency required that for foods bearing relative claims, the label or labeling must state the identity of the reference food and the percentage (or fraction) by which the amount of the nutrient that is the subject of the claim in the labeled food differs from the amount of the nutrient in the reference food. This information must be adjacent to the most prominent claim. The agency also required that quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that of the reference food be provided adjacent to the most prominent claim or on the information panel.

FDA received inquiries in response to the implementation final rule about how to present this information on small packages. The agency advises that because the minimum type size requirement for this statement is established by § 101.2 (see comment 1 above), all exemptions provided in § 101.2(c) for small package sizes would apply to the required accompanying information. Consequently, for example, accompanying information could be provided in type size as small as one thirty-second inch on packages having less than 12 sq in of available label space that met the requirements for an exemption in § 101.2(c)(2) or (c)(3).

However, some manufacturers of extremely small packages (less than 3 sq in) inquired about how to provide the required accompanying information when there was insufficient label space to do so even taking into account the exemptions in § 101.2(c).

The agency determined in the nutrient content claims final rule that the percentage that the nutrient has been reduced and the identity of the reference food (e.g., 25 percent fewer calories than regular cheesecake) are essential to consumer understanding of the claim. This information can often be structured in such a way that it is part of the claim or takes up little more space than the claim itself. Thus, it would not be appropriate to excuse packages with a small amount of label space that make comparative claims from the requirement to place this information adjacent to the most prominent claim.

However, because of the limited amount of space available to provide the required information, and the fact that an alternate means of presentation of that information is possible, the agency finds that it is appropriate to provide more flexibility for declaration of the quantitative information comparing the amount of subject nutrient in the labeled food with that in the reference food on packages with an extremely small amount of available space (that is, those with less than 3 sq in). The agency believes that in this limited circumstance, it is more important that the required information be presented rather than that it be presented in the manner that is most appropriate to prevent consumer confusion, i.e., as part of the same presentation of information, therefore, for these products. The statement of the amount of the subject nutrient that is part of the nutrition information can satisfy the requirement for the portion of the accompanying information that specifies the amount of the nutrient for the labeled product. A statement of the amount of nutrient for the reference product would still be required.

However, as is the case with referral statements on extremely small labels (less than 3 sq in of available label space), if the manufacturer still believes that there is insufficient label space to comply with this requirement, the agency believes that it is appropriate for the manufacturer to request flexibility under § 101.9(g)(9) and suggest appropriate steps that may be taken to comply with these requirements.

Alternate Spellings

6. In the nutrient content claims final rule (58 FR 2302 at 2321 (comment 60)), the agency stated that "although [it had] not specifically provided for variations in the spelling of various descriptive terms or their synonyms, except for 'light' ('lite'), the agency believes that reasonable variations in the spelling of these terms would be acceptable provided that these variations are not misleading to consumers." The agency added that it would consider on a case-by-base basis variations in spelling whose use is questionable.

Comments requested that the agency formally codify this policy so that there would be no confusion as to the permissibility of nonmisleading spelling variations.

The agency agrees that codifying the policy will facilitate compliance by providing in the codified language, rather than in just the preamble, explicit permission to use alternate spellings of descriptive terms. This provision will eliminate any confusion as to permitted label statements. Therefore, FDA is adding new § 101.13(b)(4), which states, that the use of reasonable variations in the spelling of the various descriptive terms and their synonyms, e.g., "hi," and "lo," is permitted provided that these variations are not misleading.

Definition of Meal-Type Products

7. In the nutrient content claims final rule, the agency defined a "meal product" and a "main dish product" for the purpose of making a nutrient content claim using the meal/main dish claims criteria. These criteria are different from those for individual foods. The definition for a "main dish product", among other things, requires that the food weigh at least 6 ounces (oz) per labeled serving and contain not less than 40 grams (g) for each of at least two different foods from two of the following four food groups: (1) Bread, cereal, rice and pasta group; (2) fruits and vegetable group, (3) milk, yogurt, and cheese group, and (4) meat, poultry, fish, dry beans, eggs, and nuts group. The definition also requires that these foods should not include sauces, condiments, relishes, pickles, olives, jams, jellies, syrups, breading, or garnishes. The agency stated, however, that the amount of a food in a sauce, e.g., tomatoes in a tomato sauce, could count toward the 40 g criterion. For meals, the agency required that the food weigh at least 10 oz per labeled serving and contain not less than 40 g from each of at least 3 different foods from 2 or more of the described food groups and again excluded certain foods from the 40 g criterion.

Several comments maintained that many main dish products would not be able to meet the specified definition. They stated, for example, that the major ingredient for many products was a large portion of pasta, often with sauce. The comments requested that for main dish products, the 40 g requirement be eliminated, or that the requirement be 40 g from one food group and not less than 10 g from two or more additional food groups with a total contribution from all food groups of at least 80 g (6 oz is about 170 g). They requested that the requirements for meals be similarly modified.

The comments further claimed that the requirement that FDA adopted would force manufacturers to add to their products excessive amounts of

certain ingredients such as cheese, in amounts in excess of the reference amount customarily consumed (RACC) for the individual food. These comments cited, as an example, that for the cheese in a meal-type product to meet the 40 g criterion, and thereby to qualify as one portion of food from a food group, the meal type product would have to contain more cheese than the 30 g that constitutes the RACC for an individual serving of cheese. This amount, the comments said, is significantly higher than one half the RACC of an average individual food that the agency stated was the basis for the 40 g criterion for a portion of food to qualify as a component of a meal-type product.

The agency does not intend to preclude meal-type products that are consistent with dietary recommendations that diets include a variety of foods from meeting the definitions for meals and main dishes and from qualifying to use the definitions for nutrient content claims for meal-type products. However, the definitions for main dishes suggested by the comments are far too broad. For example, the definition suggested by the comments would allow a product that is little more than a single ingredient with a small amount (10 g) each of two other foods to be mixed together and be considered a main dish for purposes of making claims. Such a food would not necessarily be the major component of a meal, as required by the definition of main dish products. The agency believes that such foods are more properly considered to be mixed dishes, which may still make a claim if they qualify for it using the RACC for mixed dishes and the criteria for individual foods (see § 101.12(b), Table 2, (21 CFR 101.12(b), Table 2).

However, the agency acknowledges that in the preamble and the codified language, it stated that to qualify for the definition of a meal, each 40 g would have to come from different foods. These statements have the unintended effect of prohibiting manufacturers from using a combination of foods from one of the four food groups to meet the 40 g criterion. For example, they would prohibit combinations such as shrimp and scallops, peas and carrots, or even swiss cheese and cheddar cheese from being considered a food from a food group unless a single ingredient contributed 40 g of food to the product. The agency did not intend to so limit the definition.

The agency intended to permit manufacturers to combine different foods from the same food group to meet the 40 g criterion. This position will allow a wider variety of products to qualify as meal-type products than would the position the agency inadvertently took in the final rule, but will still encourage manufacturers to make products that contain a variety of foods with different nutrient profiles. By allowing combinations of foods from the same food group to qualify for the 40 g criterion, certain nutrient dense ingredients could be combined with less nutrient dense foods from the same food group, or a variety of foods in the same food group could be used. For example, carrots and peas together could be used to meet the 40 g criterion for the fruit and vegetable food group and a combination of cheese and milk could be used to meet the 40 g criterion for the dairy food group. Similarly, for meals, it would be appropriate to combine two or more foods (e.g., two or three fruits or vegetables totaling at least 40 g) to meet the requirement of a 40 g portion of food from a food group. Consequently the agency is modifying § 101.13(l)(1)(ii) and (m)(1)(ii) to reflect these criteria.

However, because the dietary guidelines suggest that people should eat a variety of foods from the various food groups, as the agency stated in the final rule, a product that purports to constitute a meal, and therefore a major portion of the day's food intake, should have significant portions of at least three different foods having different nutrient profiles. Hence, the agency believes that each portion of food in a food group that constitutes one of the required 40 g portions should be composed of different foods or combinations of foods than the other 40 g portions. Foods that are made from similar ingredients (e.g., two foods each made from flour, eggs, and water) or that have similar nutrient profiles, e.g., a variety of pastas, would not provide variety and nutrient diversity and therefore would not be appropriate to constitute two of the three required portions of a meal. Therefore, 80 g of a variety of pasta would generally not qualify as two 40 g portions of different foods in a meal. However, a variety of pastas could be combined to meet the requirements for one 40 g portion.

Rounding

8. The agency has received many inquiries as to whether a product must meet the definition of a claim based on the rounded or the unrounded values.

In the nutrient content claims final rule, the agency stated in § 101.13(o) that compliance with requirements for nutrient content claims would be determined using the analytical methodology prescribed for determining compliance with nutrition labeling in § 101.9. The agency also stated in § 101.13(j)(1)(ii)(B) that for purposes of relative claims other than "light," when comparing a single manufacturer's product to the labeled product, the nutrient value for the single manufacturer's product shall be the value declared in the nutrition labeling of the product, i.e., the rounded value. However, the agency did not further specify whether the values used to determine compliance with a claim were to be the rounded or unrounded values.

The agency acknowledges that the requirement for relative claims that stipulates that the nutrient value for a single manufacturer's product must be the value declared in the nutrition labeling on the product may result in the unintended consequence of causing inconsistencies between the various required label values, specifically, the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the food has been modified. These inconsistencies will have the additional unintended consequence of causing consumer confusion. For example, a product that is reduced in fat by 25 percent compared to a reference product may contain 5.5 g fat (rounded to 6 g of fat in the nutrition label) when the reference product contains 7.4 g of fat (rounded to 7 g of fat). If the labeled values were used to declare the nutrient values in the accompanying information, the product would appear to have a reduction of only about 15 percent. Consequently, if rounded labeled values are used in the accompanying information, it would appear that the product was not reduced in fat to the extent declared, and consumer skepticism and confusion would result. There might also be consumer confusion if the actual values that were used to make the comparison, and that were shown in the accompanying information, differed from the values in the nutrition information.

Conversely, if all claims were based on rounded values rather than actual values, a relative claim could comply with the definitions but still be misleading if the percentage reduction specified was 25 percent or greater but the actual reduction was not. For example, if a food containing 5.4 g of fat (rounded to 5 g of fat) was compared to a food containing 6.5 g of fat (rounded to 7 g) it would appear, using the rounded values, that there was greater than a 25 percent reduction in the amount of fat in the labeled product. However, using the actual values, the

labeled food would have been reduced by only slightly more than 15 percent. FDA stated in the nutrient content claims final rule that nutrient reductions less than 25 percent were not meaningful and were therefore misleading. There would still be other circumstances which might be confusing. For example, if a food was reduced in the level of a nutrient by at least 25 percent and therefore qualified to make a reduced claim, the specified percentage reduction might differ from the declaration of amounts of nutrient in the compared foods depending on whether rounded or unrounded values were used to specify the percentage reduction.

Therefore, particularly for relative claims, there are advantages and disadvantages in requiring either the rounded or the unrounded nutrient values to be used in determining whether a food qualifies to make a nutrient content claim and to be declared on the label. The agency believes, however, that it is more important to prevent consumer confusion by having consistency on the food label than to be prescriptive as to the method by which nutrient values for relative claims are determined and used. It is essential, though, as discussed in the nutrient content claims final rule, that the actual nutrient reductions must be nutritionally meaningful. Therefore, to help eliminate consumer confusion, the agency is modifying § 101.13(j)(1)(ii)(B) to permit comparisons to a single manufacturer's product using either the values declared in the nutrition labeling or the actual nutrient values, provided that the label is internally consistent, that is, that the values stated in the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the food has been modified are consistent and will not cause confusion when compared, and that the actual modification is at least equal to the percentage specified in the definition of the claim.

Further, for absolute claims, because there is no need to specify the actual amount of the nutrient in the food relative to the claim and, as discussed in the mandatory nutrition labeling final rule, because there is no nutritional difference between rounded and unrounded values of a nutrient in a food, the agency does not see a need to specify which value should be used in determining whether or not a food qualifies to make a nutrient content claim.

Exemption for Grandfathered "Diet" Soft drinks.

9. Section 403(r)(2)(D) of the act, which was added by the 1990 amendments, states that section 403(r)(2) of the act does not apply to a claim that uses the term "diet" if the claim is contained in the label or labeling of a soft drink, was in use on such soft drink before October 25, 1989, and the use of the term was in conformity with § 105.66 at the time of enactment of the 1990 amendments. This provision has the effect of exempting such claims from the referral and disclosure statement requirements and the special disclosure statements (those required by section 403(r)(2)(A) of the act).

One comment asked that the exemption be included in the regulation to ensure that it is applied uniformly.

To clarify the existing exemption and to facilitate compliance, the agency is modifying § 101.13(q)(2) to state that claims for such grandfathered soft drinks are exempt from section 403(r)(2) of the act, including the referral (§ 101.13(g)) and disclosure (§ 101.13(h)) statement requirements. This modification fully responds to the comment's concern.

Applicability of General Requirements of Nutrient Content Claims to Claims About Salt and Sugar

10. Sections 101.60 and 101.61 establish the requirements for nutrient content claims about calories and sugar and sodium and salt, respectively. However, the introductory paragraphs to these sections state only that the general requirements in these introductory paragraphs are applicable to claims about calories and sodium. The agency intended that the general requirements apply to all claims and specifically that general requirements for claims defined in §§ 101.60 and 101.61 apply to all claims defined therein. Therefore, to avoid any possible confusion as to the applicability of these general requirements, the agency is adding explicit mention of sugar and of salt in the general requirements paragraphs in §§ 101.60(a) and 101.61(a), respectively.

Criteria for "Free" Claims

11. In the November 27, 1991, document on nutrient content claims (56 FR 60421) (hereinafter referred to as the nutrient content claims proposal), the agency proposed that claims, including claims that a food was "free" of a nutrient, be based on the amount of nutrient in a labeled serving of the product and in a RACC. In the nutrient content claims final rule, the agency determined, based on comments, that using the amount of nutrient per labeled serving as a criterion for various claims, in addition to the amount of nutrient per RACC, was too restrictive. Consequently, in the final rule, the agency retained the requirement that most claims, including those for products "free" of a nutrient, be based on the amount of a nutrient per RACC and deleted the criterion of amount of the nutrient per labeled serving. The agency further required that if the value of the nutrient in a labeled serving of the food did not meet the maximum or minimum amount of nutrient per RACC that qualifies a food for the claim, the claim must be followed by declaration of the criteria for the claim e.g., "sodium free, less than 5 mg sodium per 240 milliliters (8 fl oz)" (see § 101.13(p)(1)).

In addition, in the final nutrition labeling regulation (58 FR 2079), FDA prescribed how the nutrient values are to be expressed in nutrition labeling. The nutrition labeling regulation prescribed levels for nutrients that are nutritionally trivial, i.e., those nutrients that are present in a food at insignificant amounts and that consequently are declared as zero on the nutrition label (e.g., less than 5 calories and less than 0.5 g total fat). Because these values are nutritionally trivial, they are also the defining values for "free" claims.

Comments pointed out that there are situations, primarily on single serving products whose labeled serving exceeds the RACC, in which a product bearing a "free" claim will have a value in nutrition labeling other than zero for that nutrient. This situation, the comments said, would be confusing to consumers. For example, if an 8 fl. oz. (240 milliliters (mL)) bottle of soda contained 4 calories, the value for those calories could be rounded to zero in the nutrition labeling, and the product would meet the definition for "calorie free" (less than 5 calories per 240 mL). However, if the same soda were sold in a single serving 12 fl. oz. container, a labeled serving of the product would contain 6 calories. While this product would meet the current requirements for a "calorie free" claim based on the RACC, it would have to declare 5 calories in the nutrition label. The comment said that declaration of a numeric value other than zero in nutrition labeling for a nutrient for which a "free" claim is made would have the unintended effect of permitting seemingly conflicting labeling information that would be confusing to consumers. The comments suggested that "free" claims, therefore, should be based on the amount of nutrient per labeled serving rather than per RACC.

The agency agrees that because of the unique nature of the word "free," i.e., that there is none of the nutrient in the food, the perception and expectations created in consumers' minds by the use of the word, in the situations cited in the comments, would be in conflict with a nutrient value other than zero in the nutrition information. Such declarations could be confusing to consumers, and this consequence is unintended. "Free" claims are different than claims such as "low," which do not create an expectation in consumers' minds that the food bearing the claim will possess a specfic amount of the nutrient in question.

Consequently, FDA has reconsidered this aspect of the final rule. Based on the considerations discussed above as well as those of justice and the public interest, FDA has decided that to present misleading and confusing labeling when "free" is used, it will include in the final rule the requirement for "free" claims that it proposed in the November 27, 1991, document that the determination of whether a product is free of a nutrient be based on the value of the nutrient per RACC and per labeled serving. Moreover, this change in the requirements for "free" claims on individual foods eliminates an inconsistency with the requirements for "free" claims for meal-type products. Meal-type products must meet the required nutrient values on a per labeled serving basis, regardless of the size of the serving. Consequently, the agency is including this reuqirement for "free" claims in §§ 101.60(b)(1)(i), 101.60(c)(1)(i), 101.61(b)(1)(i),101.62(b)(1)(i), 101.62(c)(1)(i), 101.62(d)(1)(i)(A), and 101.62(d)(1)(ii)(A).

Per 50-g Criterion for Rehydrated Products

12. The determination as to whether a product can make a claim is based on the amount of nutrient in the product "as packaged." In the nutrient content claims final rule, the agency also established a requirement that products having a small RACC (30 g or less or 2 tablespoons or less) that bear certain claims, such as "low," must meet the nutrient values for the claim (e.g., 3 g of fat or less) per 50 g of product as well as per RACC. However, the agency provided that for dehydrated products that typically must be rehydrated with water before consumption, the 50 g criterion refers to the "as prepared" form. In the nutrient content claims final rule, FDA stated that this provision would make the basis of the claim for these products consistent with the nutrient values in nutrition labeling which are based on the amount of product customarily consumed. The agency stated that such a requirement for foods that are reconstituted with water is appropriate because water generally adds a negligible amount of additional nutrients to the "as packaged" form of the product, although it does increase the weight of the dehydrated food.

One comment requested that this exception to the per 50 g criterion be extended to products that are reconstituted with diluents other than water that contain a negligible amount of nutrients such as vinegar. The comment suggested that this modification would be consistent with the intent of the final regulation and would assure that dehydrated foods are not forced to meet a more rigid standard than equivalent amounts of the regular product because the per 50 g criterion was being applied to a more nutrient dense form of the food. The comment maintained that to not allow reconstitution of products with such diluents when determining compliance with the per 50 g criterion would have the unintended effect of prohibiting claims on certain dehydrated products when the regular version of the product would qualify for the claim. The comments maintained that when such products are reconstituted in whole or part with certain diluents other than water, they have similar nutrient profiles compared to regular versions of the same foods because, on a per serving basis, the diluent makes an insignificant contribution to the nutrient content of the food.

In response to this comment, the agency has reconsidered this aspect of the final rule. Although the agency still believes that it is appropriate to base all claims on the amount of nutrient in the "as packaged" form, the agency agrees that where a RACC of the diluent used to reconstitute a product contributes insignificant amounts of nutrients, the difference in nutrient profiles between the "as packaged" and the "as prepared" versions of the food bearing the claim would be insignificant when equivalent portions of the food are compared.

Therefore, the agency is modifying the regulations to provide that foods that must be reconstituted with a diluent that has an insignificant amount of all nutrients per RACC may make claims based on the reconstituted ("as prepared") version of the product. Insignificant amounts of nutrients (as defined in § 101.9(f)(1)) are the amounts that can be declared as zero in nutrition labeling, or, in the case of total carbohydrate, dietary fiber and protein, as less than 1 g. The agency has modified § 101.13(h) and the various affected provisions in part 101 subpart D (e.g., §§ 101.60(b)(2)(i)(B) and 101.62(d)(2)(i)) to reflect this change.

Light in Sodium

13. In the final rule, the agency provided for use of the terms "light" and "light in sodium" when the amount of sodium in a food has been reduced by at least 50 percent. The agency stated in § 101.56(c)(1)(i) that the term "light" or "lite" without further qualification could be used on a product for which the reference food contains 40 calories or less and 3 g of fat or less per RACC if the sodium content is reduced by 50 percent or more. The agency also provided in § 101.56(c)(2)(i) that the term "light in sodium" as a single term could be used on a product for which the reference food contains more than 40 calories or more than 3 g fat per RACC if it is reduced in sodium by 50 percent or more.

Inquiries to the agency have raised the question whether the manner in which the regulation was worded would preclude products whose sodium content has been reduced by 50 percent but whose reference food contains 40 calories or less and 3 g of fat or less, from using the term "light in sodium."

The agency did not intend to prohibit products that qualify for an unqualified "light" claim to express, in more explicit terms, the actual nature of the nutrient modification made to the food, such as "light in sodium," "light in fat," or "light in calories." Therefore, the agency sees no problem with "low calorie," "low fat" foods that qualify for the term "light" because of a 50 percent reduction in sodium content using the term "light in sodium." Likewise, it would not consider that foods that qualify to use the unmodified term "light" because of their calorie or fat content are prohibited from using the more explicit descriptions, "light in fat" or "light in calories."

The agency does not believe that it is necessary to provide a change in the codified language that would specifically state this position. However, if FDA finds that labeling using the terms "light in sodium," "light in fat" or "light in calories," carries a problem, the agency would consider additional rulemaking in the future.

Fortification

In § 101.54(e) of the nutrient content claims final rule, the agency defined "more" as a relative claim used to describe the level of protein, vitamins, minerals, dietary fiber, or potassium in a food that contains at least 10 percent

more of the Daily Value (DV) per reference amount than an appropriate reference food. In addition, the agency stated that for "more" claims in which the claim is based on a nutrient that has been added to the food, the fortification must be in accordance with the policy on fortification of foods in § 104.20 (21 CFR 104.20). Finally, the agency determined that the terms "fortified," "enriched," and "added" have the same nutritional meaning as the term "more." The agency concluded that, except for standardized foods in which one of the terms was defined, all foods bearing these terms would have to comply with the same quantitative definition as the term "more." However, the agency differentiated appropriate reference foods for the various terms.

14. A number of comments raised concerns about the final rule for "more," stating that FDA had not adequately considered the consequences of these provisions. They stated that because the fortification policy does not include current nutrition information and is not all inclusive, certain rationally fortified foods would be prohibited from making "more" claims, as well as the "fortified" and "enriched" claims. For example, the fortification policy does not address the issue of fortification with fiber. Many comments stated that the fortification policy was intended to be a policy and not a regulation, that FDA had acknowledged that the policy was incomplete, and that at the time of the original publication of the fortification policy it was anticipated that additional bases for rational fortification could be included from time to time. Comments maintained that the agency has unintentionally endangered consumer awareness and consumption of fortified products, such as breakfast cereals, and; has outlined a final rule that will be confusing to consumers and that will inadvertently limit the rational fortification of foods.

One comment requested that the reference to § 104.20 be deleted from the regulation. Other comments suggested that in order to allow for nutrient content claims on fortified foods for beneficial nutrients that are not covered by the fortification policy, the agency should revise § 101.54 to state that fortification of the food must be in accordance with the policy on fortification of foods in § 104.20 or be otherwise rational.

The agency has considered these comments. It was not the agency's intention to preclude rational addition of a nutrient to a food simply because it was not explicitly addressed in the fortification policy in § 104.20. However, the agency is concerned that to delete any reference to the fortification policy could result in claims on foods with irrational or inappropriate fortifications. The agency recognizes that there are additions of nutrients to foods other than those specifically mentioned in § 104.20 that are rational. The agency notes that the fortification policy as specified in § 104.20, was developed at a time when less technology was available for food formulation and when food consumption behaviors and recommendations may have varied from those considered appropriate today. For example, the fortification policy does not address the issue of fortification of foods with fiber, and yet there may be a number of applications of fiber fortification that can be considered rational and appropriate. The same considerations may apply to fortification of foods with food components such as carotenes or the addition of vitamins and minerals for which RDI's are established, to breakfast cereals.

However, to make such changes would require amending § 101.54(e)(1)(ii) and § 101.54(e)(2)(ii) for individual foods and meal-type products, respectively, to specify that rational fortifications other than those described in § 104.20 may qualify for "more" claims. The agency believes that such changes are outside the scope of this proceeding and require additional rulemaking. The agency is, therefore, not making these changes at this time. FDA intends to initiate rulemaking to permit rational fortifications other than those described in § 104.20 to qualify for "more" claims.

15. Many comments were also concerned that the terms "enriched," "fortified," and "added" had been determined by FDA to be synonymous with "more." The comments suggested that the terms "enriched" and "fortified" had never been associated with the term "more," and that equating these terms with "more" is not discussed in the fortification policy. Further, they stated that the historical meaning for "fortified" has generally been that vitamins or minerals have been added during processing—not that the food is better than another food. They said that to prohibit rationally fortified products from using these terms is inconsistent with the valuable role that these foods play in the diet.

Other comments suggested that not all foods heretofore identified as fortified have an added 10 percent of the DV of the subject nutrients. Comments stated that in many instances, including various standards of identity, a level of fortification other than 10 percent of the DV of an added nutrient is specified as the level required for the food to bear the term "fortified." The comments stated that if foods that have rational additions of nutrients do not qualify for the "more" claim, and are, therefore, not able to specify that those nutrients have been "added" to the food or that the food is "fortified," consumers may not be able to distinguish traditionally fortified foods from nonfortified foods. The comments said that as a result, fewer foods, such as cereals and other grain products, will contain rational, beneficial fortifications. This effect, they concluded, would not be in the interest of public health, especially for children and the elderly.

Many comments suggested that the terms "enriched," "fortified," and "added" be permitted on foods containing a total of 10 percent of the relevant DV of the nutrient per reference amount (some of which is added) instead of only being permitted on foods that contain an additional 10 percent of the DV of the nutrient. This step would make the amount of nutrient in foods bearing these claims the same as that for "good source" claims. Other comments suggested that "enriched," "fortified," and "added" be deleted from the final rule.

The agency continues to be convinced that the terms "enriched," "fortified," and "added" are nutrient content claims that must be defined in order to be used. As stated in the nutrient content claims final rule (58 FR 2302 at 2364), the agency believes that the term "added" is related to the term "more" as the term "reduced" is related to the term "less." Both "added" and "reduced" describe differences in the level of a nutrient between two similar foods that result from a manipulation in the level of that nutrient in the food bearing the term. Just as the 1990 amendments required that "reduced" be defined because it is a nutrient content claim, the agency believes that the term "added" must also be defined, or it cannot be used. In addition, as reflected in the agency's fortification policy (§ 104.20(h)(3)) the terms "enriched" and "fortified" are synonymous with "added."

However, the agency recognizes that there are a variety of historical uses of the terms "fortified" and "enriched" to which FDA has not objected even though the food did not bear an additional 10 percent of the DV of a nutrient compared to an appropriate reference food. The terms have come to mean that some level of nutrient was added to a food beyond the level of the nutrient that the particular product would have had were it not fortified or

enriched. Therefore, the agency continues to believe that the terms "added," "enriched," and "fortified" signal a difference in a food either compared to a similar food or compared to itself without the addition of the nutrient. However, unlike "reduced," the unfortified food is often not marketed because of the recognized nutritional benefits that the fortified product has over the unfortified version of the food. Therefore, the agency considers that even though the unfortified version of a food is not marketed, it is the appropriate reference food.

In addition, as discussed in the nutrient content claims proposal (56 FR 60421 at 60453), the agency continues to believe that, consistent with the longstanding provision in § 101.9(c)(7)(v), "No claim may be made that a food is nutritionally superior to another food unless it contains at least 10 percent more of the [Reference Daily Intake (RDI) or Daily Reference Value (DRV)] of the claimed nutrient per serving (portion)." This provision was carried through in the July 19, 1990 mandatory nutrition labeling proposal (55 FR 29487), and the agency retained the concept in the definition for "more," i.e., that a food must contain at least 10 percent more of the RDI for vitamins or minerals or of the DRV for protein, dietary fiber, or potassium before a comparative claim using the term "more" may be used. The agency went on to explain that at least a 10 percent difference relative to the RDI or DRV is necessary before consumers can be assured that there is truly a difference in the foods being compared. It further said that this finding is consistent with the agency's proposed definition of "[good] source" which the agency ultimately adopted (58 FR 2302 at 2361) and which requires that a nutrient must be present in a food at a level of at least 10 percent of the RDI or DRV before the food can be designated as a "[good] source" of the nutrient.

Therefore, the agency continues to believe that "enriched," "fortified," and "added" appropriately have the same quantitative definitions as the term "more," and that for a food to bear the terms, there must be a 10 percent difference in the amount of nutrient in the labeled food and the reference food. Consequently, the agency is not changing the definition for "more" or its related terms, "enriched," "fortified," and "added."

However, the agency recognizes that the terms "enriched," "fortified," and "added" have historically been used to signal that a nutrient has been added to a food. The agency tentatively considers that it would be appropriate to except from this 10 percent added requirement, the limited circumstances in which the use of the terms "'fortified," "enriched," and "added" have traditionally been used to signal that, through the rational addition of a nutrient, a food contains a significant amount of the specified nutrient, as well as those limited circumstances in which fortifications have been sanctioned by recognized, authoritative scientific bodies or nutrition based organizations e.g., the National Academy of Sciences, or the Women, Infants and Children Program (WIC) of the U.S. Department of Agriculture (USDA). However, to permit a food to be labeled with the terms "added," "fortified," or "enriched" in such circumstances would require additional rulemaking. Such exceptions to the 10 percent added requirement raise significant questions that are beyond the scope of this proceeding. Consequently, the agency is not making these changes at this time. As soon as practicable, FDA intends to initiate rulemaking to permit such fortifications.

The agency notes that section 403(r)(5)(C) of the act exempts claims (e.g., "fortified" and "enriched") that are required by a standard of identity from compliance with the definitions established in part 101, subpart D.

16. Comments requested that the referral statement requirement be eliminated when the terms "fortified," "enriched," and "added" are part of the statement of identity. Other comments requested that the accompanying information not be required because it could be cumbersome and confusing, especially when a wide variety of nutrients are added to a food.

The agency cannot excuse a food that bears a claim, even in the statement of identity, from carrying the referral statement because that statement is required by the statute (section 403(r)(2)(B) of the act). However, identification of the reference food and the information on the difference between the labeled food and the reference food are not specifically required by the statute. In the proposal (56 FR 60421 at 60445), the agency stated that it was necessary to identify the reference food because the amount of a nutrient in a food product, e.g., potato chips, may vary widely. To not provide this information would be to not provide a fact that was material to the understanding of the claim. FDA advises that because the terms "fortified," "enriched," and "added" imply that specific nutrients are added to a specific food, i.e., the unfortified version of the food itself, and because these foods often do not exist in their unfortified form, explicit identification of the reference food does not appear to be necessary because it would not significantly contribute to the understanding of the claim. However, the agency also recognizes that as written, the regulations require identification of the reference. Thus, FDA intends to address this issue in the rulemaking it will initiate on the use of "fortified."

Saturated Fat Free Claims; Second Criterion

17. In the nutrient content claims final rule, the agency added a second criterion for saturated fat free claims, i.e., that the level of *trans* fatty acid not exceed 1 percent of the total fat. This criterion was added because there is increasing scientific evidence that suggests that *trans* fatty acid acts in a similar manner to saturated fat with respect to raising serum cholesterol and, therefore, should be controlled. The agency stated that it would be misleading for products that were labeled "saturated fat free" to contain measurable amounts of *trans* fatty acid because consumers would expect such products to be "free" of components that significantly raise serum cholesterol. The agency stated that 1 percent was the appropriate threshold because analytical methods for measuring *trans* fatty acid below that level are not reliable.

The comments stated that in foods where the total fat content is under 30 g per serving, the 1 percent criterion is 0.3 g. Furthermore, if a cracker or cookie having a serving size of 30 g contained 5 percent fat (1.5 g) it would only be allowed to have 0.015 g of *trans* fatty acids compared to 0.5 g of saturated fat. The comments claimed that these amounts (0.015 g or 0.3 g) cannot be adequately analyzed. The comments suggested that FDA should either eliminate the *trans* fatty acid criterion from the definition of saturated fat free, or that the agency should change it to less than 0.5 g *trans* fatty acid per RACC, an amount that is analyzable and that is consistent with the definition of "free" for fat and saturated fat.

The agency has considered these comments. It did not intend to include a criterion that would, in some cases, not be analyzable. The agency still believes that because there is evidence to suggest that *trans* fatty acid acts in the same manner as saturated fat with respect to serum cholesterol, the level of *trans* fatty acid in those products bearing a "saturated fat free" claim should be limited. However, the agency is persuaded by the comments that the 0.5 g *trans* fatty acid per RACC is an

appropriate second criterion for a saturated fat free claim because this value is analyzable, and it is the same as the value (i.e., a level of 0.5 g) as defined for "saturated fat free" and "fat free." As discussed in the nutrient content claims final rule (58 2302 at 2320), this level is near the reliable limit of detection for a nutrient in a food. In addition, to be consistent with the requirement that free claims be based on a per RACC and per labled serving basis, the agency is persuaded that the *trans* fatty acids should also be less than 0.5g per RACC and per labeled serving for these foods.

Therefore, the agency is modifying § 101.62(c)(1)(i) to require that for products bearing a "saturated fat free" claim, the food contain less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acid per reference amount customarily consumed or, in the case of a meal product or main dish product, that the product contain less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acid per labeled serving.

Lean

18. In the nutrient content claims final rule, FDA adopted the definition of "lean" of the Food Safety and Inspection Service's (FSIS), USDA. FSIS provided that the term "lean" may be used on the label and in labeling for a product that contains less than 10 g of fat, less than 4 g of saturated fat, and less than 95 milligrams of cholesterol per 100 g and per RACC for individual foods and per 100 g and per labeled serving size for meal-type products.

Comments supporting use of the terms "lean" on the labels of meat products and meal-type products persuaded FDA to include a provision in the nutrient content claims final rule consistent with that of FSIS to provide for use of the term "lean" to describe certain comparable foods regulated by FDA under the act. These foods include fishery products and certain types of meat products (e.g., bison, rabbit, and game meats) not regulated by USDA under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or in situations in which these products are not subject to USDA regulation.

At the same time, in the mandatory nutrition labeling final rule, FDA defined "saturated fat" (§ 101.9(c)(2)(i)) as the sum of all fatty acids containing no double bonds. This definition was somewhat different from the one that it had previously used, which included only lauric, myristic, palmitic, and stearic acids within the coverage of this term. As a result of the new definition, the number of saturated fatty acids increased, and the declared amount of saturated fatty acid for many foods will be increased.

One comment pointed out that, when FDA adopted the FSIS definitions of "lean," neither agency took into consideration the fact that at the same time the definition of saturated fat was also being changed. The comment contended that the change in definition of saturated fat had the unintended technical consequence that foods, particularly products that contain dairy-based ingredients, that would have qualified to bear the claim "lean" under the old definition may no longer qualify because of the change in the definition.

The agency acknowledges that it did not discuss the effects of adopting a changed definition for "saturated fat" on foods that would be eligible to bear "lean" on labels or in labeling in either the mandatory nutrition labeling final rule or in the nutrient content claims final rule.

FDA agrees that the modification to the saturated fat definition may possibly affect a product's ability to qualify for a "lean" claim which is an unintended effect. The agency has concluded that to avoid changing the universe of products that FSIS envisioned would qualify to bear the term "lean," it should have modified the "lean" definition to reflect the change in the saturated fat definition. To offset this unintended effect, FDA will join with FSIS and increase the saturated fat criterion for the "lean" definition from less than 4 g to 4.5 g or less.

FDA adopted the definition for "lean" and "extra lean" for products that it regulates in the nutrient content claims final rule. In the preamble to that regulation, the agency noted that the data used by FSIS to develop the definitions included nutrient contents of meat, poultry, and fish. Having decided to adopt FSIS' revision to the saturated fat criterion for "lean," FDA has reconsidered both definitions and is now less certain than previously that the definition for "lean," and possibly also "extra lean," developed from data on flesh foods is appropriate for food products that do not contain flesh foods as ingredients. The agency intends to reevaluate its decision and will consider additional rulemaking to reexamine how the terms "lean" and "extra lean" should apply to nonflesh foods.

Environmental Impact Statement

19. Under § 101.69(h), all petitions for nutrient content claims must include either a claim for a categorical exclusion under § 25.24 (21 CFR 25.24) or an environmental assessment under § 25.31 (21 CFR 25.31). However, this requirement was not specifically articulated in each of the individual petition format paragraphs. To be consistent with the petition formats for health claims in § 101.70(f) and food additives in § 171.1(c), and to help ensure that this required information is not omitted from food labeling petitions, the agency is specifically articulating this requirement in §§ 101.69(m)(1), (n)(1), and (o)(1).

B. Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term

In the **Federal Register** of January 6, 1993 (58 FR 2431), FDA adopted a new general definition and standard of identity in § 130.10 (21 CFR 130.10) for food named by the use of a nutrient content claim defined in part 101 (such as "fat free," "low calorie," or "light") in conjunction with a traditional standardized name (for example "reduced fat sour cream"). The purpose of the new standard was to assist consumers in maintaining healthy dietary practices by providing for modified versions of certain standardized foods that bear descriptive names that are meaningful to consumers.

The new standard requires, among other things, that the modified versions of the standardized foods: (1) Not be nutritionally inferior, (2) possess performance characteristics that are similar to those of the standardized food, (3) contain a significant amount of any mandatory ingredient required to be in the food simulated, and (4) be made from the same types of ingredients as permitted in the standard for the traditional food, except that ingredients may be used to improve texture, prevent syneresis, add flavor, extend shelf life, improve appearance, or add sweetness. However, any ingredients that are specifically prohibited by the standard for the traditional food may not be used in the modified version of that food. Section 130.10 provides for the use of water and fat analogs to replace fat and calories but specifically prohibits the replacement of required ingredients of standardized foods with ingredients from a different source. For example, vegetable oil may not replace milkfat in the manufacture of a modified version of sour cream.

20. The agency has received several inquiries regarding § 130.10(d)(3) which states that "an ingredient or a component of an ingredient that is specifically prohibited by the standard as defined in parts 131 through 169 of this chapter, shall not be added to a

substitute food" (58 FR 2431 at 2447). Comments claimed that this provision is inconsistent with the policy in § 130.10(b) that requires that nutrients be added to the new food to restore nutrient levels, so that the new food is not nutritionally inferior. One comment suggested that FDA amend § 130.10(d)(3) by adding an exception to allow for compliance with § 130.10(b). The comments contended that without such an exception, no nutritionally improved versions of important products such as peanut butter would be permitted, except when labeled as imitations.

The agency acknowledges that it is arguable that a conflict exists between §§ 130.10(b) and (d)(3). Any conflict that exists was unintended, and is a consequence of the agency's need to develop a general definition and standard of identity for modified foods that would require that such foods resemble the traditional food in as many ways as possible and yet enable these new foods to achieve a nutritional goal. One of the provisions deemed necessary in the general standard was to prohibit the use of substances in the manufacture of the modified food that are prohibited in the traditional standardized food. Unfortunately, it prevents the addition of vitamins in modified peanut butter products. Thus, such food may not be made under the general standard (§ 130.10).

In the case of peanut butter, the standard of identity in § 164.150 states that artificial flavorings, artificial sweeteners, chemical preservatives, vitamins, and color additives are not suitable ingredients for use in the food. According to testimony at the hearings and the resulting findings of fact (33 FR 10506 at 10509; July 24, 1968) when the standard of identity for peanut butter was adopted, addition of vitamins was thought to be unnecessary when peanut butter was consumed as part of a balanced diet.

FDA notes that peanut butter is the only case where a conflict exists with a prohibition of added nutrients and the need to add nutrients to make a modified version of food that is not nutritionally inferior to the traditional standardized food. FDA does not believe that it would be appropriate to make a technical modification of § 130.10 to allow the addition of nutrients to peanut butter as requested by the comments. Amendment of the standard of identity for peanut butter to delete the specific reference to the addition of vitamins in § 164.150(c) could accomplish the same result. This approach would allow the general standard to remain a generic standard applicable to any standardized food. Accordingly, FDA intends to initiate a rulemaking as soon as possible to remove the specific prohibition in the peanut butter standard regarding added vitamins.

In the interim, the agency notes that the common or usual name regulation for peanut spreads in 21 CFR 102.23 permits the manufacture and distribution of modified peanut butter products containing fewer calories and less fat under the name "peanut spread." The peanut spread common or usual name regulation also provides for the addition of nutrients, so that these products will not be nutritionally inferior to peanut butter and thus will not be required to be labeled with the term "imitation."

21. In § 130.10(d)(2) of the general standard, FDA required that "an ingredient or component of an ingredient that is specifically required by the standard (i.e., a mandatory ingredient) as defined in parts 131 through 169 of this chapter shall not be replaced or exchanged with a similar ingredient from another source unless the standard, as defined in parts 131 through 169 of this chapter, provides for the addition of such ingredient (e.g., vegetable oil shall not replace milkfat in light sour cream)."

One comment stated that § 130.10(d)(2) should be revised or deleted because this provision and the provision in § 130.1(d)(4) that requires that a significant amount of a mandatory ingredient be present in the modified food have the effect of making the entire regulation unworkable and unusable for a large portion of standardized foods. The comment stated that to make a reduced calorie version of a traditional standardized food, it may be necessary to replace the mandatory sugar ingredient with a noncaloric sweetening ingredient or the mandatory fat with a nonfat ingredient. The comment contended that unless such substitutions are permitted, the new version is impossible to make.

FDA does not believe that a modification of § 130.10(d)(2) is warranted and is not making the requested change. FDA believes that the comment overstated the problem. Water and fat analogs may be used to replace part of the fat required to be in the traditional standardized food, in accordance with § 101.30(d)(5), as long as their use is not prohibited by the standard. Thus, if the standard of identity for the traditional food requires that it contain vegetable oil, the modified reduced fat version of the food must include a significant amount of this ingredient under § 101.30(d)(4), as noted by the comment. This amount must be at least sufficient to achieve its technical effect in the food, e.g., contributing substantially to the food's rheological properties. However, the amount of oil can be significantly reduced over that traditionally used, and the rheological properties of the food achieved by the use of the other ingredient. The agency also recognized, that in making reduced fat versions of traditional standardized foods, manufacturers would need to add other ingredients such as water and fat analogs to counter the loss in creaminess or lubricity provided by the fat component, and it provided for such ingredients in § 101.30(d)(5) of the standard. In addition, as noted in the final rule, removal of the milkfat from ice cream would be acceptable under § 130.10 as long as the product retained its dairy character through the use of nonfat dairy ingredients. However, vegetable oil could not be used to replace the milkfat of traditional dairy products in the manufacture of "reduced cholesterol" or "no cholesterol" dairy products under § 130.10. Consumers consider ice cream to be made from milk products, and they may be misled if vegetable oil is used as a replacement for milkfat in making the modified version of this food.

With respect to the use of nonnutritive sweeteners such as saccharin in modified versions of standardized foods, the agency does not consider these products to be the traditional foods. FDA has established standards of identity for some products made to contain artificial sweeteners, e.g., artificially sweetened canned fruit cocktail in 21 CFR 145.136). Nonstandardized products may be made as special dietary foods under § 105.66 (21 CFR 105.66) and labeled accordingly. Alternatively, manufacturers may petition to amend the standards of identity for the traditional foods to allow for the use of nonnutritive sweeteners as well as nutritive carbohydrate sweeteners, where appropriate.

22. Section 130.10(d)(4) of the general definition and standard of identity requires that an ingredient that is specifically required by the standard of identity as defined in parts 131 through 169 of this chapter shall be present in the modified product in a significant amount. A significant amount of an ingredient is at least that amount that is required to achieve the technical effect of that ingredient in the food.

Some comments on § 130.10(d)(4) suggested that FDA should remove this paragraph, and others suggested that it should be amended because it adversely

affects manufacturers' ability to produce modified versions (e.g., nonfat, no cholesterol, or sodium free) of standardized foods. To allow manufacturers to make such nonfat or no cholesterol versions of products such as mayonnaise, one comment suggested that § 130.10(d)(4) be modified to read as follows:

An ingredient that is specifically required by the standard as defined in parts 130 through 169 of this chapter, shall be present in the product in a significant amount unless the defined nutrient content claim used as part of the name of the food is generally understood by consumers to be inconsistent with the presence of a significant amount of the ingredient (e.g., "fat free" is inconsistent with the use of vegetable oil or cream). A significant amount of an ingredient or component of an ingredient is at least that amount that is required to achieve the technical effect of that ingredient in the food.

FDA does not agree that removal or modification of § 130.10(d)(4) is necessary. FDA notes that this provision was included in § 130.10 to help to ensure that the modified product made under this standard would not deviate so far from the traditional standardized food as to be misleading to consumers. In addition to requiring that the new food possess similar performance characteristics as the traditional food, i.e., physical properties, flavor characteristics, functional properties, and shelf life, FDA required that ingredients mandated to be present in a food by a standard of identity must also be present in the modified food, and that no ingredients prohibited from use in the standardized food be used.

As stated in the final rule (58 FR 2431 at 2433), the agency believes that consumers expect that a product such as "light mayonnaise" would contain a significant amount of vegetable oil and egg yolk because these ingredients are required to be present in regular mayonnaise. These ingredients are also designated in recipes in cookbooks for making mayonnaise. FDA continues to believe that this provision is necessary to promote honesty and fair dealing in the interest of consumers because it will ensure that a § 130.10 food will bear an appropriate relationship to the traditional standardized food.

FDA acknowledges that some manufacturers may wish to make "nonfat" or "no cholesterol" versions of foods for which standards of identity require that the food contain a certain level of vegetable oil or animal fat, and that they will be prohibited from doing so under § 130.10. However, the agency points out that such foods may be marketed with appropriate labeling. For example, products made to simulate mayonnaise that contain no fat may be labeled with terms such as "mayonnaise dressing," "imitation mayonnaise," or other such name that is not misleading. In the case of products simulating margarine products, but containing no fat or oil ingredient, the term "spread" may be used. In each instance, if the standardized term is used in conjunction with a term such as dressing or spread, the agency would expect that the characteristics of the resulting food would be similar to those of the standardized food so as not to be misleading to consumers.

The agency is also taking this opportunity to modify the provisions for nutrient content claim petitions to correct an editorial error that appeared in the final rule of January 6, 1993. Section 101.69(c) provides that an original petition for a nutrient content claim should be submitted to the agency along with one copy of the petition or a computer readable disk containing the petition. The format provisions for the various types of nutrient content petitions, however, refer to the petition as being in quadruplicate. The amendments below remove "in quadruplicate" from each of the format sections.

III. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain technical amendments to labeling of food, according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96–354). The amendments are intended to clarify certain provisions of the regulation and do not add new requirements. Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

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 impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The changes in this document are technical in nature and do not affect the overall intent of the regulation.

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, 21 CFR part 101 is 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 101.2 is amended by revising paragraphs (b) and (f) to read as follows:

§ 101.2 Information panel of package form food.

* * * * *

(b) All information required to appear on the label of any package of food pursuant to §§ 101.4, 101.5, 101.8, 101.9, 101.13, 101.17, subpart D of part 101, and part 105 of this chapter shall appear either on the principal display panel or on the information panel, unless otherwise specified by regulations in this chapter.

* * * * *

(f) If the label of any package of food is too small to accommodate all of the information required by §§ 101.4, 101.5, 101.8, 101.9, 101.13, 101.17, subpart D of part 101, and part 105 of this chapter, the Commissioner may establish by regulation an acceptable alternative method of disseminating such information to the public, e.g., a type size smaller than one-sixteenth inch in height, or labeling attached to or inserted in the package or available at the point of purchase. A petition requesting such a regulation, as an amendment to this paragraph shall be submitted pursuant to part 10 of this chapter.

3. Section 101.13, effective May 8, 1994, is amended by adding new paragraph (b)(4); by revising paragraphs (d)(2) and (f), the introductory text of paragraph (g), paragraph (g)(1), the parenthetical phrase in paragraph (h)(1); and paragraphs (i)(2), (j)(1)(ii)(B), (l)(1)(ii) introductory text, (m)(1)(ii) introductory text, and (q)(2) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(b) * * *

(4) Reasonable variations in the spelling of the terms defined in part 101 and their synonyms are permitted

provided these variations are not misleading (e.g., "hi" or "lo").

* * * * *

(d) * * *

(2) This disclaimer shall be in easily legible print or type and in a size no less than that required by § 101.105(i) for the net quantity of contents statement, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the disclaimer shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch, unless the package complies with § 101.2(c)(5), in which case the disclaimer may be in type of not less than one thirty-second of an inch.

* * * * *

(f) A nutrient content claim shall be in type size no larger than two times the statement of identity and shall not be unduly prominent in type style compared to the statement of identity.

(g) The label or labeling of a food for which a nutrient content claim is made shall contain prominently and in immediate proximity to such claim, the following referral statement: "See _____ for nutrition information" with the blank filled in with the identity of the panel on which nutrition labeling is located, except that when such a claim appears on the panel that bears nutrition information the referral statement may be omitted.

(1) The referral statement "See [*appropriate panel*] for nutrition information" shall be in easily legible boldface print or type, in distinct contrast to other printed or graphic matter, and in a size no less than that required by § 101.105(i) for the net quantity of contents statement, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the referral statement shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch, unless the package complies with § 101.2(c)(5), in which case the referral statement may be in type of not less than one thirty-second of an inch.

* * * * *

(h) * * *

(1) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form) * * *

* * * * *

(i) * * *

(2) The use of the statement on the food implicitly characterizes the level of the nutrient in the food and is not consistent with such a definition, but the label carries a disclaimer adjacent to the statement that the food is not "low" in or a "good source" of the nutrient, such as "only 200 mg sodium per serving, not a low sodium food." The disclaimer must be in easily legible print or type and in a size no less than that required by § 101.105(i) for the net quantity of contents statement except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the disclaimer shall be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch unless the package complies with § 101.2(c)(5), in which case the disclaimer may be in type of not less less than one thirty-second of an inch, or

* * * * *

(j) * * *

(1) * * *

(ii) * * *

(B) For relative claims other than "light," including "less" and "more" claims, the reference food may be the same as that provided for "light" in paragraph (j)(1)(ii)(A) of this section, or it may be the manufacturer's regular product, or that of another manufacturer, that has been offered for sale to the public on a regular basis for a substantial period of time in the same geographic area by the same business entity or by one entitled to use its trade name. The nutrient values used to determine the claim when comparing a single manufacturer's product to the labeled product shall be either the values declared in nutrition labeling or the actual nutrient values, provided that the resulting label is internally consistent to (i.e., that the values stated in the nutrition information, the nutrient values in the accompanying information and the declaration of the percentage of nutrient by which the food has been modified are consistent and will not cause consumer confusion when compared), and that the actual modification is at least equal to the percentage specified in the definition of the claim.

* * * * *

(l) * * *

(1) * * *

(ii) Containing not less than three 40-g portions of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (l)(1)(ii)(E) of this section.

* * * * *

(m) * * *

(1) * * *

(ii) Containing not less than 40 g of food, or combinations of foods, from each of at least two of the following four food groups, except as noted in paragraph (m)(1)(ii)(E) of this section.

* * * * *

(q) * * *

(2) A soft drink that used the term "diet" as part of its brand name before October 25, 1989, and whose use of that term was in compliance with § 105.66 of this chapter as that regulation appeared in the Code of Federal Regulations on that date, may continue to use that term as part of its brand name, provided that its use of the term is not false or misleading under section 403(a) of the act. Such claims are exempt from the requirements of section 403(r)(2) of the act (e.g., the referral statement also required by § 101.13(g) and the disclosure statement also required by § 101.13(h)). Soft drinks marketed after October 25, 1989, may use the term "diet" provided they are in compliance with the current § 105.66 of this chapter and the requirements of § 101.13.

* * * * *

4. Section 101.60 is amended by revising the introductory text of paragraph (a), paragraph (b)(1)(i), and the parenthetical phrase in paragraph (b)(2)(i)(B) and paragraph (c)(1)(i) to read as follows:

§ 101.60 Nutrient content claims for the calorie content of foods.

(a) *General requirements.* A claim about the calorie or sugar content of a food may only be made on the label or in the labeling of a food if:

* * * * *

(b) * * *

(1) * * *

(i) The food contains less than 5 calories per reference amount customarily consumed and per labeled serving.

* * * * *

(2) * * *

(i) * * *

(B) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form) * * *

* * * * *

(c) * * *

(1) * * *

(i) The food contains less than 0.5 g of sugars, as defined in § 101.9(c)(6)(ii), per reference amount customarily consumed and per labeled serving or, in the case of a meal product or main dish

product, less than 0.5 g of sugars per labeled serving; and

* * * * *

5. Section 101.61 is amended by revising the introductory text of paragraph (a), paragraph (b)(1)(i) and the parenthetical phrase in paragraphs (b)(2)(i)(B) and (b)(4)(i)(B) to read as follows:

§ 101.61 Nutrient content claims for the sodium content of foods.

(a) *General requirements.* A claim about the level of sodium or salt in a food may only be made on the label or in the labeling of the food if:

(b) * * *

(1) * * *

(i) The food contains less than 5 milligrams (mg) of sodium per reference amount customarily consumed and per labeled serving or, in the case of a meal product or a main dish product, less than 5 mg of sodium per labeled serving; and

* * * * *

(2) * * *

(i) * * *

(B) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50-g criterion refers to the "as prepared" form) * * *

* * * * *

(4) * * *

(i) * * *

(B) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50-g criterion refers to the "as prepared" form) * * *

* * * * *

6. Section 101.62 is amended by revising paragraph (b)(1)(i), the parenthetical phrase in paragraph (b)(2)(i)(B), paragraph (c)(1)(i), the parenthetical phrase in the introductory text of paragraph (d)(1)(i), paragraph (d)(1)(i)(A), the parenthetical phrase in the introductory text of paragraph (d)(1)(ii), paragraph (d)(1)(ii)(A) and the parenthetical phrase in the introductory text of paragraph (d)(2)(ii), paragraph (d)(2)(ii)(A), the introductory text of paragraph (d)(2)(iv), (d)(2)(iv)(A), the introductory texts of paragraphs (d)(4)(i) and (d)(4)(ii), and paragraphs (e)(1) and (e)(2) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(b) * * *

(1) * * *

(i) The food contains less than 0.5 gram (g) of fat per reference amount customarily consumed and per labeled serving or, in the case of a meal product or main dish product, less than 0.5 g of fat per labeled serving; and

* * * * *

(2) * * *

(i) * * *

(B) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

* * * * *

(c) * * *

(1) * * *

(i) The food contains less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acid per reference amount customarily consumed and per labeled serving, or in the case of a meal product or main dish product, less than 0.5 g of saturated fat and less than 0.5 g *trans* fatty acid per labeled serving; and

* * * * *

(d) * * *

(1) * * *

(i) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(A) The food contains less than 2 mg of cholesterol per reference amount customarily consumed and per labeling serving or, in the case of a meal product or main dish product, less than 2 mg of cholesterol per labeled serving; and

* * * * *

(ii) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(A) The food contains less than 2 mg of cholesterol per reference amount customarily consumed and per labeling serving or, in the case of a meal product or main dish product, less than 2 mg of cholesterol per labeled serving; and

* * * * *

(2) * * *

(ii) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(A) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

* * * * *

(iv) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(A) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

* * * * *

(4) * * *

(i) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

(ii) * * * (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount, as defined in § 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the 'as prepared' form) * * *

* * * * *

(e) *"Lean" and "extra Lean" claims.* (1) The term "lean" may be used on the label or in labeling of foods except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m) provided that the food is a seafood or game meat product and as packaged contains less than 10 g total fat, 4.5 g or less saturated fat, and less than 95 mg cholesterol per reference amount customarily consumed and per 100 g;

(2) The term defined in paragraph (e)(1) of this section may be used on the label or in the labeling of meal products as defined in § 101.13(l) or main dish products as defined in § 101.13(m) provided that the food contains less than 10 g total fat, 4.5 g or less saturated

fat, and less than 95 mg cholesterol per 100 g and per labeled serving;

* * * * *

7. Section 101.69 is amended in paragraphs (m)(1), (n)(1), and (o)(1) by removing ", in quadruplicate," from the second paragraph in the letter, and by adding a new paragraph "E." to paragraph (m)(1), and a new paragraph "C." to paragraphs (n)(1) and (o)(1) before the phrase "Yours very truly," to read as follows:

§ 101.69 Petitions for nutrient content claims.

* * * * *

(m) * * *

(1) * * *

E. The petitioner is required to submit either a claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter.

* * * * *

(n) * * *

(1) * * *

C. The petitioner is required to submit either a claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter.

* * * * *

(o) * * *

(1) * * *

C. The petitioner is required to submit either a claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter.

Dated: August 10, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19610 Filed 8–12–93; 8:45 am]

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Food and Drug Administration

21 CFR Parts 5, 101, 105, and 130

[Docket Nos. 90N–0134 et al.]

RIN 0905–AD08 and 0905–AB68

Food Labeling: Establishment of Date of Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is modifying the date of applicability of the mandatory nutrition labeling and nutrient content claims provisions of the Federal Food, Drug, and Cosmetic Act (the act), which were added by the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). Although the date, May 8, 1994, remains the same, under this modification it will apply to all food products labeled on or after May 8, 1994, rather than to all food products initially introduced into interstate commerce on or after that date. This action is in accordance with section 10(a)(3)(B) of the 1990 amendments, which allows the Secretary of Health and Human Services (the Secretary) (and by delegation, FDA) to delay, for up to 1 year, the date on which FDA will enforce any section if undue economic hardship would result.

DATES: FDA will apply section 403(q) and 403(r)(2) of the act and the regulations that implement this section of the act (21 CFR 101.9 implements section 403(q) except 403(q)(4) of the act; 21 CFR 101.13, subpart D of 21 CFR part 101, and 21 CFR 130.10 implement section 403(r)(2)) on May 8, 1994, for all products labeled on or after that date.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS–151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

Section 403(q) (nutrition labeling) and 403(r)(2) (nutrient content claims) of the act are effective May 8, 1993. However, under section 10(a)(3)(B) of the 1990 amendments, the Secretary may delay the application of that section of the act for up to 1 year if it is found that compliance with it by that date would cause an undue economic hardship. On January 6, 1993, in a final rule entitled "Food Labeling: Establishment of a Date of Application" (58 FR 2070) (hereinafter referred to as "the date of application final rule"), FDA made this finding and announced that it would delay application of those sections until May 8, 1994, at which time all foods introduced into interstate commerce would have to comply.

Although the 1990 amendments require that regulations implementing section 403(q) and 403(r)(2) of the act be promulgated 24 months after the date of their passage (see sections 2(b)(2) and 3(b)(2) of the 1990 amendments), they are silent as to when they are to be effective. For consistency of implementation, FDA made the regulations implementing these sections of the act effective on their date of applicability, that is, May 8, 1994.

The agency advised that compliance could begin immediately with these regulations, which include: (1) Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Labeling (Docket Nos. 90N–0135, 91N–0162, 78P–0091, 87P–0194/CP, and 90P–0052) (58 FR 2079); (2) Food Labeling: Reference Daily Intakes and Daily Reference Values (Docket No. 90N–0134) (58 FR 2206); (3) Food Labeling; Serving Sizes (Docket No. 90N–0165) (58 FR 2229); (4) Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definitions of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food (Docket Nos. 91N–0384 and 84N–0153) (58 FR 2302); (5) Food Labeling: Use of Nutrient Content Claims for Butter (Docket No. 91N–0344) (58 FR 2448); (6) Food Labeling: Label Statements on Foods for Special Dietary Use (Docket No. 91N–384L) (58 FR 2427); and (7) Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term (Docket No. 91N–0317 et al.) (58 FR 2431). The agency stated, however, that "[A]ll products initially introduced into interstate commerce on or after May 8, 1994, shall comply" with the requirements of these final rules.

II. Technical Issue Comments

In the **Federal Register** of January 6, 1993 (58 FR 2066), FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (hereinafter referred to as "the implementation final rule"). The implementation final rule, among other things, provided 30 days, until February 5, 1993, for the submission of comments on technical matters or unintended technical consequences of specific provisions of the regulations. FDA advised that it was not interested in receiving comments that it had already considered, and thus it required that interested persons certify that their comments focused solely on the type of technical matters outlined by the agency. FDA further advised that if the comments identified any technical provisions of the final rules that the agency ultimately agreed should be changed, the agency would take action to modify those provisions. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

Following publication of the date of application final rule, FDA received 12

letters from industry and industry associations that argued that even though the agency intended to delay the date that it would apply the final rules on nutrition labeling and nutrient content claims for a full year, the approach that the agency took in the date of applicability final rule would not have that effect. By linking the delay in application to the date that product was introduced into interstate commerce rather than the date the food is labeled, the comments argued, the agency would force firms to begin to apply the new labels well in advance of the date that FDA said that it expected compliance to begin.

The comments said that processed fruits, vegetables, fish, and other foods that are of a seasonal nature would be most directly affected by the agency's action with respect to the applicability date. The comments pointed out that these products are often labeled months before they are introduced into interstate commerce. For example, the comments pointed out that under the date of application final rule, seasonal products packed in the summer of 1993 would have to be labeled in accordance with the new rules because some of these products were intended to be introduced into interstate commerce after May 8, 1994. The comments argued that such a result would completely undercut the agency's purposes in delaying the applicability date of the final rule. One comment from a manufacturer of seasonal products noted that if this approach were adopted by FDA, at least 50 percent of its 1993 pack would bear the old label and those products not distributed by May 8, 1994, would either have to be destroyed or relabeled.

Other comments pointed out that the economic impact analysis was understated as to the cost the new labeling requirements would have on the food industry because the cost data submitted by industry had been based on the presumption that products labeled up through May 7, 1994, could continue to be sold.

Several comments argued that the language "All products initially introduced into interstate commerce on or after May 8, 1994, shall comply" is not consistent with the 1990 amendments or with the intent of Congress. These comments interpreted section 10(a)(2) of the 1990 amendments, which states that section 403(q) and 403(r) of the act shall not apply to food that was labeled before the effective date of the amendments made by sections 2 and 3 of the 1990 amendments, to mean that section 403(q) and 403(r)(2) of the act shall not apply to food labeled before the effective date of the implementing regulations, regardless of the effective date chosen by FDA. Moreover, some of the comments stated that the term "initially introduced into interstate commerce" is confusing (i.e., whether it applies to a product that has actually crossed a State line or has simply been identified for interstate shipment). These comments also expressed concern about the difficulty in determining when introduction into interstate commerce actually occurs and the use of the term for enforcement purposes. Depending on the interpretation, the comments noted that large manufacturers had an advantage over small firms because they could gain exemption for a product from the new labeling requirements by moving it before the effective date to an interstate warehouse for subsequent distribution, something that many smaller firms do not have the capacity to do. Thus, the comments argued that the term creates an "unlevel playing field" for the various food manufacturers.

All of the comments stated that applying the effective date to products labeled on or after May 8, 1994, would provide a more even-handed approach to the implementation of the new labeling requirements and also provide for more efficient enforcement.

The agency has carefully considered the issue raised by these comments. FDA does not agree that section 10(a)(2) of the 1990 amendments means that section 403(q) and 403(r)(2) of the act do not apply to food labeled before the effective date of the implementing regulations. While section 10(a)(2) of the 1990 amendments does state that section 403(q) and 403(r)(2) of the act are not to apply to food labeled before the effective dates of the amendments made by sections 2 and 3 of the 1990 amendments, section 10(a)(1)(A) and 10(a)(1)(B) of the 1990 amendments specify those dates. They state that the amendments made by sections 2 and 3 shall take effect 6 months after the date of promulgation of all final regulations required to implement section 403(q) and 403(r) of the act or, if such regulations are not promulgated, 6 months after the date proposed regulations are to be considered as such final regulations; that is, 6 months after November 8, 1992.

Therefore, the date on which the amendments made by sections 2 and 3 of the 1990 amendments took effect is May 8, 1993. The 1990 amendments do not provide for extending the effective date of these amendments. Section 10(a)(3)(B) states, however, that the Secretary may delay the application of section 403(q) and 403(r)(2) for no more than 1 year. Neither the 1990 amendments nor their legislative history state how the agency should implement such a delay. Moreover, as stated above, the 1990 amendments are silent as to the date that the regulations implementing section 403(q) and 403(r)(2) of the act are to be effective.

Traditionally, FDA has implemented the effective date of a statutory provision of a regulation, unless otherwise directed by law, by relating it to the initial introduction of a product into interstate commerce (e.g., see "Uniform Compliance Date for Food Labeling Regulations; Notice to Manufacturers, Packers, and Distributors" (55 FR 276, January 4, 1990)) because the authority of the act extends to products shipped in interstate commerce. The agency took this traditional approach in the date of application final rule.

After review of the various comments, however, FDA has reconsidered whether to employ this approach in applying section 403(q) and 403(r)(2), using the principles set out in § 10.33 (21 CFR 10.33) as guidance. Based on the comments, FDA recognizes that applying section 403(q) and 403(r)(2) of the act to all foods introduced into interstate commerce after May 8, 1994, will not provide the full effect that FDA intended in delaying the application of these sections.

First, making compliance turn on the date that food enters interstate commerce will mean that large firms will have a greater opportunity to take advantage of the delay than small firms because small firms generally have more limited distribution systems. The delay in application of section 403(q) and 403(r)(2) of the act was intended, however, to provide relief, in large measure, to small firms. Thus, the "date introduced into interstate commerce" formulation of the date of application does not advance the purposes of the delay.

Basing the date of application on the date of labeling will result in a more equitable application of the regulations because it will mean that the date of application will turn simply on the date that the food is labeled and not on access to a distribution system. Thus small firms will have a greater opportunity to participate in the delay under such a formulation than under that provided in the date of application final rule.

Making the date of application turn on the date of labeling will also be easier to enforce than if it turned on the date of introduction into interstate commerce. A particular lot of a food

product may be introduced into interstate commerce on a series of dates over a period of time. Thus, a lot that bears proper labeling at the time that distribution begins may at some point in its life become misbranded, unless it is relabeled. Such a result would in no way help to ease the undue economic hardship that the delay in applicability was intended to address.

Finally, the agency recognizes that a change in the applicability date (and thus the date that the regulations are to be effective) will mean that all packers, including seasonal packers, will have the benefit of the full 1-year delay in the application of section 403(q) and 403(r)(2) of the act that the agency has determined appropriate under section 10(a)(3)(B) of the 1990 amendments (58 FR 2070 at 2075).

The agency acknowledges that a change in the definition of how the applicability date will be administered will result in some delay in the time that all products appearing on the grocery shelf will be labeled in complete conformance with the new regulations. However, FDA believes that the effects of this delay will have minimal impact in terms of either consumer confusion or public health consequences. The agency points out that products have already begun to appear in the marketplace with labels conforming to the new nutrition labeling requirements. The agency also points out that under either the "introduced into interstate commerce" or "labeled before" effective date formulation, there will be a period of time in which products labeled according to the two different regulatory requirements will be in the marketplace. These products will, primarily, be those with long shelf lives that are either introduced into interstate commerce or labeled just before the effective date. Therefore, under any possible scenario, there will be a transition period during which products labeled in conformance with the two different regulatory requirements will be in the marketplace simultaneously.

Consumers will have some time to become accustomed to this situation, and FDA food label education materials explain to consumers that two different labels will be on the market at the same time and provide instructions in how to distinguish the new label. Therefore, the additional incremental delay in new label appearance being introduced by this document should not result in any significant increase in potential consumer confusion. The agency also points out that the primary beneficiaries from this delay, that is, processed fruits, vegetables, fish, and other foods that are of a seasonal nature, will begin applying the new labels as the packing season of the summer of 1994 progresses and the new labels will appear in the market only a few months after the May 8, 1994, effective date.

Therefore, based on the public interest and consideration of justice, FDA has reconsidered the applicability date for section 403(q) and 403(r)(2) of the act and the effective date of the regulations implementing those provisions (§ 10.33(d)). Based on the factors discussed above, FDA has decided that it will apply that section of the act, and that the regulations implementing it will be effective, to all products that are labeled after May 8, 1994 (§ 10.33(d)). The term "labeled" means the date that the label is affixed to the product or product container.

III. Economic Impact

The agency agrees that the regulatory impact analysis (RIA) that it published in the **Federal Register** of January 6, 1993, did not consider the cost to industry caused by applying the effective date based on the date of introduction into interstate commerce (58 FR 2927, January 6, 1997). In reviewing the information submitted in response to the proposals and the RIA of November 27, 1991 (56 FR 60366 *et seq.*), the agency recognizes that the data and information submitted did not anticipate the manner in which the agency would apply the effective date for the regulations implementing section 403(q) and 403(r)(2) of the act. Although the technical issue comments contained only minor amounts of information and data concerning the costs of the application of the effective date, FDA has assessed the potential costs of the action being implemented in this final rule.

In the date of application final rule, the agency concluded, based on its review of available data and comments, that the costs of the overall food labeling reform initiative will be reduced by nearly one-half (a cost savings of approximately $700 million) by extending the date for compliance with the food labeling requirements to May 8, 1994. Further, the agency concluded that action will significantly alleviate the economic hardship that would otherwise result if section 403(q) and 403(r)(2) of the act were made applicable, as proposed, on May 8, 1993.

Technical issue comments to the date of application final rule expressed concern that the application of the May 8, 1994, effective date to products initially introduced into interstate commerce on or after May 8, 1994, was inconsistent with congressional intent, unfair to small business, and created a hardship for firms manufacturing foods of a seasonal nature. Only limited information was presented as to the economic costs that would occur because of the application of the effective date to the date of introduction into interstate commerce. Based on its review of this information and the technical issue comments, the agency finds that changing the application of the effective date so that it applies to the date of labeling of food products will result in the full reduction of costs that FDA projected. Based on the information presented in the technical issue comments, FDA believes that a major result of the modification of the application of the effective date will be to provide industry with greater flexibility in the scheduling of their steps to implement the requirements of FDA's labeling regulations. Although no information was presented that would enable the agency to assess the impact that modifying the application of the effective date would have on potential benefits from the food labeling reform initiative, the agency believes that the effect will be minimal.

IV. Environmental Impact

The agency previously considered the environmental effects of the action being taken in its final rules establishing requirements under the provisions of the 1990 amendments. As announced in the final rules for nutrition labeling (58 FR 2066 *et seq.*, January 6, 1993), the agency determined that, under 21 CFR 25.24(a)(8) and (a)(11), these actions are of a type that do not individually or cumulatively have a significant impact on the human environment. Therefore, neither and environmental assessment nor an environmental impact statement was required. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental assessment or environmental impact statement is not required.

Dated: August 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–18888 Filed 8–12–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket Nos. 85N–0061, 91N–0098, 91N–0099, and 91N–0100]

RIN 0905–AB67, 0905–AD08

Food Labeling; Health Claims: General Requirements; Fiber-Containing Fruits, Vegetables, and Grain Products and Cancer and Coronary Heart Disease; Fruits and Vegetables and Cancer; and Folic Acid and Neural Tube Defects; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations concerning the use of health claims in food. On January 6, 1993, the agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments." The document gave interested persons an opportunity to comment on technical issues not raised in earlier comments pertaining to food labeling regulations on health claims. This document responds to technical comments that the agency received in response to that document and corrects inconsistencies and unintended technical consequences of those regulations.

EFFECTIVE DATE: These technical amendments are effective August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5916.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA published a final rule to adopt general requirements pertaining to: (1) The use of health claims that characterize the relationship of a substance to a disease or health-related condition on the labels and in labeling of foods in conventional food form, and (2) the content of petitions regarding the use of such health claims pertaining to specific substances in such food. This action was taken in response to provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535) that bear on health claims for conventional foods. At the same time, the agency announced its decisions about health claims on 10 disease-nutrient relationships specified in the 1990 amendments.

In the **Federal Register** of April 1, 1993, FDA published corrections of typographical and editorial errors in its final rules implementing the 1990 amendments, including the regulations on general requirements for health claims for food (58 FR 17097), on folic acid and neural tube defects (58 FR 17099), and on dietary fiber and cardiovascular disease (58 FR 17100). The correction notices did not address comments on technical matters or technical unintended consequences of the final rules.

II. Technical Issue Comments

In the **Federal Register** of January 6, 1993 (58 FR 2066), FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (hereinafter referred to as "the implementation final rule"). The implementation final rule provided 30 days for interested persons to comment on technical issues arising in any of the final rules implementing the 1990 amendments. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters and to technical unintended consequences of specific provisions not raised in earlier comments. In order to ensure consideration of any comments, FDA directed interested persons to certify that their comments were so limited. FDA further advised that if the comments identified any technical provision of the final rules that FDA agrees should be changed, FDA would take action to modify that provision. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

After publication of the general requirements for health claims final rule and the 10 health claim final rules, FDA received approximately 150 submissions on these rules from industry, consumers, and other interested persons each containing one or more comments. FDA has determined that 22 of the 150 comments qualify in whole or part as comments on technical issues as described in the implementation final rule and is responding below to the specific technical issues that the comments raised. Those issues that do not qualify as technical issue comments, or are otherwise not relevant to this rulemaking, are not discussed below. Because the changes FDA is making in these final rules are technical in nature and are based on a full prior opportunity for comment, the agency finds that further opportunity of public comment on them is unnecessary.

III. Technical Corrections

A. Section 101.14

In the final document on health claims general requirements (58 FR 2478), § 101.14(e)(6) (21 CFR 101.14(e)(6)) prohibits health claims on the label or labeling of a food in conventional food form unless the food contains 10 percent or more of the Reference Daily Intakes (RDI's) or Daily Reference Values (DRV's) for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

1. One comment stated that, in the preamble to the nutrient content claims final rule (58 FR 2302 at 2326), the agency indicated that the claim "useful only in not promoting tooth decay" is an unauthorized health claim, thus suggesting that a health claim petition should be submitted for such a statement. The comment noted, however, that virtually none of the sugar-free products on the market would qualify for a health claim based on the requirements of § 101.14(e)(6).

FDA acknowledges that certain food products that have been specially formulated relative to a specific disease condition such as dental caries may be determined to be appropriate foods to bear a health claim but be foods of limited nutritional value. Although not stated in the preamble to the final regulation on general requirements for health claims, it was the agency's intention that such situations be dealt with in the regulations authorizing specific health claims. That is, an exception to the general principle expressed in § 101.14(e)(6) could be granted by regulation, but limited to a specific health claim. Therefore, to clarify this, FDA is adding to § 101.14(e)(6) the phrase "* * * or where provided for in regulations in part 101, subpart E."

2. Comments received on § 101.14(e)(6) indicated concern about the phrase "prior to any nutrient addition." Some comments stated that FDA made it clear in the proposal that it was focusing on foods such as candies, soft drinks, and snack foods (56 FR 60537 at 60556 and 60557, November 27, 1991), and that the final regulation, because of its apparent comprehensiveness, is inconsistent with the intent expressed in the preamble. Several comments stated that this paragraph is very restrictive and will

prohibit health claims on certain breads and other products that are consistent with dietary guidelines for Americans. One comment requested clarification of the paragraph, asking which foods it applies to and the basis for precluding fortification of a food making a health claim to achieve a nutritional benefit which is incidental to the health claims benefit. The comment noted that the paragraph applies more broadly than explained in the preamble and may preclude health claims on much larger categories of foods than candies, soft drinks, and snacks. According to the comment, an unintended consequence of this rule may be the elimination from the diet of nutritionally important foods recommended by the U.S. Dietary Guidelines. The comment recommended that enriched, restored, and fortified foods should be excluded from the reach of this regulation. One comment stated that health claims should be based on appropriate fortification; otherwise, there is no incentive for industry to add important nutrients, such as calcium, to improve the nutritional quality of products or restore nutrients lost in processing. Many comments suggested that FDA needs a more flexible fortification policy. In particular, some comments noted that there is no scientific reason to distinguish between naturally present nutrients and those added pursuant to a policy of rational fortification. Some comments agreed with FDA that it is appropriate that foods bearing health claims should be those consistent with current dietary guidelines.

FDA considers the changes requested by the comments to be beyond the scope of this rulemaking. Interested persons who believe that § 101.14(e)(6) is scientifically inappropriate may petition the agency to revoke or amend the regulation.

The agency recognizes that the issues surrounding fortification—including what might be considered rational fortification with nutrients not addressed in FDA's fortification policy (21 CFR 104.20)—are complex. However, some of the comments misinterpret § 101.14(e)(6). With that regulation, FDA sought to prevent the fortification of food of little or no nutritional value for the sole purpose of qualifying that food for a health claim (58 FR 2478 at 2522). In the preamble to the final rule (58 FR 2522), FDA "stresse[d] that the exclusion of fortification pertains only to fortification to specifically meet the requirements of this provision and not to fortification of the food itself." A food that has traditionally been formulated in accordance with the fortification policy (or one that meets a standard of identity that includes fortification), and that, in that form, contains 10 percent or more of the RDI or DRV for vitamin A, vitamin, C, iron, calcium, protein, or fiber per reference amount customarily consumed, would not be precluded by § 101.14(e)(6) from being fortifed to qualify for a health claim.

The agency disagrees that an unintended consequence of this rule may be the elimination from the diet of nutritionally important foods recommended by the U.S. Dietary Guidelines. As stated in the preamble to the final rule, "Based on a review of the regulatory food composition data base, the agency notes that most foods consistent with dietary guidelines meet [the criterion in § 101.14(e)(6)]." (58 FR 2522).

B. Sections 101.76, 101.77, and 101.78

Section 101.76(c)(ii)(C) (21 CFR 101.76(c)(ii)(C)) specifies that a fiber-containing grain product, fruit, or vegetable bearing a health claim related to cancer and diets high in such foods must meet, without fortification, the nutrient content requirements of § 101.54 (21 CFR 101.54) for a "good source" of dietary fiber. Also, § 101.77(c)(ii)(C) (21 CFR 101.77(c)(ii)(C)) requires that such products contain, without fortification, at least 0.6 grams (g) of soluble fiber per reference amount customarily consumed when making a health claim relating diets high in such foods to a reduced risk of coronary heart disease. Additionally § 101.78(c)(ii)(C) (21 CFR 101.78(c)(ii)(C)) specifies that fruit and vegetable products bearing a health claim relating diets high in such foods to reduced risk of cancer must meet, without fortification, the nutrient content requirements of § 101.54 for a "good source" of at least one of the following: dietary fiber, vitamin A, or vitamin C.

3. Comments submitted to §§ 101.76 and 101.77 requested clarification of the term "without fortification" as used in these final regulations. One of the comments also requested confirmation that the use of fiber-containing ingredients in bakery products that already contain fiber does not constitute "fortification." Another comment stated that, in the agency's discussion of dietary fiber in its final rule on mandatory nutrition labeling, FDA equated "fortification" with "supplementation," a definition that connotes an addition to a fiber source so that the resulting level of fiber in that source exceeds the indigenous level (58 FR 2079 at 2096). The comment asked FDA to clarify that the combination of multiple grains in a food, each of which contains an indigenous level of fiber, is not "fortification" as the agency used the term in its final rule.

In developing the criteria for the health claims related to cancer and fiber-containing grain products, fruits, and vegetables, and to coronary heart disease and fiber-containing fruits, vegetables, and grain products, a prime consideration for the agency was that the scientific evidence supports health claims for foods and dietary patterns rather than for specific nutrients. Further, there is strong reason both for allowing claims only for foods high in fiber and for prohibiting claims if they give the impression that dietary fiber, as a single nutrient, is responsible for the benefit. This is based on the conclusion that, even where the scientific evidence is strongest, it is not possible to separate the effects of fiber from those of other components of the diet.

Thus, consistent with the scientific evidence, the agency limited these claims to those grain products, fruits, and vegetables containing a "good" source of dietary fiber per reference amount in the case of cancer-related health claims (58 FR 2537 at 2545 and 2622 at 2636) and to those fruits, vegetables, and grain products containing at least 0.6 g of soluble fiber per reference amount for claims related to coronary heart disease (58 FR 2552). The agency then addressed the issue of fiber as an ingredient as opposed to naturally occurring fiber. Both §§ 101.76 and 101.77 stipulate that foods must qualify for the claim based on their natural level of fiber. The agency indicated that the purpose of this requirement was to preclude the use of claims on foods that required fortification in order to meet the qualifying criteria (58 FR 2537 at 2545 and 2552 at 2574). The agency explained that this requirement is consistent with the scientific basis for the claim; that is, that grains, fruits, and vegetables in their native form correlate with the health effects. FDA further explained that, because there are not sufficient data that specifically identify dietary fiber, or particular components of fiber, as causal and because this nutrient is being used as a marker for the substance or substances in grain products, fruits, and vegetables, that provide the observed protective effect, it is the native composition of the foods that identifies their usefulness. The agency also noted that, at the same time, this requirement does not prohibit fortification of qualifying foods with dietary fiber, once the qualifying level has been met naturally.

Therefore, FDA stipulated in the final rule that foods must meet the qualifying criteria for fiber content without fortification. The agency recognizes that this provision, which excludes fortified foods, may have prohibited claims on foods that could be determined to appropriately bear a health claim related to the specific health conditions. However, the provision is derived from the scientific evidence and from the standard established for determining the basis for health claims. It was the agency's clear intention to provide for this restriction in the final rule. To reevaluate the issue is beyond the scope of the technical corrections addressed in this document.

IV. Minor Clarifications to the Preambles to the Regulations

4. One comment stated that, under section VI.C. "Inappropriate Levels of Other Substances" in the preamble to the general requirements final regulation (58 FR 2478 at 2520), FDA incorrectly indicated that it did not receive any comments on the proposed regulation to prohibit claims for any food where a substance, other than one for which a disqualifying nutrient level is established, is present at an inappropriate level as determined in the specific provision authorizing the claim in part 101, subpart E. The comment noted that it had submitted a comment opposing this provision. The earlier comment stated that Congress gave the agency great flexibility to make exceptions to the disqualifying level requirements where an otherwise prohibited health claim would assist consumers in maintaining sound dietary practices. Further, the comment stated that the proposed approach would reintroduce an undesirable degree of inflexibility by barring health claims for foods that have levels of other substances not identified by Congress as creating special risks. The comment concluded that, if the agency adopts such an approach, it should be willing to grant exceptions to disqualification with respect to foods having inappropriate levels of these other substances.

FDA notes that the above comment was received and was inadvertently overlooked. The agency has now reviewed the comment, but concludes that it does not require a change in the final regulation. The agency has explained that § 101.14(e)(4) is intended to prevent health claims from appearing on foods that contain substances other than the substance that is the subject of the claim if any of those other substances, although not harmful in their own right, could interfere with the claimed effect on the risk of disease (56 FR 60555 through 60556, November 27, 1991; 58 FR 2520, January 6, 1993). It is not the agency's intent to apply § 101.14(e)(4) rigidly.

5. One comment stated that section 403(r) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)) is "limited to disease prevention (health) claims that relate to a 'nutrient.'" The comment made three points: (1) In § 101.14, FDA is exceeding the statutory scope of that specific provision to the extent that FDA interprets this section to refer to disease prevention claims that relate to food in general; (2) the agency is blurring the distinction between disease prevention claims for specific nutrients and dietary guidance for food in general; and (3) not all dietary guidance that relates food categories to disease prevention requires a specific regulation.

FDA disagrees with the comment's interpretation of section 403(r) of the act as applying to disease prevention claims. "Disease prevention" claims are not within the scope of the final health claim regulations. A product that is intended to prevent disease is a drug under section 201(g)(1)(B) of the act (21 U.S.C. 321(g)(1)(B)).

FDA defined the term "health claim" in § 101.14(a)(1) as, in part, any claim on the label or in labeling of a food that characterizes the relationship of any substance to a disease or health-related condition. For the sake of clarity, the agency uses the term "dietary guidance" to refer to claims that do not contain both basic elements of a health claim (i.e., a substance and its relationship to a disease or health-related condition) (58 FR 2478 at 2487). The agency believes it adequately addressed the remaining issues raised in this comment in the preamble to the final rule see, e.g., 58 FR 2479 through 2480, and 2487.

6. One comment noted that, in section IV.B.4 of the preamble to the folic acid and neural tube defects final rule (58 FR 2606 at 2617), the agency stated that products containing 800 micrograms (µg) of folic acid were drugs. The comment stated that 800 µg of folic acid is the U.S. RDA for pregnant and lactating women.

The agency agrees that products containing 800 µg of folic acid are not necessarily drugs. Section 172.345 states that folic acid may be safely added to food specified for pregnant or lactating women for its vitamin property provided that the maximum daily ingestion will not exceed 8 milligrams. The agency intends to address the issue of folic acid further in future rulemaking.

V. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain technical amendments to the health claims regulations for food, according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96–354). The amendments are intended to clarify certain provisions of the regulation and do not add new requirements. Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

VI. 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 impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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, 21 CFR part 101 is 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 101.14 is amended by revising paragraph (e)(6) to read as follows:

§ 101.14 Health claims: general requirements.

* * * * *

(e) * * *

(6) Except for dietary supplements not in conventional food form or where provided for in other regulations in part 101, subpart E, the food contains 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

* * * * *

Dated: August 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19447 Filed 8–12–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket No. 90N–0165

RIN 0905–AD08

Food Labeling; Serving Size; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making technical revisions to the regulations that established the general rules for declaring serving sizes as part of the nutrition label. In January 1993, the agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" that gave interested persons 30 days to comment on technical issues not raised in earlier comments pertaining to nutrition labeling. This document addresses the comments received and corrects unintended technical consequences of the final rule.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5662.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2229), FDA issued a final rule entitled "Food Labeling; Serving Sizes" (hereinafter referred to as "the serving size final rule"). The final rule amended the agency's nutrition labeling regulations to: (1) Define "serving size" as the amount of food customarily consumed per eating occasion, (2) establish reference amounts customarily consumed per eating occasion (reference amounts) for 139 food product categories, (3) provide procedures for using the reference amounts to determine serving sizes for use on product labels, (4) require the use of both common household and metric measures to declare serving sizes, (5) define "single-serving containers," (6) require that the use of claims be based on the reference amount, (7) permit the declaration of serving size in U.S. measures, and (8) permit the optional declaration of nutrient content per 100 grams (g) or 100 milliliters (mL).

II. Technical Issue Comments

In the same issue of the **Federal Register**, FDA issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (58 FR 2066) (hereinafter referred to as "the implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters and to technical unintended consequences of specific provisions that they had not raised in earlier comments. To ensure consideration of any comments, FDA directed interested persons to certify that their comments were so limited. FDA further advised that if the comments identified any technical provisions of the final rules that the agency agrees should be amended, FDA would take action to do so. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality of these rules.

Following publication of the serving size final rule, FDA received 15 letters containing 1 or more comments, from industry, consumers, and other interested parties, and over 1,000 telephone calls and other communications on this document. Approximately 10 percent of these communications submitted technical issue comments or raised technical issues as described in the implementation final rule. FDA is responding below to the specific technical issues that the comments raised. Those issues that do not qualify as technical issue comments or are otherwise not relevant to this rule making are not discussed below. Issues that are not merely technical in nature should be the subject of petitions to the agency for further rulemaking. Because the changes FDA is making in these final rules are technical in nature and are based on a full prior opportunity for comment, the agency finds that further opportunity for public comment on them is unnecessary.

III. Technical Corrections

1. One technical comment requested that § 101.9(b)(2)(i) (21 CFR 101.9(b)(2)(i) be further divided into paragraphs to make it easier to interpret. FDA acknowledges that the inclusion of a variety of specifications in one paragraph may be confusing and has therefore subdivided § 101.9(b)(2)(i). The agency has also reordered some of the information and made minor editorial changes in it to improve its comprehensibility. For example, in new § 101.9(b)(2)(i)(B), FDA has made it explicit that for products that are in discrete units that contain between 50 and 67 percent of the reference amount, the manufacturer may declare the serving size as either 1 or 2 units.

2. Several comments asked how to treat products made up of distinct and separate foods packaged together in the same container and intended to be consumed together.

In the mandatory nutrition labeling final rule ("Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label" (58 FR 2079 at 2184)), FDA specified in § 101.9(h)(1) that when separately packaged ingredients are intended to be eaten at the same time, the nutrition information may be specified per serving for each component or, alternatively, as a composite value. This approach was inadvertently omitted in the serving size regulation, and thus no provision for these types of serving size declarations is available. Thus, FDA recognizes that it needs to address how to declare serving sizes for these products when the manufacturer chooses to list the nutrition information separately for each component.

Products that consist of two or more ingredients packaged together and presented as a single product include "complete" products, such as chow mein components in multiple cans and pizza mix with a prepared crust, and mixes and kits with separate packets that require the addition of water or other ingredients, such as macaroni and cheese mix (pasta and cheese packets), stir-fry kits (sauce, vegetables, rice, and noodles packets), cake mix kits (mix, filling, frosting, nuts, and fruit packets), and salad kits (dressing, croutons, grated cheese, and bacon bits packets). Also included among these types of products are products that are distinct and separate foods packaged together in the same container and intended to be consumed together (e.g., pancakes with syrup, chips and dip).

First, for a number of these products, the serving size can be expressed as the amount of the main ingredient plus proportioned minor ingredients based on the "reference amount for the combined product" (see § 101.12(f)). For example, the "reference amount for the combined product" calculated for a

package of 4 pancakes (220 g) and syrup (100 g) is 160 g (110 g pancakes plus 50 g syrup). The serving size for the composite product could be expressed as "2 pancakes with syrup (160 g)," and the serving size for each component could be expressed as "2 pancakes (110 g)" and either "syrup for 2 pancakes (50 g)" or "—— tbsp syrup (50 g)" if 50 g of syrup makes —— tbsp. The number of servings for this package would be "2." Therefore, FDA has revised §§ 101.9(b)(2)(i), (b)(2)(ii), and (b)(2)(iii) and added § 101.9(b)(2)(i)(H) to provide this option for serving sizes for products that consist of two or more foods that are packaged and presented to be consumed together. FDA has revised § 101.9(b)(5) to specifically allow this option in § 101.9(b)(5)(vii) rather than the hierarchy in § 101.9(b)(5)(i) through (b)(5)(iii).

However, because serving size declarations are to be on an "as packaged" basis, and they must relate to established reference amounts, another alternative is required when the various components are each best described using different measures (e.g., gram, cup, fluid ounce, fraction). This situation can be illustrated by the example of a macaroni and cheese product containing a package of dry macaroni and a pouch of cheese sauce. There is no clear indication as to the appropriate household measure for the composite "as packaged" serving size declaration.

FDA has determined that a workable option for declaring serving sizes for composite nutrition values for these products would be the use of ounces to reflect, on an "as packaged" basis, the entire contents of the combined package. For example, the reference amount for prepared macaroni and cheese is 1 cup. If a 12 ounce (oz) package (9 oz dry macaroni and 3 oz dry cheese mix) makes 3 cups of prepared macaroni and cheese, then the serving size for the composite product is 4 oz.

An ounce declaration, however, under § 101.9(b)(5)(iii), must be accompanied by an appropriate visual unit to assist consumers in conceptualizing the serving size. The visual unit of measure will be especially useful for products such as these because it can present a complicated array of information to the consumer in a readily understood way. Continuing with the macaroni and cheese example, the serving size for the composite product could be expressed as "4 oz (112 g/about 2/3 cup macaroni and 2 tbsp dry cheese mix)."

If the manufacturer lists the nutrition information separately for each component that makes up the finished food product, declaration in ounces is still an appropriate approach. Using the macaroni and cheese example, the serving size for each component could be expressed as "3 oz dry macaroni (84 g/about 2/3 cup)" and "1 oz dry cheese mix (28 g/about 2 tbsp)." Declaration in ounces thus allows consumers to sum the individual ounce portions, allows greater ease in comparison among similar products, and is consistent with the declarations used for these same products when a composite declaration is used.

Accordingly, FDA is adopting this approach as one alternative. The agency has included macaroni and cheese kits in § 101.9(b)(2)(iii) as an additional example of a nondiscrete bulk product, and in new § 101.9(b)(5)(vii), FDA has specified that ounces may be used to declare the serving size for products that consist of two or more distinct foods packaged and presented to be consumed together as an alternative to the options described above. The agency has also stated that the information may be provided for each component or as a composite.

3. In the final regulation (58 FR 2229 at 2292), FDA provided in § 101.9(b)(6) that single serving containers of products with large reference amounts (i.e., 100 g (or mL) or larger) may declare 1 or 2 servings per container if they contain more than 150 percent but less than 200 percent of the reference amount. This provision applies to products that are "packaged and sold individually."

Although not specifically mentioned in written comments received by the agency, in reviewing the document, FDA has become aware that the agency inadvertently omitted a similar provision in § 101.9(b)(2)(i) for products within multiserving packages, and this unintended technical inconsistency would allow individual units packaged and sold separately to be labeled as one or two servings while not permitting the same label declaration on the same product when sold as part of a multiserving package. Therefore, FDA is adding paragraph (E) to § 101.9(b)(2)(i) to permit products within multiserving packages to be declared as one or two servings if they have reference amounts of 100 g (or mL) or larger and contain more than 150 percent but less than 200 percent of the reference amount.

4. In § 101.9(b)(5), FDA established a hierarchy for expressing the serving size in household measures: (1) Cups, tablespoons, and teaspoons; (2) piece, slice, tray, jar, and fraction; and (3) ounces with a visual unit of measure. In the preamble to the final rule (58 FR 2229 at 2274 to 2275), FDA said that there is wide variability in the unit size of some products, such as seafood and pickles, which are usually sold and consumed as discrete individual units. The agency noted that this variability would make it very difficult to express the serving size as the number of discrete pieces, even though this declaration would be the appropriate one to use according to the hierarchal listing. Consequently, in the final rule, FDA revised section § 101.9(b)(2)(i) to state that the serving size for certain products in discrete units that naturally vary in size would be expressed as the number of ounces most closely approximating the reference amount. FDA noted that ounces is not appropriate for products such as fish sticks, because even though there is some variability, the manufacturer controls the unit size.

A number of comments reported difficulty in conforming the directions in § 101.9(b)(2)(i) with § 101.9(b)(5). The comments stated that it is unclear whether all products that naturally vary in size are to be declared in ounces, particularly because there are some products that naturally vary in size that can readily be measured in a cup, because the pieces of these products are very small (e.g., sunflower seeds and popcorn), or that are measurable by the piece, because the product is graded to provide substantial uniformity in size (e.g., olives). The comments asked about how the serving size for these types of products should be declared.

The agency's intent was that small bulk products that naturally vary in size, but that could be measured in cups, tablespoons, or pieces, would use the appropriate one of these units as the unit of measure in declaring serving size. FDA intended to allow products in discrete units with sufficient variability to make it difficult to use pieces as a serving size (e.g., pickles) to use ounce declarations in place of piece declarations.

To make the agency's intent clear, FDA has rearranged § 101.9(b)(2)(i) and included § 101.9(b)(2)(i)(G), to specify that: "The serving size for products that naturally vary in size (e.g., pickles, shellfish, whole fish, and fillet of fish) may be the amount in ounces that most closely approximates the reference amount for the product category." FDA cannot by regulation definitively describe all products that fall into this category. Therefore, it is incumbent on the manufacturer to determine whether an individual product naturally varies in size such that ounces would be the appropriate measure.

Some small bulk products that would seem to be measurable by cups, tablespoons, or pieces may be so

variable that such declaration becomes impractical. In such instances, an ounce measure may be the logical household measure. The manufacturer should discuss any such situations with FDA, and the agency will make a determination on a case by case basis under § 101.9(g)(9).

To conform § 101.9(b)(5) to this clarification, FDA has added § 101.9(b)(5)(vi) to provide appropriate units for these types of products and has revised § 101.9(b)(5) to specifically allow this option rather than the hierarchy in § 101.9(b)(5)(i) through (b)(5)(iii).

5. In its definition of products in discrete units (§ 101.9(b)(2)(i)), FDA included individually packaged products within multiserving packages. Several comments requested that 1 unit be the serving size for these products, and a few comments noted that the products could be sold individually as single-serving containers.

In considering these comments, FDA recognized that there is potential ambiguity between the rules provided in § 101.9(b)(6) for single-serving containers and those provided in § 101.9(b)(2)(i) for individually packaged products within multiserving containers. This ambiguity could produce inconsistent labeling on the inner and outer packaging of these products. For example, if labeled and sold individually, 10-g candy bars could be considered single-serving packages, and the serving size would be "1 candy bar." However, if several candy bars are packaged within a multiserving package, the serving size, when determined in accordance with § 101.9(b)(2)(i), is the number of whole units that most closely approximates the reference amount for the product category, 40 g. Thus the serving size for the multiserving package would be "4 candy bars," and a bag containing 40 candy bars would be labeled as "10 servings." If each of the candy bars in the multiserving packages is labeled as a single serving, the outer and inner labeling would have inconsistent nutrient values on a per serving basis.

The agency has determined that, when the individual units are completely and appropriately labeled as single-serving containers, one unit is the labeled serving size to be used on the multiserving container. This approach will mean that the inner and outer labeling values on these types of products will be consistent, and that the number of servings declared on the multiunit package will be equal to the number of units in the package. Accordingly, FDA has added § 101.9(b)(2)(i)(I) to provide for serving size declaration of 1 unit for products containing several individual single-serving containers that are fully labeled, and the agency has added § 101.9(b)(8)(iv) on the number of servings when a product contains such individually labeled containers. Both of these provisions require that each of the individual units bear all required labeling information, including nutrition labeling. To improve clarity, the agency has also divided paragraph (b)(8) into subparagraphs and made minor editorial changes.

Alternatively, the inner units may be labeled in accordance with § 101.9(j)(15)(ii) and (j)(15)(iii) with the statement, "This unit not labeled for retail sale." If the individual units do not bear complete labeling, the serving size for the product must be determined in accordance with the provisions for discrete units in § 101.9(b)(2)(i), and the number of servings per container shall be determined in accordance with § 101.9(b)(8)(i).

Finally, FDA acknowledges that there may be a level of product below which labeling an individual unit as 1 serving is grossly inconsistent with food consumption patterns and would be misleading. This would be the case, for example, if a 3-g candy bar were labeled as a single serving. The agency has no basis, however, upon which to determine a lower level for such serving size declaration and is unaware of blatant attempts to mislead consumers in this fashion. Furthermore, FDA believes that the cost of fully labeling individual units is such that there may be an economic limit to this practice. Nonetheless, the agency will monitor this practice in the marketplace as needed and will initiate rulemaking to establish a lower limit, if necessary.

6. Many comments expressed confusion about how to deal with products that require further preparation (e.g., cake mix, variety mix, pasta).

Products requiring further preparation were discussed in response to comment 23 in the preamble to the final rule (58 FR 2229 at 2238 to 2239). The agency confirmed that nutrition labeling for these products is required on an "as packaged" basis and provided an example for pancakes to illustrate how to generate a serving size for the "as packaged" product using the reference amount in the table for the ready-to-eat product.

In the pancake example, FDA directed the manufacturer to determine the quantity of the unprepared product required to make one reference amount for the prepared product and stated that this amount is the "reference amount for the unprepared product" (see § 101.12(c)) (21 CFR 101.12(c)). The manufacturer then determines the household measure closest to the "reference amount for the unprepared product" and uses it to express the serving size. In the pancake example, 40 g of pancake mix made 110 g of pancakes, the reference amount for pancakes. The weight of 1/3 cup of pancake mix was closer to 40 g than the weight of other possible fractional cup measures such as 1/4 or 1/2 cup. The agency stated that "[t]he serving size for this pancake mix will be about 1/3 cup (40 g)."

FDA has reexamined the serving size declaration for these types of products in deciding how to ease the confusion that many comments expressed. FDA recognized that use of the term "about" as part of the primary household measure declaration is not appropriate because it is inconsistent with the provisions of the Federal Food, Drug, and Cosmetic Act (the act) in that it makes the metric amount, rather than the amount in common household measure, the effective serving size. However, section 403(q)(1)(A)(i) of the act (21 U.S.C. 343(q)(1)(A)(i) states that the serving size is an amount declared in common household units. It is impossible to calculate the values for the various nutrients in a food if the serving is "about 1/3 cup."

Therefore, for products that require further preparation, the serving size will be the household measure that is closest to the "reference amount for the unprepared product" and will not include the word "about." In the pancake example, if the weight of 1/3 cup of pancake mix is closest to 40 g (the "reference amount for the unprepared product"), and if 1/3 cup of pancake mix weighs 42 g, the serving size for this pancake mix would be "1/3 cup (42 g)." FDA has incorporated pancake mix into the list of examples in § 101.9(b)(2)(iii) as an additional example of a nondiscrete bulk product to try to help eliminate the confusion asserted in the comments.

However, if this procedure is applied to products where the entire contents of the package is used to prepare one discrete unit, the approach results in unintended inconsistencies in terms of the number of servings per container. For example, if 480 g of cake mix makes 900 g of prepared cake, then 1/12 of the prepared cake (75 g) is the closest fraction to the 80 g reference amount for medium cakes under § 101.9(b)(2)(ii). The reference amount for the unprepared product is 40 g, 1/12 of the 480 g in the mix. If the household measure closest to 40 g is 1/3 cup (44

g), then using the procedure described previously, the serving size would be listed as "1/3 cup (44 g)," where 44 g of cake mix makes close to, but not exactly, 1/12 of a prepared cake. However, the number of servings for this product would be listed as "about 11" (480 g divided by 44 g equals 10.9), which would be inconsistent with reference amounts based on 1/12 of the unprepared and prepared products and would be confusing if the manufacturer voluntarily included a second column of nutrition information for 1/12 of a prepared cake.

To resolve this unintended inconsistency, FDA has determined that for products that require further preparation, where the entire contents of the package are used to prepare a large discrete unit usually divided for consumption (e.g., cake mix, pizza kit), the serving size is the amount of the unprepared product used to make the "reference amount for the unprepared product," determined in accordance with § 101.12(c). For these products, because the entire contents of the package is used at one time and can be considered to be a large discrete unit, the fraction of the box that makes the "reference amount for the unprepared product" is the most appropriate household measure. Thus, for example, because the entire box is used to make a cake, and because the serving size for the prepared food is 1/12 cake, the appropriate serving size for the unprepared product is 1/12 package.

When a fraction of a box is the primary household measure, FDA is encouraging manufacturers to include a visual unit of measure in the serving size declaration as additional assistance to consumers in understanding how much mix is used. For the cake mix example provided above, the serving size could be listed as "1/12 package (40 g/about 1/3 cup mix)." The second column of information could provide nutrition information on "1/12 prepared cake." The number of servings would be listed as "12" in both columns. These changes have been incorporated into § 101.9(b)(2)(ii), and § 101.9(b)(5)(v) has been added to provide that, in these circumstances, the fraction of the package is to be used to express the serving size. In addition, FDA has revised § 101.9(b)(5) to reflect the latter provision.

7. Comments stated that the rounding rules for tablespoon declarations resulted in confusing and inadvertent consequences for dry mixes and concentrated products. To illustrate the problem, the comments pointed out that approximately 1.5 tablespoons (tbsp) of ice tea mix is used to make 240 mL (one serving) of the prepared product, while the regulations provide for serving sizes in whole number increments of tablespoons for quantities less than 1/4 cup but greater then or equal to 1 tbsp. Thus 1.5 tbsp of ice tea mix would be rounded to "2 tablespoons (—— g)." This results in considerable inconsistency between the declaration of the serving size and the preparation instructions (about 33 percent) and could be potentially very confusing to the consumer.

FDA acknowledges that allowing for only whole numbers of tablespoons is a significant problem for concentrated products that require further preparation and, in particular, for beverages reconstituted with water. The agency inadvertently omitted consideration of the 1 to 2 tbsp range in the final rule. The agency has decided that given the nature of the products involved, the lack of a provision for fractional amounts between 1 and 2 tbsp is a significant omission. Therefore, FDA is modifying § 101.9(b)(5)(i) to allow use of the fractions 1/3, 1/2, and 2/3 tablespoons between 1 and 2 tbsp. Thus, for the example above, if 1.5 tbsp of ice tea mix makes 240 mL of beverage, the manufacturer could list the serving size as "1 1/2 tbsp (—— g)," which allows the manufacturer to more closely reflect the actual amount of product needed to prepare the final product in the nutrition information.

8. One comment noted that use of the term "about" is included in § 101.9(b)(5)(iii) for rounding ounces but was not included in the rest of the hierarchy (§ 101.9(b)(5)(i) and (ii)) for other household measures.

This statement was inadvertently left in the final rule. As discussed in comment 6 (section III of this document), use of the term "about" is inappropriate as part of the primary serving size declaration. Furthermore, this wording has been misinterpreted to mean that "about" should be used anytime the reference amount value is not an even multiple of 1 oz (28 g) or anytime half ounces are declared. It was the agency's intent to delete it. Consequently, FDA has removed the phrase "with rounding indicated by use of the term 'about' (e.g., about 2.5 oz)" from § 101.9(b)(5)(iii)).

9. Several comments noted that instructions in § 101.9(b)(2)(i) and (b)(5) for determining the appropriate household measure for single serving containers of beverages were ambiguous. The preamble to the final rule (58 FR 2229 at 2280) discussed the use of unit declaration for single servings (e.g. 1 can, 1 package), but the agency failed to include it in the codified provisions. Without this specification, some manufacturers could conclude that it would be most appropriate to follow § 101.9(b)(5) in which FDA establishes a hierarchy to be used for expressing label serving sizes beginning with cups, tablespoons, teaspoons, and fluid ounces. As an example, one comment asked whether single servings of liquids (such as milk, juice, and soda) are required to use "—— cups" rather than "1 can, box, or container" as the household measure, or whether the manufacturer could make a choice.

In § 101.9(b)(2)(i), FDA provided that the serving size for products in discrete units shall be the number of whole units that most closely approximates the reference amount. Thus, the serving sizes of individually packaged products within multiserving containers is the appropriate number of such products that supplies the reference amount. For example, because cans and boxes are discrete units, the serving size for soda in a six-pack would be "1 can" rather than "1 cup," and the serving size for small boxes of raisins would be "2 boxes" rather than "1/2 cup." Although § 101.9(b)(2)(i) specifies that the number of discrete units should be listed, the agency inadvertently failed to include provision for these products in the hierarchy in § 101.9(b)(5)(i) through (b)(5)(iii).

Thus, FDA is adding § 101.9(b)(5)(iv), which states that household units for serving sizes of single serving containers and individually packaged products within multiserving containers must be stated using a description of the container (e.g., can, box, package), and that the serving sizes of other discrete units must be stated using a description of the individual unit (e.g., piece, slice, cracker, bar).

10. A few comments noted that the conversion factors for ounces to grams and for fluid ounces to milliliters are different in the net contents declaration (§ 101.7(r), proposed rule for Metric Labeling Requirements (58 FR 29716 at 29725)) than in the serving size declaration (§ 101.9(b)(5)(iv), redesignated as § 101.9(b)(5)(viii)). Therefore, in cases where the net quantity of contents and the serving size refer to the same amount of product in the container, i.e. single-serving containers, two different values for the amount of product would appear on the label. For example, the net quantity of contents for a 12 fluid ounce (fl oz) can of soda would be 355 mL (12 fl oz x 29.5735 mL/fl oz), and the serving size for the same 12 fl oz can would be "1 can (360 mL)" (12 fl oz x 30 mL/fl oz). If a manufacturer opted to give the

metric equivalent for this single serving of soda, two discrepant values would appear on the label and could potentially cause consumer confusion.

This discrepancy is only a problem for single-serving containers where the net contents and the serving size refer to the same amount of product. The net contents declaration is always required to be on the label. A manufacturer is not required to declare the metric equivalent on single serving containers under § 101.9(b)(7). However, FDA has determined that if a manufacturer optionally declares the metric equivalent, the serving size declaration should agree with the net contents declaration. Therefore, the agency is making minor corrections to § 101.9(b)(7) to ensure that consistent information is provided to consumers. FDA has divided this section into subparagraphs and made minor editorial changes to improve clarity. The agency incorporated the provision for agreement between serving size and net quantity values into new § 101.9(b)(7)(i).

11. One comment noted that in § 101.9(b)(7) there are rules for rounding gram weights of household measures, but there are no rules for rounding milliliters for beverages and other liquids.

The absence of rounding rules for milliliters was unintended. FDA has revised § 101.9(b)(7)(ii) to correct this omission. When it is necessary to round the parenthetical milliliter equivalent of the household measure, such as for concentrated liquids, rules similar to those for grams shall apply. The milliliter equivalent shall be rounded to the nearest whole number except for quantities that are less than 5 mL. Milliliter amounts between 2 and 5 mL shall be rounded to the nearest 0.5 mL, and amounts less than 2 mL shall be expressed in 0.1-mL increments.

12. The agency received many comments stating that, for foods that are diluted or reconstituted with water (e.g., powdered beverages, canned soup) or prepared with water as the only added ingredient (e.g., dry soups, dry mixes), there are no provisions for indicating how much of the finished product is prepared using the specified amount of unprepared product. The comments noted that, although a second column is allowed to provide nutrition information for the "as prepared" form of the product, this listing would be unnecessary and needlessly repetitive because it would contain identical listings to those for the mandatory "as packaged" column. Furthermore, the extra space required for two columns would be prohibitive to many manufacturers because concentrated or dry products often come in small containers.

FDA did not intend to omit provisions that would allow for the declaration of additional information, useful to consumers, for those products for which the only added ingredient is water and the nutrient information is not substantially altered by preparation. FDA is therefore adding new § 101.9(b)(7)(v) to allow for a voluntary nonmisleading declaration that describes the amount of the finished product made from the stated serving size, for example "makes 1 cup prepared." This voluntary declaration is to be in parentheses at the end of the serving size declaration. It is to be used only for products that require the addition of water or another ingredient that contains insignificant amounts of nutrients in the amount added and that are prepared in such a way that there is no significant change to the nutrient profile.

13. Comments stated that the provisions for declaring the number of servings per container could be problematic for some individually packaged products containing at least 200 percent of the reference amount and packaged within multiserving packages. For example, if a package of microwave popcorn contains four inner packages that each make 3.2 servings, each inner package makes "about 3 servings," which in turn results in a total package content of about 12 servings (4 times 3). However, if all the popcorn is considered together, the total package makes 12.8 servings (4 times 3.2) and would be required to be labeled as "about 13 servings." Statements on the labeling that the individual inner packages each make "about 3 servings" but that the entire package makes "about 13 servings" are inconsistent and could cause consumer confusion. Furthermore, even if the inner packages were not labeled, "about 13 servings" would be confusing on a package containing four inner packages because 13 is not an even multiple of four.

To clarify this situation, FDA has added new provision § 101.9(b)(8)(v) which deals with packages that contain several individually packaged multiserving units. For this type of product, the number of servings shall be determined by multiplying the number of servings per individual inner unit by the total number of inner units. Specifying the method of determining the number of servings ensures that there is consistency between the number of servings listed on the outer labeling and the number of units and the number of servings per individual unit. Each inner unit is considered to be a separate package with a specified number of servings, and the number of servings in the outer package reflects (i.e., is a multiple of) the number of servings in the inner packages. Thus, in the popcorn example, the serving size would be approximately 1/3 of an individual unit, "—— cup (—— g unpopped popcorn)," and each individual unit contains "about 3 servings." The number of servings in the entire package would be "about 12" (4 packets times "about 3" servings per packet).

14. In order to provide manufacturers with examples of how serving sizes should appear on product labels, FDA added a label statement column to Tables 1 and 2 of the final rule (58 FR 2229 at 2294 to 2298). In response to comment 24 in the final rule (58 FR 2229 at 2239), the agency stated that, where possible, it also provided the exact household measure and the equivalent metric measure based on the U. S. Department of Agriculture (USDA) values. For example, the label statement column for confectioner's sugar states "1/4 cup (30 g)."

While this information was intended to be helpful, it may have inadvertently lead to confusion. A comment regarding shortenings agreed with the reference amount, 1 tbsp, but expressed concern about the label statement column listing a specific gram weight, "1 tbsp (13 g)." The comment noted that a listing of "1 tbsp (—— g)" would be more consistent with the remainder of the table where gram amounts are generally not used. It also pointed out that most retail shortenings weigh 12 g per tbsp with the remainder weighing 11 g per tbsp, and that manufacturers vary densities of shortenings in order to alter hardness.

Another comment noted that the regulation specifies that the equivalent metric quantity should be declared in milliliters for fluids and in grams for all other foods, § 101.9(b)(7). However, the comment observed that the label statement column in Table 2 (58 FR 2229 at 2296) lists "1 tbsp (14 g) for butter, margarine, or oil." Because oil is a fluid, the comment asked whether the metric equivalent for oil should be in grams or milliliters.

Finally, several comments noted that the label statement for pastas used ounces as the household measure for lasagna noodles, whereas large shells, which may have similar weights, used pieces as the household measure. The comments questioned whether pieces or ounces should be used for lasagna noodles because the hierarchy in § 101.9(b)(5)(i) through (b)(5)(iii) indicates that pieces are preferred over ounces.

FDA acknowledges that providing specific values, even as examples, can result in confusion in many cases. FDA included the label statement column to provide examples of the types of serving sizes that may be used on product labels and never intended them to be an all-inclusive list. The agency has come to recognize, however, that many manufacturers have assumed that their serving size should be identical to that listed in the label statement column regardless of the weight or volume of their specific product. Therefore, FDA has decided to make some minor changes in the label statement column to provide more generic examples and to include milliliter examples which it inadvertently overlooked.

Specifically, in cases where the reference amount is a volumetric measure, FDA has retained the volumetric expression and eliminated the value for the specific gram equivalent weight. For example, FDA has revised the label statement for shortening, which has a reference amount of 1 tbsp, from "1 tbsp (13 g)" to "1 tbsp (—— g)." In cases where the reference amount is a gram weight, and the household measure is not expressed as a weight, specific values for both the household measure and the gram equivalent have been deleted. For example, the label statement for cottage cheese, which has a reference amount of 55 g, has been changed from "1/3 cup (48 g) for dry curd cottage cheese; 1/4 cup (62 g) for ricotta cheese" to "—— cup (—— g)." Finally, FDA agrees that lasagna noodles can be measured by the piece and has included them as an example for pieces rather than ounces.

FDA has modified parts of Table 1 for infant and toddler foods in § 101.12(b) (58 FR 2229 at 2294) as follows:

Product category	Label statement (formerly)	Label statement (new)
Cereals, dry instant	1/3 cup (13 g)	—— cup (—— g)
Dinners, desserts, fruits, vegetables or soups, ready-to serve, junior type.	—— cup(s) (——g)	—— cup(s) (——g);—— cup(s) (—— mL)
Dinners, desserts, fruits, vegetables or soups, ready-to-serve, strained type.	—— cup(s) (—— g)	—— cup(s) (—— g);—— cup(s) (—— mL)
Dinners, stews or soups for toddlers, ready-to-serve.	—— cup(s) (—— g)	—— cup(s) (—— g); —— cup(s) (—— mL)

FDA has modified parts of Table 2 for the general food supply in § 101.12(b)) (58 FR 2229 at 2294 to 2298) as follows:

Product category	Label statement (formerly)	Label statement (new)
Cereals and grains:		
Pastas, plain	—— cup(s) (—— g); —— piece(s) (—— g) for large pieces (e.g., large shell) or 2 oz (56 g/visual unit of measure) for dry bulk products (e.g., lasagna or spaghetti noodles).	—— cup(s) (—— g); —— piece(s) (—— g) for large pieces (e.g., large shells or lasagna noodles) or 2 oz (56 g/visual unit of measure) for dry bulk products (e.g., spaghetti)
Starches, e.g., cornstarch, potato starch, tapioca, etc..	1 tbsp (8 g) for cornstarch; 1 tbsp (10 g) for tapioca; 1 tbsp (—— g) for others.	—— tbsp (—— g)
Dairy Products and Substitutes:		
Cottage cheese	1/2 cup (105 g) for small curd; 1/2 cup (113 g) for large curd, lowfat, or with fruit added; 1/2 cup (—— g) for others.	—— cup (—— g)
Cheese used primarily as ingredients, e.g., dry cottage cheese, ricotta cheese.	1/3 cup (48 g) for dry curd cottage cheese; 1/4 cup (62 g) for ricotta cheese.	—— cup (—— g)
Cheese, grated hard, e.g., Parmesan, Romano.	1 tbsp(s) (5 g)	—— tbsp (—— g)
Cream or cream substitutes, powder	1 tsp (2 g)	——tsp (—— g)
Sour cream	2 tbsp (30 g)	—— tbsp (—— g)
Dessert Toppings and Fillings:		
Other dessert toppings, e.g., fruits, syrups, spreads, marshmallow cream, nuts, dairy and nondairy whipped toppings.	2 tbsp (—— g)	2 tbsp (—— g); 2 tbsp (60 mL)
Egg and Egg Substitutes:		
Egg substitutes	—— cup(s) (—— g)	—— cup(s) (—— g); —— cup(s) (—— mL)
Fats and Oils:		
Butter, margarine, oil, shortening	1 tbsp (14 g) for butter, margarine, or oil; 1 tbsp (9 g) for whipped butter or margarine; 1 tbsp (13 g) for shortening.	1 tbsp (—— g); 1 tbsp (15 mL)
Dressings for salads	2 tbsp (—— g)	—— tbsp (—— g); —— tbsp (—— mL)
Mayonnaise, sandwich spreads, mayonnaise-type dressings.	1 tbsp (14 g) for mayonnaise; 1 tbsp (15 g) for imitation mayonnaise, mayonnaise-type dressings or sandwich spreads.	—— tbsp (—— g)
Legumes:		
Beans, plain or in sauce	1/2 cup (—— g)	—— cup (—— g)
Miscellaneous:		
Baking powder, baking soda, pectin	1/4 tsp (—— g)	—— tsp (—— g)
Salads:		
Gelatin salad	1/2 cup (120 g)	—— cup (—— g)

Product category	Label statement (formerly)	Label statement (new)
Sauces, Dips, Gravies, and Condiments		
Barbecue sauce, hollandaise sauce, tartar sauce, other sauces for dipping (e.g., mustard sauce, sweet and sour sauce), all dips (e.g., bean dips, dairy-based dips, salsa).	2 tbsp (—— g)	2 tbsp (—— g); 2 tbsp (60 mL)
Major main entree sauces, e.g., spaghetti sauce.	1/2 cup (—— g)	—— cup (—— g); —— cup (—— mL)
Minor main entree sauces, (e.g., pizza sauce, pesto sauce), other sauces used as toppings (e.g., gravy, white sauce, cheese sauce), cocktail sauce.	1/4 cup (—— g)	1/4 cup (—— g); 1/4 cup (120 mL)
Major condiments, e.g., catsup, steak sauce, soy sauce, vinegar, teriyaki sauce, marinades.	1 tbsp (—— g)	1 tbsp (—— g); 1 tbsp (15 mL)
Minor condiments, e.g., horseradish, hotsauces, mustards, worcestershire sauce.	1 tsp (—— g)	1 tsp (—— g); 1 tsp (5 mL)
Soups:		
All varieties	1 cup (—— g)	—— cup (—— g); —— cup (—— mL)
Sugars and Sweets:		
Confectioners sugar	1/4 cup (30 g)	—— cup (—— g)
Honey, jams, jellies, fruit butter, molasses	1 tbsp (—— g)	1 tbsp (—— g); 1 tbsp (15 mL)
Sugar	1 tsp (—— g)	—— tsp (—— g)
Vegetables:		
Pickle relishes	1 tbsp (15 g)	—— tbsp (—— g)
Vegetable pastes	2 tbsp (33 g) tomato paste; 2 tbsp (—— g) all others.	—— tbsp (—— g)
Vegetable sauces or purees, e.g., tomato sauce, tomato puree.	1/4 cup (61 g) tomato sauce; 1/4 cup (63 g) tomato puree; 1/4 cup (—— g) all others.	—— cup (—— g); —— cup (—— mL)

15. Some comments pointed out that although grains and pastas have reference amounts for both the dry and the prepared forms of the product, "Beans, plain or in sauce" (listed under Legumes) does not. The reference amount for beans is provided only for the prepared form of the product, even though beans, like grains and pastas, are very commonly sold in the dry form, and the rehydration process for beans is similar to that for grains and pastas.

The agency inadvertently omitted providing for a reference amount for dry beans as it had provided for other products requiring rehydration. Accordingly, FDA has revised the reference amount for "Legumes: beans, plain or in sauce" to read "130 g for beans in sauce or canned in liquid prepared; 90 g for others prepared; 35 g dry." This value is based on USDA yield data and represents the average weight of dry beans that would yield 90 g of prepared beans (Ref. 1).

16. One comment suggested that there is an error in the declaration of the reference amount for "Baking Decorations, e.g. colored sugars and sprinkles for cookies, cake decorations" (58 FR 2229 at 2296), which states "1/4 tsp or 4 grams if not measurable by teaspoon." The comment noted that the 1991 reproposal (56 FR 60394, 60419) listed the reference amount as 1 tsp, and the comment also noted that there was no discussion in the preamble to the final rule to indicate the basis for the change.

FDA agrees that the reference amount of "1/4 teaspoon" given in Table 2 of the final serving size regulation is incorrect. The printed value is a typographical error. The reference amount listed is revised to state "1 teaspoon or 4 g if not measurable by teaspoon." This reference amount is the same as that proposed by the agency in 1991.

17. One comment stated that the wording in § 101.12(c) is unclear and therefore confusing: "The reference amount of a product that requires cooking or the addition of water or other ingredients shall be the amount required to prepare one reference amount of the final product as established in paragraph (b) of this section." The comment suggested that for products requiring further preparation, the agency should provide a better method of referring to the reference amount generated for the unprepared product using the reference amount in the table.

The agency agrees that using the term "reference amount" to refer to both the reference amount of the prepared and the unprepared products is confusing. However, the agency believes that it is necessary to have a term that can be used to refer to the amount of the unprepared product that makes the reference amount of the prepared product because the serving size declaration is for the unprepared (i.e., "as packaged") product. Furthermore, depending on the form of the unprepared product, there are situations in which two different reference amount values for unprepared products are generated for the same product category. For example, frozen and refrigerated pastas both require further preparation, but different amounts of the frozen form and of the refrigerated form would be needed to make the reference amount of the prepared product. Finally, for some products that require further preparation, the agency actually has provided reference amounts for the unprepared or uncooked forms of the product in § 101.12(b) of the regulation, e.g. cooked and uncooked fish and dry and prepared pasta and rice.

To improve clarity, FDA is changing the terms used in § 101.12(c) and in the footnotes to the tables to "reference amount for the prepared product" and "reference amount for the unprepared product" to distinguish, respectively, between the reference amount provided in the tables and the reference amount generated by using the table value and the provisions in § 101.12(c). The agency recognizes that it may still be confusing to have values that differ from those in the tables (§ 101.12(b))(58 FR 2229 at 2294 to 2298) that are referred to as "reference amounts," and at some future time, FDA may need to reexamine how to deal with and discuss

products that do not have reference amounts established in the tables.

Furthermore, to ensure that the serving sizes of like products are as consistent as possible, products that require further preparation but are in a form for which there is an established reference amount in Table 1 or Table 2 of the final rule (58 FR 2229 at 2294 to 2298), such as refrigerated or frozen pasta, are required to use the reference amount provided and should not generate their own (see comment 21 of section IV, of this document). Therefore, the agency is specifically restricting § 101.12(c) to products that do not have reference amounts in the tables.

18. Several comments provided evidence that, for products that require further preparation, the provisions for establishing the "reference amount for the unprepared product" have unintended effects. First, for products that are used to make foods that are consumed in small discrete units, such as muffins, the prescribed approach to determining a "reference amount for the unprepared product" resulted in discrepancies between the number of servings declared per package (e.g., "about 5") and the number of discrete units prepared in accordance with package directions (e.g., "makes 8 muffins"). Second, for products that prepare large discrete units, there were discrepancies between the number of servings declared per package (e.g., "about 11") and the declaration of a "friendly" fraction of a large discrete unit (e.g., "1/10 cake") for use in an optional second column of nutrition information.

The provision for establishing a "reference amount for the unprepared product" for products that require further preparation was illustrated in the pancake example in response to comment 23 in the final rule (58 FR 2229 at 2238 to 2239) and is discussed in comment 6 above. In the pancake example, FDA directed the manufacturer to determine the quantity of the unprepared product required to make the reference amount for the prepared product. This amount of dry pancake mix is to be used as the "reference amount for the unprepared product," § 101.12(c).

The purpose of the pancake example was to provide a description of the process for deriving the "reference amount for the unprepared product" and the serving size for a product that requires further preparation. It reflects an approach to bulk products that are used to make discrete units where the reference amount tables (58 FR 2229 at 2294 to 2298) contain reference amounts for the product "as prepared" but not "as packaged." FDA acknowledges that unintended effects occur when an entire package is used to prepare discrete units (e.g. cake and muffin mixes), and that the resultant discrepancies may be confusing to consumers.

For cake mixes, the agency has determined that the discrepancies can be remedied by providing for a reference amount for the unprepared product that reflects the fraction of the prepared product closest to the reference amount for the prepared product for the specific product category. A serving size derived from this "reference amount for the unprepared product" will reflect that it is based on a portion of the entire package. In the example provided above, the "reference amount for the unprepared product" would be the amount of cake mix needed to make 1/10 cake, the optional second column could provide nutrition information on "1/10 cake," and the number of servings would be listed as "10." This approach is consistent with that for arriving at the serving size for ready-to-serve products, that is, the fraction of a large discrete unit that comes closest to the reference amount for the prepared product for the specific product category.

For muffin mixes, the agency has taken a different approach. While it is true that cake mix batters may be subdivided to prepare individual layers, the primary way in which a cake mix is used is to make one discrete unit. Any layers that are made are assembled to make the cake.

However, when mixes that prepare small discrete units are subdivided, like pancakes or muffins, the consumer controls the finished size of the prepared product and may use a packaged muffin mix to make several small muffins or a few larger muffins. Therefore it makes sense to continue to present the "reference amount for the unprepared product" for these products as the amount of bulk product used to prepare the reference amount for the prepared product.

19. In the final regulation, the reference amount for products packaged and presented to be consumed together and for which there is no established reference amount in the tables (58 FR 2229 at 2294 to 2298) (e.g., peanut butter and jelly combination, cracker and cheese pack, pancakes and syrup pack) is defined (§ 101.12(f)) as the sum of the reference amounts for the individual foods in the package. A problem occurs when there is a need to combine reference amounts that are not in the same units. For example, creating a "reference amount for the combined product" for pancakes and syrup would involve summing 100 g and 60 mL.

In addition, the amounts of various distinct foods packaged by the manufacturer and presented to be consumed together may be different from the reference amounts established by FDA. Thus, for products of varying densities, the number of servings would be overly influenced by the denser food. For example, even if a "reference amount for the combined product" of pancakes and syrup were created by summing the weights of the respective components to get 170 g (110 g of pancake plus 60 mL syrup (or approximately 60 g)), if 220 g of pancakes have been packaged with a packet containing 120 g of syrup, the 340 g package would list the number of servings as 2. If the same 220 g of pancakes were packaged with an additional 50 g of syrup (170 g), the 390 g package would list the number of servings as "about 2 1/2," yet the amount of pancake—the main food component of the package—would remain the same. Finally, if the component elements of the product were listed separately on the label, the number of servings of pancakes might differ from the number of servings of syrup (e.g., 2 servings of pancakes; about 3 servings of syrup).

A procedure for determining the appropriate "reference amount for the combined product" for these types of products was not adequately provided in the final rule. Therefore, FDA is modifying § 101.12(f) to provide for this procedure. It is important to note that this modification affects only products intended to be combined and consumed together and for which the combination is not listed as a reference amount in the table in § 101.12(b). All products that are not intended to be consumed together (e.g., variety packs of single- or multiserving packages of snacks or breakfast cereals) are still required to provide nutrition information for each food individually in a location clearly visible to the consumer, as specified in § 101.9(h)(2).

For products with reference amounts in compatible units, the units can be directly summed (e.g., 2 tbsp peanut butter and —— tbsp jelly). However, for products described above with reference amounts in incompatible units that cannot be directly summed (e.g., 110 g pancakes and —— mL syrup), the agency has incorporated into its regulations the approach of summing the weights of the relevant amounts of the foods that are combined to make the "reference amount for the combined product." This approach has been selected because amounts that are provided as volume measures can easily be expressed as weights and summed.

However, the opposite is not the case because weights cannot always be easily expressed as volumes. This approach has been codified in § 101.12(f)(3).

To ensure that the serving size declaration will not be improperly influenced by minor dense ingredients, and that the number of servings will be consistent for all ingredients, the agency has revised § 101.12(f)(1) to require that manufacturers derive a "reference amount for the combined product" that takes into account the ingredient that is represented as the main ingredient. Thus, for products that consist of two or more distinct foods packaged separately within the same container, intended to be consumed together, and without established reference amounts (e.g., pancakes and syrup, chips and dip), the "reference amount for the combined product" will be based on the reference amount of the ingredient that is represented as the main ingredient. Other ingredients within the container are proportioned to fit the serving size of the main ingredient.

To illustrate the use of this approach, for pancakes and syrup, the pancakes represent the main ingredient. The package contains 240 g of pancakes (4 pancakes) and 100 g of syrup for a total package weight of 340 g. The reference amount for pancakes is 110 g, and 2 pancakes, which weigh 120 g, represent the number of discrete units closest to the reference amount for pancakes. Since there are 4 pancakes in the box, the proportionate amount of syrup is 50 g or half the syrup. Thus, the "reference amount for the combined product" for this particular combination of pancakes and syrup would be 120 g (weight of 2 pancakes) plus 50 g (weight of syrup for 2 pancakes) or 170 g. Options for declaring the serving size for this type of product are discussed in comment 2 of section III. of this document.

IV. Minor Corrections to the Preamble to the Regulation

20. Several comments expressed confusion over the appropriate reference amount to be utilized when two reference amounts are provided for a product category. For example, reference amounts for the dry and prepared forms of the product were provided for pastas, rices, variety mixes, and hot cereals; and cooked and uncooked reference amounts were provided for fish products. In addition, one technical comment from a manufacturer of parfried or partially cooked, frozen fish products expressed a desire to use its own yield data to determine product specific "cooked" and "uncooked" reference amounts. The comment argued that the USDA yield data were inaccurate for many products.

With regard to fish products, in the 1990 proposed rule (56 FR 60394 at 60419), FDA provided a reference amount of 85 g for fish on a cooked basis. In one of the comments (58 FR 2229 at 2257), a seafood trade association expressed concern that its members would have great difficulty in determining the amount of uncooked seafood needed to make one reference amount of cooked seafood. They noted that seafood yield values vary greatly and depend on many uncontrollable variables such as cooking method and cooking time. The agency agreed and in the final rule, in addition to retaining the reference amount for cooked fish, 85 g, the agency used USDA yield data to estimate the amount of uncooked fish that would make 85 g of cooked fish, 110 g, and provided this value as an appropriate reference amount for uncooked fish.

With regard to all products, including fish products, that have reference amounts for more than one form of the product in the final regulation, the agency stipulated that the reference amount of a product is for the ready-to-serve or almost ready-to-serve form of the product (e.g., heat and serve, brown and serve). Unless listed separately, the "reference amount for the unprepared product" (e.g., dry mixes; concentrates; dough; batter; dry, fresh or frozen pasta) is the amount of the product needed to make the reference amount for the prepared product (58 FR 2229 at 2298, Table 2, Footnote 2).

Thus, products that are in a form for which there is an established reference amount in Table 2 are required to use the reference amount listed. This approach is intended to provide consistency for products in similar forms. Therefore, dry pasta must use the reference amount for the dry form, 55 g, and prepared pasta must use that for the prepared form, 140 g. Uncooked fish products, not covered under the voluntary labeling provisions (§ 101.45) must use the 110 g reference amount and cooked fish the 85 g reference amount.

The agency did not specifically discuss reference amount procedures for intermediate products that have reference amounts for the prepared and unprepared forms of the product, i.e. products intermediate between dry and prepared or cooked and uncooked, such as parfried frozen fish sticks and refrigerated or frozen pasta. These products should be considered similar to all other products that require further preparation. In accordance with the provisions of § 101.12(c), the manufacturer shall determine a "reference amount for the unprepared [i.e., in this case, partially prepared] product," that is, the amount required to make the reference amount for the prepared product. For example, for refrigerated pasta, the manufacturer begins with the reference amount for the prepared product, 140 g. Manufacturers then determine the amount of their unprepared product that makes that amount, as specified in § 101.12(c) and as described in comment 6 (section III, of this document). Manufacturers use the reference amount for the prepared product and their own yield data to determine the "reference amount for the unprepared [e.g., intermediate, partially prepared] product." For example, 100 g of refrigerated pasta may make 140 g of prepared pasta. The serving size is then the household measure that comes closest to the "reference amount for the unprepared product" (100 g) and is accompanied by the metric equivalent, e.g., "1/2 cup (95 g)." FDA strongly recommends that quality control records and other pertinent data be maintained to verify and document the procedure used to obtain yield factors for specific products. This supporting information is essential should regulatory officials contest the amount of product listed on the label as making the reference amount for the prepared product.

21. A comment noted that while the agency stated in the final rule that fish packed in a liquid that is not customarily consumed should declare nutrient information on the drained solids, § 101.9(b)(9), the agency failed to indicate an appropriate methodology for draining the products. The comment provided four options: tilting the can and draining for a specified time (Canadian procedure), inverting the can and using "gentle finger pressure," and two variations that involved draining in a sieve for a specified time (Codex and Association of Official Analytical Chemists (AOAC)). In considering this comment, FDA identified several additional products that require draining, such as olives and cherries in cans or jars and pickled fish, fruits, and vegetables.

The agency did not provide a methodology for draining such products. The agency believes that specifying "gentle finger pressure" is too vague to be useful, although it is probably the method actually used by consumers. The Canadian procedure could work reasonably well for all canned products, but it would be very unwieldy, and thus potentially inconsistent, for products in jars. Thus, FDA favors the sieve methods because the purpose of draining is to remove the

liquid in a simple and reproducible manner. FDA does not consider product adherence to the sieve to be a problem because the product weight can be determined by difference: i.e., weighing the empty sieve and reweighing the sieve and product together after draining. Furthermore, analysis is done on a representative sample of the drained product and does not require retrieval of the total product. The agency uses AOAC methodology in resolving compliance issues. Therefore, draining for two minutes on a No. 8 sieve is an acceptable method for draining fish and other food products.

22. Many comments stated that FDA's failure to provide for specific clarifying terminology that could be included as part of the serving size declaration could result in unintended consumer confusion. For example, some comments noted that the unqualified label declaration for dry, condensed, or concentrated products that require further preparation (e.g., "1/2 cup" for a condensed soup or juice concentrate) may be misleading and confusing to consumers who may assume the information refers to the "as prepared" rather than the "as packaged" product. Comments also stated that not allowing clarifying phrases in serving sizes for foods containing inedible components, the label statement would be unclear and confusing. For example, pistachio nuts have a reference amount of 30 g. The household measure of the edible portion is 1/2 cup or 30 g of shelled nuts, and the household measure of the nuts "as packaged" (i.e., unshelled) is 1 cup or 60 g of unshelled nuts. The comments asserted that listing either 1/2 cup or 1 cup without additional clarification could be confusing because the consumer cannot tell whether the household measure refers to the shelled or unshelled nuts.

FDA agrees that this type of information may be useful in avoiding misinterpretation of the serving size declaration. The agency has no objections to manufacturers providing truthful and nonmisleading clarifying phrases that can be used to alert consumers to the form, physical state, drained or undrained state, inclusion or exclusion of inedible components, or similar necessary descriptions of the product for which the nutrition information is provided. The agency will monitor the kinds of phrases that are included to ensure that they remain pertinent to the declaration of the serving size for the product.

With regard to products that require further preparation, concentrated and dry soups could list the serving sizes as "1/2 cup (120 mL) concentrated soup" and "1/4 cup (50 g) dry powder soup mix," respectively. With regard to products with established reference amounts for both cooked and uncooked forms of the product (e.g., fish, pastas, grains), examples of appropriate clarifying phrases include "4 oz (112 g/about 1/2 fillet) raw fish," "2 pieces (80 g) precooked fish sticks," and "1/2 cup (53 g) dry pasta." For products with edible and inedible portions (e.g., nuts with shells, olives with pits), sample clarifying phrases include: "1/2 cup nuts without shells (30 g/about 1 cup with shells)," which clearly indicates that the shells are not included in the primary serving size declaration. This declaration is consistent with § 101.12(a)(6), which states that the serving size on the food label is based on only the edible portion of the food.

Finally, examples of clarifying phrases for drained products, such as olives and canned fish, and undrained products, such as peaches or blueberries in liquid and cranberry and pickle relishes, include: "2 pieces with liquid (135 g)" and "1/4 cup drained (32 g)." Although one comment provided examples of serving size declarations as specific numbers of whole units (e.g., 2 pieces) plus corresponding liquid (e.g., 1/4 cup), FDA believes that the use of clarifying statements such as "undrained" or "plus liquid" is sufficient. Declaring corresponding liquid would require specifying appropriate amounts per serving as well as providing for more detailed procedures for draining these products. Furthermore, such declarations are unlikely to be useful to consumers who serve the solids and liquids together.

V. References

The following reference has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Anderson, Ellen M., memo to file, July 28, 1993.

VI. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain techical amendments to serving sizes of food, according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96-354). The amendments are intended to clarify certain provisions of the regulation and do not add new requirements. Therefore, the agency concludes that its final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

VII. 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 impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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, 21 CFR part 101 is 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 101.9, effective May 8, 1994, is amended by revising paragraph (b) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(b) Except as provided in § 101.9(h)(3), all nutrient and food component quantities shall be declared in relation to a serving as defined in this section.

(1) The term "serving" or "serving size" means an amount of food customarily consumed per eating occasion by persons 4 years of age or older which is expressed in a common household measure that is appropriate to the food. When the food is specially formulated or processed for use by infants or by toddlers, a serving or serving size means an amount of food customarily consumed per eating occasion by infants up to 12 months of age or by children 1 through 3 years of age, respectively.

(2) Except as provided in paragraphs (b)(3), (b)(4), and (b)(6) of this section and for products that are intended for weight control and are available only through a weight-control or weight-maintenance program, serving size declared on a product label shall be determined from the "Reference Amounts Customarily Consumed Per

Eating Occasion * * *" (reference amounts) that appear in § 101.12(b) using the procedures described below. For products that are both intended for weight control and available only through a weight-control program, a manufacturer may determine the serving size that is consistent with the meal plan of the program. Such products must bear a statement, "for sale only through the ———— program" (fill in the blank with the name of the appropriate weight-control program, e.g., Smith's Weight Control), on the principal display panel. However, the reference amounts in § 101.12(b) shall be used for purposes of evaluating whether weight-control products that are available only through a weight-control program qualify for nutrient content claims or health claims.

(i) For products in discrete units (e.g., muffins, sliced products, such as sliced bread, or individually packaged products within a multiserving package) and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., pancakes and syrup), the serving size shall be declared as follows:

(A) If a unit weighs 50 percent or less of the reference amount, the serving size shall be the number of whole units that most closely approximates the reference amount for the product category;

(B) If a unit weighs more than 50 percent, but less than 67 percent of the reference amount, the manufacturer may declare one unit or two units as the serving size;

(C) If a unit weighs 67 percent or more, but less than 200 percent of the reference amount, the serving size shall be one unit;

(D) If a unit weighs 200 percent or more of the reference amount, the manufacturer may declare one unit as the serving size if the whole unit can reasonably be consumed at a single-eating occasion.

(E) For products that have reference amounts of 100 grams (g) (or milliliter (mL)) or larger and are individual units within a multiserving package, if a unit contains more than 150 percent but less than 200 percent of the reference amount, the manufacturer may decide whether to declare the individual unit as 1 or 2 servings.

(F) The serving size for maraschino cherries shall be expressed as 1 cherry with the parenthetical metric measure equal to the average weight of a medium size cherry.

(G) The serving size for products that naturally vary in size (e.g., pickles, shellfish, whole fish, and fillet of fish) may be the amount in ounces that most closely approximates the reference amount for the product category. Manufacturers shall adhere to the requirements in paragraph (b)(5) of this section for expressing the serving size in ounces.

(H) For products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is in discrete units (e.g., pancakes and syrup), the serving size may be the number of discrete units represented as the main ingredient plus proportioned minor ingredients used to make the reference amount for the combined product determined in § 101.12(f).

(I) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 101.9 (that is, are labeled appropriately for individual sale as single-serving containers), the serving size shall be 1 unit.

(ii) For products in large discrete units that are usually divided for consumption (e.g., cake, pie, pizza, melon, cabbage), for unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., cake mix, pizza kit), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is a large discrete unit usually divided for consumption (e.g., prepared cake packaged with a can of frosting), the serving size shall be the fractional slice of the ready-to-eat product (e.g., 1/12 cake, 1/8 pie, 1/4 pizza, 1/4 melon, 1/6 cabbage) that most closely approximates the reference amount for the product category, and may be the fraction of the package used to make the reference amount for the unprepared product determined in § 101.12(c) or the fraction of the large discrete unit represented as the main ingredient plus proportioned minor ingredients used to make the reference amount for the combined product determined in § 101.12(f). In expressing the fractional slice, manufacturers shall use 1/2, 1/3, 1/4, 1/5, 1/6, or smaller fractions that can be generated by further division by 2 or 3.

(iii) For nondiscrete bulk products (e.g., breakfast cereal, flour, sugar, dry mixes, concentrates, pancake mixes, macaroni and cheese kits), and for products which consist of two or more foods packaged and presented to be consumed together where the ingredient represented as the main ingredient is a bulk product (e.g., peanut butter and jelly), the serving size shall be the amount in household measure that most closely approximates the reference amount for the product category and may be the amount of the bulk product represented as the main ingredient plus proportioned minor ingredients used to make the reference amount for the combined product determined in § 101.12(f).

(3) The serving size for meal products and main dish products as defined in § 101.13(l) and (m) that comes in single-serving containers as defined in paragraph (b)(6) of this section shall be the entire content (edible portion only) of the package. Serving size for meal products and main dish products in multiserving containers shall be based on the reference amount applicable to the product in § 101.12(b) if the product is listed in § 101.12(b). Serving size for meal products and main dish products in multiserving containers that are not listed in § 101.12(b) shall be based on the reference amount according to § 101.12(f).

(4) A variety pack, such as a package containing several varieties of single-serving units as defined in paragraph (b)(2)(i) of this section, and a product having two or more compartments with each compartment containing a different food, shall provide nutrition information for each variety or food per serving size that is derived from the reference amount in § 101.12(b) applicable for each variety or food and the procedures to convert the reference amount to serving size in paragraph (b)(2) of this section.

(5) For labeling purposes, the term "common household measure" or "common household unit" means cup, tablespoon, teaspoon, piece, slice, fraction (e.g., 1/4 pizza), ounce (oz), fluid ounce (fl oz), or other common household equipment used to package food products (e.g., jar, tray). In expressing serving size in household measures, except as specified in paragraphs (b)(5)(iv), (b)(5)(v), (b)(5)(vi), and (b)(5)(vii) of this section, the following rules shall be used:

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate except for beverages. For beverages, a manufacturer may use fluid ounces. Cups shall be expressed in 1/4- or 1/3-cup increments, tablespoons in whole number of tablespoons for quantities less than 1/4 cup but greater than or equal to 2 tablespoons (tbsp), 1, 1 1/3, 1 1/2, or 1 2/3 tbsp for quantities less than 2 tbsp but greater than or equal to 1 tbsp, and teaspoons in whole number of teaspoons for quantities less

than 1 tbsp but greater than or equal to 1 teaspoon (tsp), and in 1/4-tsp increments for quantities less than 1 tsp.

(ii) If cups, tablespoons or teaspoons are not applicable, units such as piece, slice, tray, jar, and fraction shall be used.

(iii) If paragraphs (b)(5)(i) and (b)(5)(ii) of this section are not applicable, ounces may be used with an appropriate visual unit of measure such as a dimension of a piece, e.g., 1 oz (28 g/about 1/2 pickle). Ounce measurements shall be expressed in 0.5 oz increments most closely approximating the reference amount.

(iv) A description of the individual container or package shall be used for single serving containers and for individually packaged products within multiserving containers (e.g., can, box, package). A description of the individual unit shall be used for other products in discrete units (e.g., piece, slice, cracker, bar).

(v) For unprepared products where the entire contents of the package is used to prepare large discrete units that are usually divided for consumption (e.g., cake mix, pizza kit), the fraction or portion of the package may be used.

(vi) Ounces with an appropriate visual unit of measure, as described in paragraph (b)(5)(iii) of this section, may be used for products that naturally vary in size as provided for in paragraph (b)(2)(i)(G) of this section.

(vii) As provided for in § 101.9(h)(1), for products that consist of two or more distinct ingredients or components packaged and presented to be consumed together (e.g. dry macaroni and cheese mix, cake and muffin mixes with separate ingredient packages, pancakes and syrup), nutrition information may be declared for each component or as a composite. The serving size may be provided in accordance with the provisions of paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this section, or alternatively in ounces with an appropriate visual unit of measure, as described in paragraph (b)(5)(iii) of this section (e.g., declared as separate components: "3 oz dry macaroni (84 g/about 2/3 cup)" and "1 oz dry cheese mix (28 g/about 2 tbsp);" declared as a composite value: "4 oz (112 g/about 2/3 cup macaroni and 2 tbsp dry cheese mix)").

(viii) For nutrition labeling purposes, a teaspoon means 5 milliliters (mL), a tablespoon means 15 mL, a cup means 240 mL, 1 fl oz means 30 mL, and 1 oz in weight means 28 g.

(ix) When a serving size, determined from the reference amount in § 101.12(b) and the procedures described in this section, falls exactly half way between two serving sizes, e.g., 2.5 tbsp, manufacturers shall round the serving size up to the next incremental size.

(6) A product that is packaged and sold individually and that contains less than 200 percent of the applicable reference amount shall be considered to be a single-serving container, and the entire content of the product shall be labeled as one serving except for products that have reference amounts of 100 g (or mL) or larger, manufacturers may decide whether a package that contains more than 150 percent but less than 200 percent of the reference amount is 1 or 2 servings. Packages sold individually that contain 200 percent or more of the applicable reference amount may be labeled as a single-serving if the entire content of the package can reasonably be consumed at a single-eating occasion.

(7) A label statement regarding a serving shall be the serving size expressed in common household measures as set forth in paragraphs (b)(2) through (b)(6) of this section and shall be followed by the equivalent metric quantity in parenthesis (fluids in milliliters and all other foods in grams) except for single-serving containers.

(i) For a single-serving container, the parenthetical metric quantity, which will be presented as part of the net weight statement on the principal display panel, is not required except where nutrition information is required on a drained weight basis according to § 101.9(b)(9). However, if a manufacturer voluntarily provides the metric quantity on products that can be sold as single servings, then the numerical value provided as part of the serving size declaration must be identical to the metric quantity declaration provided as part of the net quantity of contents statement.

(ii) The gram or milliliter quantity equivalent to the household measure should be rounded to the nearest whole number except for quantities that are less than 5 g (mL). The gram (mL) quantity between 2 and 5 g (mL) should be rounded to the nearest 0.5 g (mL) and the g (mL) quantity less than 2 g (mL) should be expressed in 0.1-g (mL) increments.

(iii) In addition, serving size may be declared in ounce and fluid ounce, in parenthesis, following the metric measure separated by a slash where other common household measures are used as the primary unit for serving size, e.g., 1 slice (28 g/1 oz) for sliced bread. The ounce quantity equivalent to the metric quantity should be expressed in 0.1 oz increments.

(iv) If a manufacturer elects to use abbreviations for units, the following abbreviations shall be used: tbsp for tablespoon, tsp for teaspoon, g for gram, mL for milliliter, oz for ounce, and fl oz for fluid ounce.

(v) For products that only require the addition of water or another ingredient that contains insignificant amounts of nutrients in the amount added and that are prepared in such a way that there are no significant changes to the nutrient profile, the amount of the finished product may be declared in parentheses at the end of the serving size declaration (e.g., 1/2 cup (120 mL) concentrated soup (makes 1 cup prepared)).

(vi) To promote uniformity in label serving sizes in household measures declared by different manufacturers, FDA has provided a guideline entitled, "Guidelines for Determining the Gram Weight of the Household Measure." The guideline can be obtained from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(8) Determination of the number of servings per container shall be based on the serving size of the product determined by following the procedures described in this section.

(i) The number of servings shall be rounded to the nearest whole number except for the number of servings between 2 and 5 servings and random weight products. The number of servings between 2 and 5 servings shall be rounded to the nearest 0.5 serving. Rounding should be indicated by the use of the term "about" (e.g., about 2 servings, about 3.5 servings).

(ii) When the serving size is required to be expressed on a drained solids basis and the number of servings varies because of a natural variation in unit size (e.g., maraschino cherries, pickles), the manufacturer may state the typical number of servings per container (e.g., usually 5 servings).

(iii) For random weight products, a manufacturer may declare "varied" for the number of servings per container provided the nutrition information is based on the reference amount expressed in ounces. The manufacturer may provide the typical number of servings in parenthesis following the "varied" statement.

(iv) For packages containing several individual single-serving containers, each of which is labeled with all required information including nutrition labeling as specified in § 101.9 (that is, are labeled appropriately for individual sale as single-serving containers), the number of servings shall

be the number of individual packages within the total package.

(v) For packages containing several individually packaged multiserving units, the number of servings shall be determined by multiplying the number of individual multiserving units in the total package by the number of servings in each individual unit.

(9) The declaration of nutrient and food component content shall be on the basis of food as packaged or purchased with the exception of raw fish covered under § 101.42 (see 101.44), packaged single-ingredient products that consist of fish or game meat as provided for in paragraph (j)(11) of this section, and of foods that are packed or canned in water, brine, or oil but whose liquid packing medium is not customarily consumed (e.g., canned fish, maraschino cherries, pickled fruits, and pickled vegetables). Declaration of nutrient and food component content of raw fish shall follow the provisions in § 101.45. Declaration of the nutrient and food component content of foods that are packed in liquid which is not customarily consumed shall be based on the drained solids.

(10) Another column of figures may be used to declare the nutrient and food component information:

(i) Per 100 g or 100 mL, or per 1 oz or 1 fl oz of the food as packaged or purchased;

(ii) Per one unit if the serving size of a product in discrete units in a multiserving container is more than 1 unit;

(iii) Per cup popped for popcorn in a multiserving container.

(11) If a product is promoted on the label, labeling, or advertising for a use that differs in quantity by twofold or greater from the use upon which the reference amount in § 101.12(b) was based (e.g., liquid cream substitutes promoted for use with breakfast cereals), the manufacturer shall provide a second column of nutrition information based on the amount customarily consumed in the promoted use, in addition to the nutrition information per serving derived from the reference amount in § 101.12(b), except that nondiscrete bulk products that are used primarily as ingredients (e.g., flour, sweeteners, shortenings, oils), or traditionally used for multipurposes (e.g., eggs, butter, margarine), and multipurpose baking mixes are exempt from this requirement.

* * * * *

3. Section 101.12 is revised to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

(a) The general principles and factors that the Food and Drug Administration (FDA) considered in arriving at the reference amounts customarily consumed per eating occasion (reference amounts) which are set forth in paragraph (b) of this section, are that:

(1) FDA calculated the reference amounts for persons 4 years of age or older to reflect the amount of food customarily consumed per eating occasion by persons in this population group. These reference amounts are based on data set forth in appropriate national food consumption surveys.

(2) FDA calculated the reference amounts for an infant or child under 4 years of age to reflect the amount of food customarily consumed per eating occasion by infants up to 12 months of age or by children 1 through 3 years of age, respectively. These reference amounts are based on data set forth in appropriate national food consumption surveys. Such reference amounts are to be used only when the food is specially formulated or processed for use by an infant or by a child under 4 years of age.

(3) An appropriate national food consumption survey includes a large sample size representative of the demographic and socioeconomic characteristics of the relevant population group and must be based on consumption data under actual conditions of use.

(4) To determine the amount of food customarily consumed per eating occasion, FDA considered the mean, median, and mode of the consumed amount per eating occasion.

(5) When survey data were insufficient, FDA took various other sources of information on serving sizes of food into consideration. These other sources of information included:

(i) Serving sizes used in dietary guidance recommendations or recommended by other authoritative systems or organizations;

(ii) Serving sizes recommended in comments;

(iii) Serving sizes used by manufacturers and grocers; and

(iv) Serving sizes used by other countries.

(6) Because they reflect the amount customarily consumed, the reference amount and, in turn, the serving size declared on the product label are based on only the edible portion of food, and not bone, seed, shell, or other inedible components.

(7) The reference amount is based on the major intended use of the food (e.g., milk as a beverage and not as an addition to cereal).

(8) The reference amounts for products that are consumed as an ingredient of other foods, but that may also be consumed in the form in which they are purchased (e.g., butter), are based on use in the form purchased.

(9) FDA sought to ensure that foods that have similar dietary usage, product characteristics, and customarily consumed amounts have a uniform reference amount.

(b) The following reference amounts shall be used as the basis for determining serving sizes for specific products:

TABLE 1.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: INFANT AND TODDLER FOODS [1,2,3,4]

Product category	Reference amount	Label statement[5]
Cereals, dry instant	15 g	——— cup (——— g)
Cereals, prepared, ready-to-serve	110 g	——— cup(s) (——— g)
Other cereal and grain products, dry ready-to-eat, e.g., ready-to-eat cereals, cookies, teething biscuits, and toasts.	7 g for infants and 20 g for toddlers for ready-to-eat cereals; 7 g for all others.	——— cup(s) (——— g) for ready-to-eat cereals; ——— piece(s) (——— g) for others
Dinners, desserts, fruits, vegetables or soups, dry mix.	15 g	——— tbsp(s) (——— g); ——— cup(s) (——— g)
Dinners, desserts, fruits, vegetables or soups, ready-to-serve, junior type.	110 g	——— cup(s) (——— g); ——— cup(s) (——— mL)
Dinners, desserts, fruits, vegetables or soups, ready-to-serve, strained type.	60 g	——— cup(s) (——— g); ——— cup(s) (——— mL)
Dinners, stews or soups for toddlers, ready-to-serve.	170 g	——— cup(s) (——— g); ——— cup(s) (——— mL)

TABLE 1.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: INFANT AND TODDLER FOODS [1,2,3,4]—Continued

Product category	Reference amount	Label statement[5]
Fruits for toddlers, ready-to-serve	125 g	——— cup(s) (——— g)
Vegetables for toddlers, ready-to- serve	70 g	——— cup(s) (——— g)
Eggs/egg yolks, ready-to-serve	55 g	——— cup(s) (——— g)
Juices, all varieties	120 mL	4 fl oz (120 mL)

[1] These values represent the amount of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry cereal) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for frozen novelties).

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY [1,2,3,4]

Product category	Reference amount	Label statement[5]
Bakery products:		
Biscuits, croissants, bagels, tortillas, soft bread sticks, soft pretzels, corn bread, hush puppies.	55 g	——— piece(s) (——— g)
Breads (excluding sweet quick type), rolls	50 g	——— piece(s) (——— g) for sliced bread and distinct pieces (e.g., rolls); 2 oz (56 g/ ——— inch slice) for unsliced bread
Bread sticks—see crackers		
Toaster pastries—see coffee cakes		
Brownies	40 g	——— piece(s) (——— g) for distinct pieces; fractional slice (——— g) for bulk
Cakes, heavy weight (cheese cake; pineapple upside-down cake; fruit, nut, and vegetable cakes with more than or equal to 35 percent of the finished weight as fruit, nuts, or vegetables or any of these combined)[6].	125 g	——— piece(s) (——— g) for distinct pieces (e.g., sliced or individually packaged products); ——— fractional slice (——— g) for large discrete units
Cakes, medium weight (chemically leavened cake with or without icing or filling except those classified as light weight cake; fruit, nut, and vegetable cake with less than 35 percent of the finished weight as fruit, nuts, or vegetables or any of these combined; light weight cake with icing; Boston cream pie; cupcake; eclair; cream puff)[7].	80 g	——— piece(s) (——— g) for distinct pieces (e.g., cupcake); ——— fractional slice (——— g) for large discrete units
Cakes, light weight (angel food, chiffon, or sponge cake without icing or filling)[8].	55 g	——— piece(s) (——— g) for distinct pieces (e.g., sliced or individually packaged products); ——— fractional slice (——— g) for large discrete units
Coffee cakes, crumb cakes, doughnuts, Danish, sweet rolls, sweet quick type breads, muffins, toaster pastries.	55 g	——— piece(s) (——— g) for sliced bread and distinct pieces (e.g., doughnut); 2 oz (56 g/visual unit of measure) for bulk products (e.g., unsliced bread)
Cookies	30 g	——— piece(s) (——— g)
Crackers that are usually not used as snack, melba toast, hard bread sticks, ice cream cones[9].	15 g	——— piece(s) (——— g)
Crackers that are usually used as snacks	30 g	——— piece(s) (——— g)
Croutons	7 g	——— tbsp(s) (——— g); ——— cup(s) (——— g); ——— piece(s) (——— g) for large pieces
French toast, pancakes, variety mixes	110 g prepared for french toast and pancakes; 40 g dry mix for variety mixes.	——— piece(s) (——— g); ——— cup(s) (——— g) for dry mix
Grain-based bars with or without filling or coating, e.g., breakfast bars, granola bars, rice cereal bars.	40 g	——— piece(s) (——— g)
Ice cream cones—see crackers		

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4] Continued

Product category	Reference amount	Label statement[5]
Pies, cobblers, fruit crisps, turnovers, other pastries.	125 g	——— piece(s) (———g) for distinct pieces; ——— fractional slice (——— g) for large discrete units
Pie crust	1/6 of 8 inch crust; 1/8 of 9 inch crust	1/6 of 8 inch crust (——— g); 1/8 of 9 inch crust (——— g)
Pizza crust	55 g	——— fractional slice (——— g)
Taco shells, hard	30 g	——— shell(s) (——— g)
Waffles	85 g	——— piece(s) (——— g)
Beverages:		
Carbonated and noncarbonated beverages, wine coolers, water.	240 mL	8 fl oz (240 mL)
Coffee or tea, flavored and sweetened	240 mL prepared	8 fl oz (240 mL)
Cereal and Other Grain Products:		
Breakfast cereals (hot cereal type), hominy grits.	1 cup prepared; 40 g plain dry cereal; 55 g flavored, sweetened dry cereal.	——— cup(s) (——— g)
Breakfast cereals, ready-to-eat, weighing less than 20 g per cup, e.g., plain puffed cereal grains.	15 g	——— cup(s) (——— g)
Breakfast cereals, ready-to-eat weighing 20 g or more but less than 43 g per cup; high fiber cereals containing 28 g or more of fiber per 100 g.	30 g	——— cup(s) (——— g)
Breakfast cereals, ready-to-eat, weighing 43 g or more per cup; biscuit types.	55 g	——— piece(s) (——— g) for large distinct pieces (e.g., biscuit type);——— cup(s) (——— g) for all others
Bran or wheat germ	15 g	——— tbsp(s) (——— g); ——— cup(s) (——— g)
Flours or cornmeal	30 g	——— tbsp(s) (——— g); ——— cup(s) (——— g)
Grains, e.g., rice, barley, plain	140 g prepared; 45 g dry	——— cup(s) (——— g)
Pastas, plain	140 g prepared; 55 g dry	——— cup(s) (——— g); ——— piece(s) (——— g) for large pieces (e.g., large shells or lasagna noodles) or 2 oz (56 g/visual unit of measure) for dry bulk products (e.g., spaghetti)
Pastas, dry, ready-to-eat, e.g., fried canned chow mein noodles.	25 g	——— cup(s) (——— g)
Starches, e.g., cornstarch, potato starch, tapioca, etc..	10 g	——— tbsp (——— g)
Stuffing	100 g	——— cup(s) (——— g)
Dairy Products and Substitutes:		
Cheese, cottage	110 g	——— cup (——— g)
Cheese used primarily as ingredients, e.g., dry cottage cheese, ricotta cheese.	55 g	——— cup (——— g)
Cheese, grated hard, e.g., Parmesan, Romano.	5 g	——— tbsp (——— g)
Cheese, all others except those listed as separate categories—includes cream cheese and cheese spread.	30 g	——— piece(s) (——— g) for distinct pieces;——— tbsp(s) (——— g) for cream cheese and cheese spread; 1 oz (28 g/visual unit of measure) for bulk
Cheese sauce—see sauce category		
Cream or cream substitutes, fluid	15 mL	1 tbsp (15 mL)
Cream or cream substitutes, powder	2 g	——— tsp (——— g)
Cream, half & half	30 mL	2 tbsp (30 mL)
Eggnog	120 mL	1/2 cup (120 mL); 4 fl oz (120 mL)
Milk, condensed, undiluted	30 mL	2 tbsp (30 mL)
Milk, evaporated, undiluted	30 mL	2 tbsp (30 mL)
Milk, milk-based drinks, e.g., instant breakfast, meal replacement, cocoa.	240 mL	1 cup (240 mL); 8 fl oz (240 mL)
Shakes or shake substitutes, e.g., dairy shake mixes, fruit frost mixes.	240 mL	1 cup (240 mL); 8 fl oz (240 mL)
Sour cream	30 g	——— tbsp (——— g)
Yogurt	225 g	——— cup (——— g)
Desserts:		
Ice cream, ice milk, frozen yogurt, sherbet: all types, bulk and novelties (e.g., bars, sandwiches, cones).	1/2 cup-includes the volume for coatings and wafers for the novelty type varieties.	——— piece(s) (——— g) for individually wrapped or packaged products; 1/2 cup (——— g) for others
Frozen flavored and sweetened ice and pops, frozen fruit juices: all types, bulk and novelties (e.g., bars, cups).	85 g	——— piece(s) (——— g) for individually wrapped or packaged products; ——— cup(s) (——— g) for others
Sundae	1 cup	1 cup (——— g)

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4] Continued

Product category	Reference amount	Label statement[5]
Custards, gelatin or pudding	1/2 cup	——— piece(s) (——— g) for distinct unit (e.g., individually packaged products); 1/2 cup (——— g) for bulk
Dessert Toppings and Fillings:		
Cake frostings or icings	35 g	——— tbsp(s) (——— g)
Other dessert toppings, e.g., fruits, syrups, spreads, marshmallow cream, nuts, dairy and nondairy whipped toppings.	2 tbsp	2 tbsp (——— g); 2 tbsp (60 mL)
Pie fillings	85 g	——— cup(s) (——— g)
Egg and Egg Sustitutes:		
Egg mixtures, e.g., egg foo young, scrambled eggs, omelets.	110 g	——— piece(s) (——— g) for discrete pieces; ——— cup(s) (——— g)
Eggs (all sizes)[9]	50 g	1 large, medium, etc. (——— g)
Egg substitutes	An amount to make 1 large (50 g) egg	——— cup(s) (——— g); ——— cup(s) (——— mL)
Fats and Oils:		
Butter, margarine, oil, shortening	1 tbsp	1 tbsp (——— g); 1 tbsp (15 mL)
Butter replacement, powder	2 g	——— tsp(s) (——— g)
Dressings for salads	30 g	——— tbsp (——— g); ——— tbsp (——— mL)
Mayonnaise, sandwich spreads, mayonnaise-type dressings.	15 g	——— tbsp (——— g)
Spray types	0.25 g	About ——— seconds spray (——— g)
Fish, Shellfish, Game Meats[10], and Meat or Poultry Substitutes:		
Bacon substitutes, canned anchovies,[11] anchovy pastes, caviar.	15 g	——— piece(s) (——— g) for discrete pieces; ——— tbsp(s) (——— g) for others
Dried, e.g., jerky	30 g	——— piece(s) (——— g)
Entrees with sauce, e.g., fish with cream sauce, shrimp with lobster sauce.	140 g cooked	——— cup(s) (——— g); 5 oz (140 g/visual unit of measure) if not measurable by cup
Entrees without sauce, e.g., plain or fried fish and shellfish, fish and shellfish cake.	85 g cooked; 110 g uncooked[12]	——— piece(s) (——— g) for discrete pieces; ——— cup(s) (——— g); ——— oz (——— g/visual unit of measure) if not measurable by cup[13]
Fish, shellfish or game meat[10], canned[11]	55 g	——— piece(s) (——— g) for discrete pieces; ——— cup(s) (——— g); 2 oz (56 g/——— cup) for products that are difficult to measure the g weight of cup measure (e.g., tuna); 2 oz (56 g/——— pieces) for products that naturally vary in size (e.g., sardines)
Substitute for luncheon meat, meat spreads, Canadian bacon, sausages and frankfurters.	55 g	——— piece(s) (——— g) for distinct pieces (e.g., slices, links); ——— cup(s) (——— g); 2 oz (56 g/visual unit of measure) for nondiscrete bulk product
Smoked or pickled[11] fish, shellfish, or game meat[10]; fish or shellfish spread.	55 g	——— piece(s) (——— g) for distinct pieces (e.g., slices, links) or ——— cup(s) (——— g); 2 oz (56 g/visual unit of measure) for nondiscrete bulk product
Substitutes for bacon bits—see miscellaneous category.		
Fruits and Fruit Juices:		
Candied or pickled[11]	30 g	——— piece(s) (——— g)
Dehydrated fruits—see snacks category		
Dried	40 g	——— piece(s) (——— g) for large pieces (e.g., dates, figs, prunes); ——— cup(s) (——— g) for small pieces (e.g., raisins)
Fruits for garnish or flavor, e.g., maraschino cherries[11].	4 g	1 cherry (——— g)
Fruit relishes, e.g., cranberry sauce, cranberry relish.	70 g	——— cup(s) (——— g)
Fruits used primarily as ingredients, avocado.	30 g	See footnote 13
Fruits used primarily as ingredients, others (cranberries, lemon, lime).	55 g	——— piece(s) (——— g) for large fruits; ——— cup(s) (——— g) for small fruits measurable by cup[13]
Watermelon	280 g	See footnote 13
All other fruits (except those listed as separate categories), fresh, canned, or frozen.	140 g	——— piece(s) (——— g) for large pieces (e.g., strawberries, prunes, apricots, etc.); ——— cup(s) (——— g) for small pieces (e.g., blueberries, raspberries, etc.)[13]

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4] Continued

Product category	Reference amount	Label statement[5]
Juices, nectars, fruit drinks	240 mL	8 fl oz (240 mL)
Juices used as ingredients, e.g., lemon juice, lime juice.	5 mL	1 tsp (5 mL)
Legumes:		
Bean cake (tofu)[11], tempeh	85 g	——— piece(s) (——— g) for discrete pieces; 3 oz (84 g/visual unit of measure) for bulk products
Beans, plain or in sauce	130 g for beans in sauce or canned in liquid and refried beans prepared; 90 g for others prepared; 35 g dry.	——— cup (——— g)
Miscellaneous Category:		
Baking powder, baking soda, pectin	1 g	——— tsp (——— g)
Baking decorations, e.g., colored sugars and sprinkles for cookies, cake decorations.	1 tsp or 4 g if not measurable by teaspoon	——— piece(s) (——— g) for discrete pieces;1/4 tsp (——— g)
Batter mixes, bread crumbs	30 g	——— tbsp(s) (——— g);——— cup(s) (——— g)
Cooking wine	30 mL	2 tbsp (30 mL)
Drink mixers (without alcohol)	Amount to make 240 mL drink (without ice)	——— fl oz (——— mL)
Chewing gum[9]	3 g	——— piece(s) (——— g)
Meat, poultry and fish coating mixes, dry; seasoning mixes, dry, e.g., chili seasoning mixes, pasta salad seasoning mixes.	Amount to make one reference amount of final dish.	——— tsp(s) (——— g); ——— tbsp(s) (——— g)
Salad and potato toppers, e.g., salad crunchies, salad crispins, substitutes for bacon bits.	7 g	——— tbsp(s) (——— g)
Salt, salt substitutes, seasoning salts (e.g., garlic salt).	1 g	——— tsp(s) (——— g);——— piece(s) (——— g) for discrete pieces (e.g., individually packaged products)
Spices, herbs (other than dietary supplements).	1/4 tsp or 0.5 g if not measurable by teaspoon	1/4 tsp (——— g); ——— piece(s) (——— g) if not measurable by teaspoons (e.g., bay leaf)
Mixed Dishes:		
Measurable with cup, e.g., casseroles, hash, macaroni and cheese, pot pies, spaghetti with sauce, stews, etc..	1 cup	1 cup (——— g)
Not measurable with cup, e.g., burritos, egg rolls, enchiladas, pizza, pizza rolls, quiche, all types of sandwiches.	140 g, add 55 g for products with gravy or sauce topping, e.g., enchilada with cheese sauce, crepe with white sauce[14].	——— piece(s) (——— g) for discrete pieces; ——— fractional slice (——— g) for large discrete units
Nuts and Seeds:		
Nuts, seeds, and mixtures, all types: sliced, chopped, slivered, and whole.	30 g	——— piece(s) (——— g) for large pieces (e.g., unshelled nuts);——— tbsp(s) (——— g) ;——— cup(s) (——— g) for small pieces (e.g., peanuts, sunflower seeds)
Nut and seed butters, pastes, or creams	2 tbsp	2 tbsp (——— g)
Coconut, nut and seed flours	15 g	——— tbsp(s) (——— g); ——— cup (——— g)
Potatoes and Sweet Potatoes/Yams:		
French fries, hash browns, skins, or pancakes.	70 g prepared; 85 g for frozen unprepared french fries.	——— piece(s) (——— g) for large distinct pieces (e.g., patties, skins); 2.5 oz (70 g/——— pieces) for prepared fries; 3 oz (84 g/——— pieces) for unprepared fries
Mashed, candied, stuffed, or with sauce	140 g	——— piece(s) (——— g) for discrete pieces (e.g., stuffed potato); ——— cup(s) (——— g)
Plain, fresh, canned, or frozen	110 g for fresh or frozen; 125 g for vacuum packed; 160 g for canned in liquid.	——— piece(s) (——— g) for discrete pieces;——— cup(s) (——— g) for sliced or chopped products
Salads:		
Gelatin salad	120 g	——— cup (——— g)
Pasta or potato salad	140 g	——— cup(s) (——— g)
All other salads, e.g., egg, fish, shellfish, bean, fruit, or vegetable salads.	100 g	——— cup(s) (——— g)
Sauces, Dips, Gravies and Condiments:		
Barbecue sauce, hollandaise sauce, tartar sauce, other sauces for dipping (e.g., mustard sauce, sweet and sour sauce), all dips (e.g., bean dips, dairy-based dips, salsa).	2 tbsp	2 tbsp (——— g); 2 tbsp (60 mL)
Major main entree sauces, e.g., spaghetti sauce.	125 g	——— cup (——— g); ——— cup (——— mL)

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4] Continued

Product category	Reference amount	Label statement[5]
Minor main entree sauces (e.g., pizza sauce, pesto sauce), other sauces used as toppings (e.g., gravy, white sauce, cheese sauce), cocktail sauce.	1/4 cup	1/4 cup (——— g); 1/4 cup (120 mL)
Major condiments, e.g., catsup, steak sauce, soy sauce, vinegar, teriyaki sauce, marinades.	1 tbsp	1 tbsp (——— g); 1 tbsp (15 mL)
Minor condiments, e.g., horseradish, hot sauces, mustards, worcestershire sauce.	1 tsp	1 tsp (——— g); 1 tsp (5 mL)
Snacks:		
All varieties, chips, pretzels, popcorns, extruded snacks, fruit- based snacks (e.g., fruit chips,) grain-based snack mixes.	30 g	——— cup(s) (——— g) for small pieces (e.g., popcorn) ——— piece(s) (——— g) for large pieces (e.g., large pretzels; pressed dried fruit sheet); 1 oz (28 g/visual unit of measure) for bulk products (e.g., potato chips)
Soups:		
All varieties	245 g	——— cup (——— g); ——— cup (——— mL)
Sugars and Sweets:		
Baking candies (e.g., chips)	15 g	——— piece(s) (——— g) for large pieces; ——— tbsp(s) (——— g) for small pieces; 1/2 oz (14 g/visual unit of measure) for bulk products
Hard candies, breath mints	2 g	——— piece(s) (——— g)
Hard candies, roll-type, mini-size in dispenser packages.	5 g	——— piece(s) (——— g)
Hard candies, others	15 g	——— piece(s) (——— g) for large pieces;——— tbsp(s) (——— g) for "mini-size" candies measurable by tablespoon; 1/2 oz (14 g/visual unit of measure) for bulk products
All other candies	40 g	——— piece(s) (——— g); 1 1/2 oz (42 g/visual unit of measure) for bulk products
Confectioner's sugar	30 g	——— cup (——— g)
Honey, jams, jellies, fruit butter, molasses	1 tbsp	1 tbsp (——— g); 1 tbsp (15 mL)
Marshmallows	30 g	——— cup(s) (——— g) for small pieces; ——— piece(s) (——— g) for large pieces
Sugar	4 g	——— tsp (——— g) ; ——— piece(s) (——— g) for discrete pieces (e.g., sugar cubes, individually packaged products)
Sugar substitutes	An amount equivalent to one reference amount for sugar in sweetness.	——— tsp(s) (——— g) for solids; ——— drop(s) (——— g) for liquid; ——— piece(s) (——— g) (e.g., individually packaged products)
Syrups	30 mL for syrups used primarily as an ingredient (e.g., light or dark corn syrup); 60 mL for all others.	2 tbsp (30 mL) for syrups used primarily as an ingredient; 1/4 cup (60 mL) for all others
Vegetables:		
Vegetables primarily used for garnish or flavor, e.g., pimento, parsley.	4 g	——— piece(s) (——— g); ——— tbsp(s) (——— g) for chopped products
Chili pepper, green onion	30 g	——— piece(s) (——— g)[13]; ——— tbsp(s) (——— g); ——— cup(s) (——— g) for sliced or chopped products
All other vegetables without sauce: fresh, canned, or frozen.	85 g for fresh or frozen; 95 g for vacuum packed; 130 g for canned in liquid, cream-style corn, canned or stewed tomatoes, pumpkin, or winter squash.	——— piece(s) (——— g) for large pieces (e.g., brussel sprouts); ——— cup(s) (——— g) for small pieces (e.g., cut corn, green peas); 3 oz (84 g/visual unit of measure) if not measurable by cup[13]
All other vegetables with sauce: fresh, canned, or frozen.	110 g	——— piece(s) (——— g) for large pieces (e.g., brussel sprouts); ——— cup(s) (——— g) for small pieces (e.g., cut corn, green peas); 4 oz (112 g/visual unit of measure) if not measurable by cup
Vegetable juice	240 mL	8 fl oz (240 mL)
Olives[11]	15 g	——— piece(s) (——— g); ——— tbsp(s) (——— g) for sliced products
Pickles, all types[11]	30 g	1 oz (28 g/visual unit of measure)
Pickle relishes	15 g	——— tbsp (——— g)
Vegetable pastes, e.g., tomato paste	30 g	——— tbsp (——— g)

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1,2,3,4] Continued

Product category	Reference amount	Label statement[5]
Vegetable sauces or purees, e.g, tomato sauce, tomato puree.	60 g	——— cup (——— g); ——— cup (——— mL)

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; dry, fresh, and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

[6] Includes cakes that weigh 10 g or more per cubic inch.

[7] Includes cakes that weigh 4 g or more per cubic inch but less than 10 g per cubic inch.

[8] Includes cakes that weigh less than 4 g per cubic inch.

[9] Label serving size for ice cream cones and eggs of all sizes will be 1 unit. Label serving size of all chewing gums that weigh more than the reference amount that can reasonably be consumed at a single-eating occasion will be 1 unit.

[10] Animal products not covered under the Federal Meat Inspection Act or the Poultry Products Inspection Act, such as flesh products from deer, bison, rabbit, quail, wild turkey, geese, ostrich, etc.

[11] If packed or canned in liquid, the reference amount is for the drained solids, except for products in which both the solids and liquids are customarily consumed (e.g., canned chopped clam in juice).

[12] The reference amount for the uncooked form does not apply to raw fish in § 101.45 or to single-ingredient products that consist of fish or game meat as provided for in § 101.9(b)(j)(11).

[13] For raw fruit, vegetables, and fish, manufacturers should follow the label statement for the serving size specified in Appendices A and B to the regulation entitled "Food Labeling; Guidelines for Voluntary Nutrition Labeling; and Identification of the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish; Definition of Substantial Compliance; Correction" (56 FR 60880 as amended 57 FR 8174, March 6, 1992).

[14] Pizza sauce is part of the pizza and is not considered to be sauce topping.

(c) If a product requires further preparation, e.g., cooking or the addition of water or other ingredients, and if paragraph (b) of this section provides a reference amount for the product in the prepared but not the unprepared form, then the reference amount for the unprepared product shall be determined using the following rules:

(1) Except as provided for in paragraph (c)(2) of this section, the reference amount for the unprepared product shall be the amount of the unprepared product required to make the reference amount for the prepared product as established in paragraph (b) of this section.

(2) For products where the entire contents of the package is used to prepare one large discrete unit usually divided for consumption, the reference amount for the unprepared product shall be the amount of the unprepared product required to make the fraction of the large discrete unit closest to the reference amount for the prepared product as established in paragraph (b) of this section.

(d) The reference amount for an imitation or substitute food or altered food, such as a "low calorie" version, shall be the same as for the food for which it is offered as a substitute.

(e) If a food is modified by incorporating air (aerated), and thereby the density of the food is lowered by 25 percent or more in weight than that of an appropriate reference regular food as described in § 101.13(j)(1)(ii)(A), and the reference amount of the regular food is in grams, the manufacturer may determine the reference amount of the aerated food by adjusting for the difference in density of the aerated food relative to the density of the appropriate reference food provided that the manufacturer will show FDA detailed protocol and records of all data that were used to determine the density-adjusted reference amount for the aerated food. The reference amount for the aerated food shall be rounded to the nearest 5-g increment. Such products shall bear a descriptive term indicating that extra air has been incorporated (e.g., whipped, aerated). The density-adjusted reference amounts described in paragraph (b) of this section may not be used for cakes except for cheese cake. The differences in the densities of different types of cakes having different degrees of air incorporation have already been taken into consideration in determining the reference amounts for cakes in § 101.12(b). In determining the difference in density of the aerated and the regular food, the manufacturer shall adhere to the following:

(1) The regular and the aerated product must be the same in size, shape, and volume. To compare the densities of products having nonsmooth surfaces (e.g., waffles), manufacturers shall use a device or method that ensures that the volumes of the regular and the aerated products are the same.

(2) Sample selections for the density measurements shall be done in accordance with the provisions in § 101.9(e).

(3) Density measurements of the regular and the aerated products shall be conducted by the same trained operator using the same methodology (e.g., the same equipment, procedures, and techniques) under the same conditions.

(4) Density measurements shall be replicated a sufficient number of times to ensure that the average of the measurements is representative of the true differences in the densities of the regular and the "aerated" products.

(f) For products that have no reference amount listed in paragraph (b) of this section for the unprepared or the prepared form of the product and that consist of two or more foods packaged and presented to be consumed together (e.g., peanut butter and jelly, cracker

and cheese pack, pancakes and syrup, cake and frosting), the reference amount for the combined product shall be determined using the following rules:

(1) For bulk products (e.g., peanut butter and jelly), the reference amount for the combined product shall be the reference amount, as established in paragraph (b) of this section, for the ingredient that is represented as the main ingredient plus proportioned amounts of all minor ingredients.

(2) For products where the ingredient represented as the main ingredient is one or more discrete units (e.g., cracker and cheese pack, pancakes and syrup, cake and frosting), the reference amount for the combined product shall be either the number of small discrete units or the fraction of the large discrete unit that is represented as the main ingredient that is closest to the reference amount for that ingredient as established in paragraph (b) of this section plus proportioned amounts of all minor ingredients.

(3) If the reference amounts are in compatible units, they shall be summed (e.g., the reference amount for equal volumes of peanut butter and jelly for which peanut butter is represented as the main ingredient would be 4 tablespoons (tbsp) (2 tbsp peanut butter plus 2 tbsp jelly). If the reference amounts are in incompatible units, the weights of the appropriate volumes should be used (e.g., 110 grams (g) pancakes plus the gram weight of the proportioned amount of syrup).

(g) The reference amounts set forth in paragraphs (b) through (f) of this section shall be used in determining whether a product meets the criteria for nutrient content claims, such as "low calorie," and for health claims. If the serving size declared on the product label differs from the reference amount, and the product meets the criteria for the claim only on the basis of the reference amount, the claim shall be followed by a statement that sets forth the basis on which the claim is made. That statement shall include the reference amount as it appears in paragraph (b) of this section followed, in parenthesis, by the amount in common household measure if the reference amount is expressed in measures other than common household measures (e.g., for a beverage, "Very low sodium, 35 mg or less per 240 mL (8 fl oz)").

(h) The Commissioner of Food and Drugs, either on his or her own initiative or in response to a petition submitted pursuant to part 10 of this chapter, may issue a proposal to establish or amend a reference amount in paragraph (b) of this section. A petition to establish or amend a reference amount shall include:

(1) Objective of the petition;

(2) A description of the product;

(3) A complete sample product label including nutrition label, using the format established by regulation;

(4) A description of the form (e.g., dry mix, frozen dough) in which the product will be marketed;

(5) The intended dietary uses of the product with the major use identified (e.g., milk as a beverage and chips as a snack);

(6) If the intended use is primarily as an ingredient in other foods, list of foods or food categories in which the product will be used as an ingredient with information on the prioritization of the use;

(7) The population group for which the product will be offered for use (e.g., infants, children under 4 years of age);

(8) The names of the most closely related products (or in the case of foods for special dietary use and imitation or substitute foods, the names of the products for which they are offered as substitutes);

(9) The suggested reference amount (the amount of edible portion of food as consumed, excluding bone, seed, shell, or other inedible components) for the population group for which the product is intended with full description of the methodology and procedures that were used to determine the suggested reference amount. In determining the reference amount, general principles and factors in paragraph (a) of this section should be followed.

(10) The suggested reference amount shall be expressed in metric units. Reference amounts for fluids shall be expressed in milliliters. Reference amounts for other foods shall be expressed in grams except when common household units such as cups, tablespoons, and teaspoons, are more appropriate or are more likely to promote uniformity in serving sizes declared on product labels. For example, common household measures would be more appropriate if products within the same category differ substantially in density, such as frozen desserts.

(i) In expressing the reference amounts in milliliters, the following rules shall be followed:

(A) For volumes greater than 30 milliliters (mL), the volume shall be expressed in multiples of 30 mL.

(B) For volumes less than 30 mL, the volume shall be expressed in milliliters equivalent to a whole number of teaspoons or 1 tbsp, i.e., 5, 10, or 15 mL.

(ii) In expressing the reference amounts in grams, the following general rules shall be followed:

(A) For quantities greater than 10 g, the quantity shall be expressed in the nearest 5-g increment.

(B) For quantities less than 10 g, exact gram weights shall be used.

(11) A petition to create a new subcategory of food with its own reference amount shall include the following additional information:

(i) Data that demonstrate that the new subcategory of food will be consumed in amounts that differ enough from the reference amount for the parent category to warrant a separate reference amount. Data must include sample size; and the mean, standard deviation, median, and modal consumed amount per eating occasion for the petitioned product and for other products in the category, excluding the petitioned product. All data must be derived from the same survey data.

(ii) Documentation supporting the difference in dietary usage and product characteristics that affect the consumption size that distinguishes the petitioned product from the rest of the products in the category.

(12) A claim for categorical exclusion under § 25.24 of this chapter or an environmental assessment under § 25.31 of this chapter; and

(13) In conducting research to collect or process food consumption data in support of the petition, the following general guidelines should be followed.

(i) Sampled population selected should be representative of the demographic and socioeconomic characteristics of the target population group for which the food is intended.

(ii) Sample size (i.e., number of eaters) should be large enough to give reliable estimates for customarily consumed amounts.

(iii) The study protocol should identify potential biases and describe how potential biases are controlled for or, if not possible to control, how they affect interpretation of results.

(iv) The methodology used to collect or process data should be fully documented and should include: study design, sampling procedures, materials used (e.g., questionnaire, and interviewer's manual), procedures used to collect or process data, methods or procedures used to control for unbiased estimates, and procedures used to correct for nonresponse.

(14) A statement concerning the feasibility of convening associations, corporations, consumers, and other interested parties to engage in negotiated rulemaking to develop a proposed rule consistent with the

Negotiated Rulemaking Act (5 U.S.C. 561).

Dated: August 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

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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; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is modifying its regulations that require percent juice labeling for beverages that purport to contain fruit or vegetable juice and those that pertain to the common or usual names for such products. The agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" that gave interested persons 30 days to comment on technical issues not raised in earlier comments pertaining to this rulemaking. This document addresses those comments that the agency received and corrects inconsistencies and unintended technical consequences of specific provisions in these regulations.

EFFECTIVE DATE: Section 101.30 is effective May 8, 1993; § 102.33 is effective May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5007.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of January 6, 1993, FDA published a final rule entitled "Food Labeling; Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages" (58 FR 2897) (hereinafter referred to as the "juice labeling final rule"). The document amended the food labeling regulations to establish in new § 101.30 (21 CFR 101.30) requirements for label declaration of the percentage of juice in foods that purport to be beverages containing fruit or vegetable juice. In that final rule, FDA also revised the existing common or usual name regulation for diluted fruit or vegetable juice beverages in § 102.33 (21 CFR 102.33). In addition, the agency revoked the common or usual name regulation for noncarbonated beverage products that contain no fruit or vegetable juice, § 102.30 (21 CFR 102.30).

That final rule was part of FDA's ongoing rulemaking on juice beverages. It also responded to the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) (the 1990 amendments), which amended section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) to provide that foods that purport to be beverages containing vegetable or fruit juice must bear a statement with appropriate prominence on the information panel of the label of the total percentage of such fruit or vegetable juice contained in the food.

II. Technical Issue Comments

In the Federal Register of January 6, 1993 (58 FR 2066), FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (hereinafter referred to as "the implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters, such as inconsistencies or unintended consequences of specific provisions, that were not raised in earlier comments. In order to ensure consideration of any comments, interested persons were to certify that their comments were so limited. FDA further advised that if the comments identify any technical provisions of the final rules that FDA agrees should be changed, FDA will take action to modify those provisions. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

Following publication of the juice labeling final rule, FDA received 17 letters containing one or more comments from industry, consumers, and other interested persons. Most of the submissions requested exemption from the effective date of May 8, 1993, for 1 year, until May 8, 1994. FDA published a document in the Federal Register of April 7, 1993 (58 FR 18057), that proposed a 1-year exemption as requested. (FDA intends to finalize that action in a future issue of the Federal Register.) Seven of the submissions included technical issue comments as described in the implementation final rule. One submission requested clarification of an issue and another raised an issue that is beyond the scope of technical concerns (e.g., establishment of a minimum Brix value for an additional juice and that would require further rulemaking). FDA is responding below to the specific technical issues that the comments raised.

Because the changes FDA is making in these final rules are technical in nature and are based on a full opportunity for comment, the agency finds that further opportunity for public comment on them is unnecessary.

III. Revisions To Be Codified

A. 21 CFR 101.30—Declaration of the Percentage of Juice

1. Type Size Requirement

Section 101.30(e) (21 CFR 101.30(e)) provides for placement of the percentage of juice declaration on the information panel of the label. Section 101.30(e)(1) requires that it appear near the top of the information panel, with no other printed label information appearing above the statement except the brand name, product name, logo, or universal product code. Section 101.30(e)(2) states that it must 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 brand name, product name, logo, or universal code. These requirements are necessary to provide sufficient prominence to the percent juice declaration.

FDA received requests for a modification to § 101.30(e)(2) to include the title phrase "Nutrition Facts," appearing in the nutrition label, in the list of exceptions regarding type or print size. Otherwise, the comments stated that, the percent juice declaration will always have to be as large as that phrase. The comments contended that this situation would raise extremely difficult space problems on the label and would detract seriously from the importance of the required nutrition information. One comment pointed out that the nutrition labeling regulation, in § 101.9(d)(1)(iii) (21 CFR 101.9(d)(1)(iii)), requires that the type size for the presentation of several of the elements of the nutrition label be not

less than 8 point, and that § 101.9(d)(2) requires that "Nutrition Facts" be set in a type size larger than all other print size in the nutrition label. Thus, the comment stated that it must be in at least 9 point type although, according to examples in Appendix B to part 101 (21 CFR part 101), on typical packages, the "Nutrition Facts" title would be no smaller than 13 point type.

FDA acknowledges that it had not intended that the type size of the declaration of the percentage of juice be controlled by the type size of the "Nutrition Facts" title of the nutrition label when both appear on the information panel. Under section 2(b)(i)(A) of the 1990 amendments, FDA intended that "Nutrition Facts" be particularly prominent. Therefore, to minimize space problems on the information panel of the label and to ensure that "Nutrition Facts" has the prominence that FDA intended, FDA is modifying § 101.30(e)(2) by adding the title phrase "Nutrition Facts" to the list of exceptions.

2. Acid Correction of Brix Values

In § 101.30(h)(1), FDA specified minimum Brix values that the agency will use for enforcement purposes in calculating the labeled percentage of juice from concentrate in a juice or juice beverage. Several comments to the July 2, 1991, juice labeling proposal had asked the agency to provide for acid correction of the Brix values when the percentage of juice is based on Brix determined by refractometer. FDA did not provide for acid corrections in the juice labeling final rule, however, because it did not have sufficient information to provide for correction of Brix for all juices. Different types of acids found in juices may affect the Brix determination by refractometer differently.

Two trade associations commented that they concurred with FDA regarding the lack of information for corrections for acidity in certain juices but requested that where it has information, such as in the case of citrus juices that contain citric acid (e.g., grapefruit, orange, and tangerine juices), the agency provide for acid correction when the Brix is determined by refractometer. The comments suggested that the agency could include a footnote at the end of the table of Brix values in § 101.30(h)(1) to set out the correction.

In support of the need for the correction, the comments explained that it has been common practice in the fruit juice industry to use refractometers to measure degrees Brix and to equate the readings obtained to "total soluble solids." Refractometers and hydrometers calibrated in degrees Brix and used on sucrose solutions such as those made from cane or beet sugar give readings equivalent to the percent of sugar by weight of the solution. However, in the case of juices or beverages containing other soluble matter, such as citric acid, the reading from a refractometer is slightly less than the true total soluble solids. The comments contended that, to make up for this deficiency, the citrus industry has applied a correction to the refractometer readings based on the amount of acid present, expressed as percent by weight of anhydrous citric acid. The comments noted that Yeatman (Ref. 1) has developed a formula for correction of refractometer readings for citric acid content, based on information published in an earlier acid correction table by Stevens and Baier (Ref. 2).

The comments further pointed out that FDA's discussion in the preamble to the juice labeling final rule leaves the impression that in cases where the standard of identity provides for acid correction, and FDA has listed a value based on the standard of identity in § 101.30(h)(1), corrections would be used. For example, the standard of identity for grapefruit juice in § 146.132 (21 CFR 146.132) specifically provides for acid correction, and both the standard of identity and § 101.30(h)(1) list the same minimum Brix value for grapefruit juice from concentrate.

The comments also noted that the standard of identity for frozen concentrate for lemonade in § 146.120 (21 CFR 146.120) implies that an acid correction is made. In addition, in the case of the orange juice standards of identity in part 146 (21 CFR part 146), the regulations refer to soluble solids content and to Brix hydrometer, implying all of the soluble solids. Soluble solids include both the soluble solids from sugars (that are measured by the refractometer) as well as those soluble solids contributed by citric acid and other minor juice constituents (Ref. 2). Thus, the comment contended, because FDA equated the 11.8 percent orange juice "soluble solids" in the standard of identity for orange juice from concentrate in § 146.145 with the 11.8 degrees Brix set forth in the new regulation (§ 101.30(h)(1)), the agency implicitly recognizes the need to apply an acid correction factor if a refractometer is used to determine the Brix.

FDA has reconsidered its position on including a footnote for acid correction in § 101.30(h)(1). The agency acknowledges that acid corrections are proper for citrus juices that contain significant amounts of citric acid, such as grapefruit juice, and certain concentrated citrus juices when the Brix is determined by refractometer. As noted by the comment, FDA has incorporated such a provision in the standard of identity for grapefruit juice in § 146.132, allowing for the correction of acidity using the Yeatman formula (Ref. 1). The method for soluble solids content in citrus fruit juice by refractometer, cited in the 15th edition of the Official Methods of Analysis of the Association of Official Analytical Chemists in 983.17 (AOAC method), also provides for correcting for acidity for citrus juice by the same method as provided in § 146.132. The AOAC method is listed as "first action 1983" and not as final action and is not being specifically referenced in the technical amendments set out below. FDA notes that the AOAC method, if used, should be corrected in the last line by changing the figure 0.064 to 0.0064 in calculating the percent of anhydrous citric acid in the sample.

FDA has not provided for correction for acidity when the Brix of orange juice is determined by refractometer in the orange juice standards because the level of citric acid in the unconcentrated juices is generally low. Where the citric acid content is less than 2 percent, the correction of the Brix value determined by refractometer to obtain the total soluble solids content as measured by hydrometer is usually insignificant (Ref. 2). However, manufacturers are free to use whatever method they deem suitable to ensure that any concentrated or reconstituted orange juice products will comply with the requirements for soluble solids content prescribed by the standards of identity in part 146.

Accordingly, the agency concludes that it is reasonable to provide in § 101.30(h)(1) for a correction of citric acid in the Brix values for citrus juices (grapefruit, orange, and tangerine juices) determined by refractometer and is including a footnote in the table as requested by the comments.

3. Auxiliary Percentage Statements

Section 101.30(l) states that a beverage required to bear a percentage juice declaration on its label shall not bear any other percentage declaration that describes the juice content of the beverage in its label or in its labeling (e.g., "100 percent natural" or "100 percent pure"). However, the regulation continues, the label or labeling may bear percentage statements clearly unrelated to the juice content (e.g., "provides 100 percent of the U.S. RDA of vitamin C"). (RDA is the acronym for recommended daily allowance.)

Several comments asked whether the prohibition against the use of the "100 percent pure" statement in § 101.30(l) applies to products that are 100 percent juice. One comment noted that, for years, one State has had an administrative rule designed to reduce consumer confusion between full-strength juice and diluted juice beverages by requiring citrus products to bear either a "100 percent juice" or "100 percent pure" declaration. It also noted that Florida's Seal of Approval mark, a registered trademark of the Florida Department of Citrus, that bears the term "100% pure" as an integral part of the mark, appears on a substantial portion of the orange juice labels in the United States. It further noted that no exception appears to be provided in § 101.30 for such established trademarks. It contended that prohibition of the term "100% pure" on all such products could cause an economic hardship over and above the changes mandated by the 1990 amendments because the Florida citrus industry and label owners will lose the goodwill and consumer and trade recognition attached to the Seal of Approval mark.

FDA established the prohibition in § 101.30(l) concerning declarations that use a percentage to describe a term other than juice, such as "100 percent pure" or "100 percent natural" declarations, because these statements have the potential to mislead the consumer into believing that the product is 100 percent juice, especially when they appear on the principal display panel of the label. On the other hand, FDA agreed with those comments on the proposal that claimed that statements clearly unrelated to juice content, e.g., "provides 100 percent of U.S. RDA of vitamin C," are not misleading, and it specifically exempted such statements in § 101.30(l).

FDA notes that it has defined a "100 percent juice" product in terms of volume, i.e., as one containing 1 part juice and no water (58 FR 2915). A "100 percent juice" product may also contain nonjuice ingredients provided the added ingredients do not result in a diminution of the juice soluble solids or, in the case of an expressed juice, a change in the volume. Such nonjuice ingredients must be declared in conjunction with the 100 percent juice statement if the statement used on a label panel that does not bear an ingredient statement, except when the presence of the nonjuice ingredients is declared as part of the statement of identity of the product (§ 101.30(b)(3)).

FDA believes that it is reasonable to limit the prohibition in § 101.30(l) to juice beverages that contain less than 100 percent juice and is modifying § 101.30(l), accordingly. This modification is consistent with the agency's intent, as expressed in the July 2, 1991, juice labeling proposal, to limit the use of percentage statements such as "100 percent natural" or "100 percent pure" because they have the potential to mislead consumers to believe that the product is "100 percent juice" when the product is actually a diluted juice beverage (56 FR 30452 at 30457). This action is also consistent with FDA's conclusions in the preamble to the juice labeling final rule in which the agency stated that use of a percentage, particularly 100 percent, in conjunction with terms other than "juice," such as "pure" and "natural," on a beverage that is not full strength can be misleading, particularly where the 100 percent figure appears near the name of the product but not in close proximity to a prominent declaration of the percentage of juice (58 FR 2897 at 2903).

With respect to the use of the term "pure" in the labeling of juices, the agency stated in the preamble to the juice labeling final rule (58 FR 2897 at 2903) that comments to the July 2, 1991, juice labeling proposal (56 FR 30452) presented opinions on the word "pure," but they did not provide sufficient information on which to base a regulation. FDA concluded that while there is no specific prohibition against the use of the terms "pure" and "natural," it has discouraged the use of these terms because they are ambiguous and may be misleading. For example, "orange juice," "pure orange juice," and "100 percent pure orange juice" are identical foods, but "pure" as applied to the food implies that other identical products are "impure" or "not pure" if they do not bear the same term on their label. The term "natural" is similarly ambiguous when applied to any food except flavors and flavorings. However, the agency concluded that the juice labeling final rule was not the appropriate vehicle to consider whether terms such as "pure" and "natural" should be permitted on juice product labels. The agency continues to hold this position.

The term "natural" was also discussed in another final rule, that FDA published in the **Federal Register** of January 6, 1993 (58 FR 2302 at 2407), entitled "Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food." FDA stated that it was not undertaking rulemaking to establish a definition for "natural" at that time. The agency will maintain its current policy not to restrict the use of the term "natural" except for added color, synthetic substances, and flavors as provided in § 101.22 (21 CFR 101.22). Additionally, the agency stated that it will maintain its policy (Ref. 3) regarding the use of "natural," as meaning that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food. In addition, the agency continues to distinguish between natural and artificial flavors as outlined in § 101.22.

Thus, even though FDA is not prohibiting the use of terms such as "100 percent pure" and "100 percent natural" on "100 percent juice" products, it continues to believe that these terms are appropriately used on such products in extremely limited circumstances. Manufacturers must be certain that any use of these terms on such products is consistent with agency policy as stated above, or they risk regulatory action on the grounds that their labeling is false or misleading. FDA has particular concerns about when, if ever, such terms would be appropriately used on a 100 percent juice product that contains nonjuice ingredients.

Therefore, to clarify the intent of § 101.30(l), the agency is amending paragraph (l) by limiting the prohibition on the use of other percentage statements that describe the juice to beverages that contain less than 100 percent juice. The provision in § 101.30(l) to allow labels or labeling of 100 percent juices, as well as those of beverages that contain less than 100 percent juice, to bear percentage statements clearly unrelated to juice content (e.g., "provides 100 percent of U.S. RDA of vitamin C") remains unchanged.

B. § 102.33—Declaration of "From Concentrate" in Identity Statement

Section 102.33(g) of the common or usual name regulation for beverages requires that if one or more juices in a juice beverage is made from concentrate, the name of the juice must include a term indicating that fact, such as "from concentrate" or "reconstituted." Further, such term must be included in the name of each individual juice, or it may be stated once adjacent to the product name so that it applies to all of the juices, (e.g., "cherry juice (from concentrate) in a blend of two other juices" or "cherry juice in a blend of 2 other juices (from concentrate)"). Under § 102.33(g), the term must be in a type

size no less than one-half the height of the letters in the name of the juice.

A comment requested that § 102.33(g) be modified to include an exception from the requirement for declaration of the juice concentrate in the name of the product when a concentrated juice is added to an expressed juice of the same species to adjust the Brix. For example, addition of apple juice concentrate to expressed apple juice may be necessary to improve the palatability or to meet the U.S. Department of Agriculture grade standard for apple juice. The comment stated that, under the terms of § 102.33(g), the common or usual name of the food would be "apple juice and apple juice concentrate" because no provision is made for adjusting the Brix level of a lower Brix juice by addition of the concentrated form of the juice. On the other hand, the comment noted, the standard of identity for grapefruit juice in § 146.132(a) provides for the addition of concentrate to enhance the total solids of the juice without a requirement for including the name of the concentrated juice in the name of the finished food.

FDA agrees with the comment that when the Brix of an expressed juice is adjusted by adding a small amount of the concentrated form of that juice, declaration of the name of the concentrated juice in the name of the food is not necessary. Therefore, FDA is providing an exception in new § 102.33(g)(2) as requested. However, FDA notes that any juice concentrate added to the expressed juice would have to be declared in the ingredient statement of the label.

This has been agency policy for a number of years. It serves to distinguish products that are made from unconcentrated and undiluted single strength juices from single strength juices that are prepared by diluting concentrated juices with water, i.e., "reconstituted juices." As noted by the comment, the standard of identity for grapefruit juice in § 146.132, which dates back to January 27, 1981 (46 FR 8462), does not require declaration of the presence of concentrated grapefruit juice in the name of the food when grapefruit juice is prepared from unconcentrated, undiluted liquid extracted from mature grapefruit to which concentrated grapefruit juice is added to adjust the soluble solids content. However, the standard of identity, in § 146.132(a)(3)(i)(*b*), states that if the food is prepared from: (1) Concentrated grapefruit juice and water, and/or grapefruit juice or (2) grapefruit juice from concentrate and grapefruit juice, the name of the food is "grapefruit juice from concentrate." Thus, in the latter case, if any of the grapefruit juice concentrate used in the manufacture of the product is diluted with water, the name of the food must contain the phrase "from concentrate." FDA believes that this policy is necessary to clearly distinguish the two forms of juice and has applied it to lemon juice (§ 146.114). It also believes that it is reasonable to include the policy in the common or usual name provisions for labeling of other juices and juice beverages.

Therefore, for consistency with this existing policy, FDA is providing in § 102.33(g)(2) that if water is also added to such a single juice mixture (expressed juice and concentrated juice), the name of the juice must include the term "from concentrate" or "reconstituted," irrespective of the fact that a major portion of the juice may be expressed juice.

One comment stated that the requirement in § 102.33(g) is too broad. It stated that while the use of the term "from concentrate" is appropriate for 100 percent juice products that are made from concentrate, it is not necessary for diluted juices containing less than 100 percent juice because the common or usual name will already bear a qualifying term such as "diluted" or "drink" (e.g., "diluted grape juice beverage" or "grape juice drink"). Another comment that expressed a similar opinion suggested amending § 102.33(g) to read, "If one or more juices in a 100 percent juice beverage is made from concentrate * * *."

FDA does not agree with these comments. Consumers have a right to know when juice products are made from concentrate, i.e., when water has been added to the juice product, whether the resulting product is a 100 percent juice or not. Diluted juices may be made with expressed juices or concentrated juice. Some consumers may prefer to purchase only expressed juice products. These consumers should be able to distinguish such beverages from those that are made from concentrate in the same manner that consumers of 100 percent juices do. Therefore, FDA is not making the requested change. Moreover, in any case, such a change would be beyond the scope of this document.

IV. Other Matters

A comment requested clarification of the exemption from the total percent juice declaration requirement in § 101.30(c) for those beverages that contain minor amounts of juice for flavoring that, except for a flavor description with a fruit or vegetable name, are not labeled with fruit or vegetable juice claims. Despite the broad application of this exemption, the comment stated, the preamble to the percent juice labeling regulation in one instance narrowly refers to "juice flavored waters and seltzers" (58 FR 2898 through 2899, January 6, 1993). The comment asked that FDA state in the technical corrections document that this exemption applies to all beverage products in compliance with the terms of the regulation.

FDA acknowledges that the exemption in § 101.30(c) is not limited to flavored waters and seltzers. While these products were the subject of the comments that suggested the exemption, they were included in the preamble only as examples of the types of products that may contain minor amounts of juice (usually less than 2 percent) for flavoring purposes. The exemption from label declaration of the percentage of juice applies to any beverage that contains only minor amounts of juice for flavoring, that is labeled with a flavor description using terms such as "flavor," "flavored," or "flavoring" with a fruit or vegetable name, and that does not bear: (1) The term "juice" on the label other than in the ingredient statement; (2) an explicit vignette depicting the fruit or vegetable from which the flavor derives, such as juice exuding from a fruit or vegetable; or (3) specific physical resemblance to a juice or distinctive juice characteristic such as pulp (§ 101.30(c)).

V. References

The following references have been placed on display in the Dockets Management Branch (HFA–305) Food and Drug Administration, rm. 1–23. 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Yeatman, Senzel, and Springer, "Correction of Refractometer Readings for Citric Acid Content in Frozen Concentrate for Lemonade," *Journal of the Association of Official Analytical Chemists*, vol. 59, p. 368, 1976.

2. Stevens, J. W., and W. E. Baier, "Refractometric Determination of Soluble Solids in Citrus Juices," *Industrial and Engineering Chemistry*, Analytical Edition, vol. 11, pp. 447–449, 1939.

3. Raymond E. Newberry, letter to Clinton K. Davies, September 29, 1988.

VI. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain technical modifications to the percent juice labeling regulation in § 101.30 and the common or usual name regulation in § 102.33, according to the standard in Executive Order 12291 and

as required by the Regulatory Flexibility Act (Pub. L. 96–354). The modifications are intended to clarify certain provisions of the final rule and do not add new requirements. Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

VII. 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 impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

21 CFR 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, 21 CFR parts 101 and 102 are 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 amended by revising paragraphs (e)(2) and (l), and by amending the table in paragraph (h)(1) by revising the entries for " grapefruit," "orange," and "tangarine" to read as follows:

§ 101.30 Percentage juice declaration for foods purporting to be beverages that contain fruit or vegetable juice.

* * * * *

(e) * * *

(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 brand name, product name, logo, universal product code, or the title phrase "Nutrition Facts" appearing in the nutrition information as required by § 101.9.

* * * * *

(h)(1) * * *

Juice	100 percent juice[1]
• • • • •	
Grapefruit	[3]10.0
• • • • •	
Orange	[3]11.8
• • • • •	
Tangerine	[3]11.8
• • • • •	

[1]Indicates Brix value unless other value specified.

• • • • •

[3]Brix values determined by refractometer for citrus juices may be corrected for citric acid.

* * * * *

(l) A beverage required to bear a percentage juice declaration on its label, that contains less than 100 percent juice, shall not bear any other percentage declaration that describes the juice content of the beverage in its label or in its labeling (e.g., "100 percent natural" or "100 percent pure"). However, the label or labeling may bear percentage statements clearly unrelated to juice content (e.g., "provides 100 percent of U.S. RDA of vitamin C").

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).

4. Section 102.33 effective May 8, 1994, is amended by redesignating paragraph (g) as paragraph (g)(1) and by adding a new paragraph (g)(2) to read as follows:

§ 102.33 Beverages that contain fruit or vegetable juice.

* * * * *

(g) * * *

(2) If the juice is 100 percent single species juice consisting of juice directly expressed from a fruit or vegetable whose Brix level has been raised by the addition of juice concentrate from the same fruit or vegetable, the name of the juice need not include a statement that the juice is from concentrate. However, if water is added to this 100 percent juice mixture to adjust the Brix level, the product shall be labeled with the term "from concentrate" or "reconstituted."

Dated: August 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19260 Filed 8–12–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket Nos. 90N–0134 and 91N–0162]

RIN 0905–AD08

Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making technical amendments to the regulations that require nutrition labeling on most foods that are regulated by FDA. The agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" that gave interested persons an opportunity to comment on technical issues not raised in earlier comments pertaining to nutrition labeling. This document addresses the comments received and corrects unintended technical consequences of the regulations.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of January 6, 1993, FDA issued a final rule entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label" (58 FR 2079) (and corrected at 58 FR 17328, April 2, 1993) (hereinafter referred to as "the mandatory nutrition labeling final rule") to amend its regulations to: (1) Require nutrition labeling on most foods that are regulated by FDA; (2) revise the list of required nutrients and food components and the conditions for declaring them in nutrition labeling; (3) specify a new format for declaring nutrition information; (4) allow specified products to be exempt from nutrition

labeling; and (5) prescribe a simplified form of nutrition labeling and the circumstances in which such simplified nutrition labeling may be used. This action was taken to implement the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535), which amended the Federal Food, Drug, and Cosmetic Act (the act).

II. Technical Issue Comments

In the Federal Register of January 6, 1993, FDA issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (58 FR 2066) (hereinafter referred to as "the implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that it was not interested in receiving comments that it had already received and considered. FDA urged interested persons to limit their comments to technical matters, such as inconsistencies or unintended consequences of specific provisions, if not raised in earlier comments. In order to ensure consideration of any comments, interested persons were to certify that their comments were so limited. FDA further advised that if the comments identified any technical provisions of the final rules that FDA agrees should be changed, FDA would take action to modify those provisions. FDA stated that this approach would enable it to quickly address any unintended effects of the final rules, yet not delay the finality that is imperative for both industry and consumers.

Following publication of the mandatory nutrition labeling final rule, FDA received approximately 60 letters containing one or more comments from industry, consumers, and other interested persons. Thirty-seven of these submissions submitted technical issue comments as described in the implementation final rule. The other submissions raised matters that merely require clarification or that are beyond the scope of technical concerns and would require further rulemaking. FDA is responding below to the specific technical issues that the comments raised. Because the changes FDA is making in these final rules are technical in nature and are based on a full prior opportunity for comment, the agency finds that further opportunity for public comment on them is unnecessary.

Following the discussion of technical issues that require modification of the mandatory nutrition labeling final rule, several concerns that merely require clarifications are discussed. Those issues that are beyond the scope of this document or that are otherwise not relevant to this rulemaking are not discussed below. To the extent that interested persons believe that these issues require changes in FDA's regulations, they should petition the agency for such a change (e.g., to make provision for the voluntary declaration of complex carbohydrate within the nutrition label).

III. Technical Corrections

A. Nutrient Declaration

1. One comment noted that the final rules governing the listing of total calories provides five methods by which calories in food may be determined. Some of these methods require the calculation of calories from quantitative information concerning macronutrients (e.g., grams (g) of fat) and established specific or general factors (e.g., 9 calories per g (cal/g) of fat). The comment pointed out that although FDA specifies the rounding rules to be applied in many situations, the agency did not specify whether only the final calorie determination should be rounded, or whether the quantitative values for macronutrients should be rounded before the calculation is performed.

FDA acknowledges its oversight in this regard. Calorie declaration should be calculated with as much precision as possible up to the point of the final rounding to provide consumers with the most accurate reflection of the caloric content of a serving of the food. Therefore, FDA is revising § 101.9(c)(1)(i) (21 CFR 101.9(c)(1)(i)) to state that where specific or general food factors are used, the factors should be applied to the actual amounts (i.e., not rounded) of food components (fat, carbohydrate, protein, or ingredients with specific food factors) present in a serving of the food.

2. As discussed in a companion document published elsewhere in this issue of the Federal Register pertaining to nutrient content claims, FDA and the Food Safety Inspection Service of the United States Department of Agriculture (USDA) have received and considered comments on the definition of "lean" that have convinced the two agencies to change the saturated fat criterion in the definition of this term to a maximum of 4.5 g or less of saturated fat. Related to that change, a comment has requested that the agency modify its incremental rounding rules for the declaration of saturated fat to allow 0.5 (1/2) g increments below 5 g rather than below 3 g as provided in § 101.9(c)(2)(i). The comment argued that changing the saturated fat component of the "lean" definition to 4.5 g or less without permitting companies to also label at 4.5 g would create consumer confusion and subject both FDA and food companies to needless criticism. The comment stated that required declaration of 5 g saturated fat will give the appearance of a violative product because the declared amount will exceed the criteria for the claim, leading to consumer mistrust rather than informed consumers.

FDA has given careful consideration to the potential consumer confusion, and consequent mistrust of the label, that might result were the declared amounts to exceed the criteria of the "lean" definition. As discussed in the document making technical corrections for nutrient content claims, published elsewhere in this issue of the Federal Register, the agency believes that it is important to minimize consumer confusion by ensuring that food is consistently labeled. The agency acknowledges that the argument made in virtually all of the comments that opposed FDA's proposal to require that all fat components be declared in half-gram increments was that the available analytical methods are not sensitive enough to provide reliable data to support label declarations that have that degree of precision. The agency notes however that several comments asserted that methodology does exist to support half-gram increment declarations.

The comments that opposed declaration of fat and fatty acids in half-gram increments were submitted in response to the proposed regulation, in which "total fat" was not explicitly defined but was considered, for compliance purposes, as the sum of all compounds with lipid characteristics that are extracted by the Association of Official Analytical Chemists methods or by other "reliable or appropriate analytical procedures" (former § 101.9(e)(2)). Such an approach allows for the use of many methods that measure different analytes. FDA was concerned by the obvious confusion caused by the lack of a precise definition of total fat. Thus, in the mandatory nutrition labeling final rule, FDA explicitly defined "total fat" as total lipid fatty acids expressed as triglycerides.

This definition of "total fat," in effect, will mean that certain previously used methods (e.g., some gravimetric procedures) will no longer be adequate for determining total fat content. Rather, for the labeling of fat and fatty acid contents, fatty acid content will have to be determined by other (e.g., chromatographic) methods, which have inherently greater precision than many

of the methods previously used to determine fat content. Based on further consideration of the comments submitted in response to the proposed rule, in light of the explicit definition of "total fat" in the final rule and the methods that must be used as a result of that definition, FDA finds that adequate methodologies do exist to determine the various fat components to half-gram increments, at least at certain levels of fat. Natural variation of fat content in foods is such that a determination of fat content in half-gram increments cannot be reliably made for all levels of fat in food, especially at higher levels of fat content.

Thus, the issue is whether determinations of fat and fatty acid contents in half-gram increments can be made at levels up to 5 g, or whether considerations of variability require that the use of half-gram increments be limited to levels of up to 3 g. Considering the reported precisions and reliabilities of methodologies likely now to be used for nutrition labeling purposes, the agency is not persuaded that there are any technical impediments to raising the half-gram increment to 5 g (Refs. 59, 60, and 61).

Comments to the proposed rule also raised the issue of increased cost involved in analyzing to half-gram increments. The agency has stated that cost, although a factor, is not a sufficient reason, in and of itself, to declare total fat, saturated fat, and poly- and monounsaturated fats in whole-gram increments. The public health benefits from decreasing dietary intakes of fat, especially saturated fat, justify the use of half-gram increments to allow consumers to differentiate among products that contain relatively low levels of fats. A product bearing a "lean" label would be such a food. Therefore, because consumer confusion will be decreased if the declared values of nutrients on labels are consistent with the definitions of nutrient content claims, and because the definition for the term "lean" is being modified to include foods with 4.5 g or less of saturated fat, FDA is revising § 101.9(c)(2), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) to require that levels of fat and components of fat below 5.0 g per serving be declared in half-gram increments and levels of 5.0 g and above be declared in gram increments.

3. A comment recommended that the declaration of polyunsaturated and monounsaturated fat not be required when fatty acid or cholesterol claims are made if the food qualifies for a "fat free" or "low fat" claim. The comment stated that this requirement in § 101.9(c)(2)(ii) and (c)(2)(iii) has the unintended technical consequence of adding little, if any, useful information to the nutrition label where space is at a premium, particularly for "fat free" foods, where the value for these subcomponents will be zero.

The agency agrees that the required disclosure of poly- and monounsaturated fat in the nutrition label of a "fat free" food serves no useful purpose because no additional information would be provided to consumers. Accordingly, the agency is modifying § 101.9(c)(2)(ii) and (c)(2)(iii) to remove the required disclosure of poly- and monounsaturated fat, respectively, when fatty acid or cholesterol claims are made on foods that meet the criteria in § 101.62(b)(1) for a "fat free" claim.

However, the comment failed to provide a sufficient basis for dropping the required disclosure of poly- and monounsaturated fat in "low fat" foods making fatty acid or cholesterol claims. Such foods can contain up to 3 g of fat per reference amount and have a wide variety of fatty acid compositions. The fatty acid composition of these foods thus can be significant. Therefore, the agency is retaining the requirement that poly- and monounsaturated fat be declared when fatty acid or cholesterol claims are made on "low fat" foods.

4. One comment objected to the incremental levels set by the agency for declaring *beta*-carotene as a percentage of vitamin A. The comment argued that, from a technical standpoint, required rounding of the percent of vitamin A present as *beta*-carotene to the nearest 10-percent increment is inconsistent with the incremental rounding at 2, 5, and 10-percent increments required for vitamins and minerals. This comment suggested that using the same rounding and incremental levels for *beta*-carotene as specified for vitamins and minerals in § 101.9(c)(8)(iii) would provide more accurate quantitative information for consumers when this substance is present at levels below 50 percent of the vitamin A.

The agency agrees that using the same incremental rounding procedures in § 101.9(c)(8)(vi) for *beta*-carotene as specified in § 101.9(c)(8)(iii) for vitamins and minerals would provide more precise information because § 101.9(c)(8)(vi) currently only provides for 10-percent increments, regardless of the percent present. Consistent incremental rounding procedures could also assist consumers by providing for consistent declaration of similar amounts. For example, under the final rules, 6 percent of the daily value (DV) of a vitamin or mineral would be declared as such, while 6 percent of vitamin A present as *beta*-carotene would have to be declared as 10 percent. To correct this situation, FDA is making a technical correction to § 101.9(c)(8)(vi) to state that the percent of vitamin A that is present as *beta*-carotene is to be declared in the same increments as provided in § 101.9(c)(8)(iii) for vitamins and minerals.

5. A comment requested clarification as to whether the declaration of percent of vitamin A present as *beta*-carotene is required to be placed in parenthesis when given, as shown in the example in Appendix C of the mandatory nutrition labeling final rule (58 FR 2079 at 2196).

FDA acknowledges that it failed to expressly provide for how the declaration of *beta*-carotene is to be presented. The agency is concerned that the information on *beta*-carotene be formatted to convey to the consumer that *beta*-carotene is a subcomponent of vitamin A. To do this, the information must be presented in one of two ways: When the vitamins and minerals are arranged in a single column, the information on *beta*-carotene is to be indented under the information on vitamin A, in the manner that subcomponents of the macronutrients are (as directed by the individual paragraphs for subcomponents in § 101.9(c)). When the vitamins are arrayed horizontally, the declaration of *beta*-carotene is to be placed in parenthesis after the declaration of vitamin A. Section 101.9(c)(8)(vi) is revised to include these provisions.

B. Format

6. Package design firms stated that a numeric kerning value (which in effect limits the proximity of one letter to another) has meaning only for a particular type setting system. Each such system has a unique numeric scale, and, as a result, a setting of -4 is meaningless for all systems other than the one that FDA used in designing its sample labels. One design firm recommended that kerning should be "tight but never touching."

The agency acknowledges its error in including a single kerning limit that would be required for all type setting systems. FDA's intent was to require sufficient space between letters to improve the legibility of the information in the nutrition label. Accordingly, in light of the lack of a consistent scale of kerning values, FDA is revising § 101.9(d)(1)(ii)(D) to delete the requirement for a -4 setting and to state that letters should never touch.

7. Several comments pointed out that the type size specifications in § 101.9(d)(1)(iii) did not address several

statements that may be declared within the nutrition label, such as the declaration of percent of vitamin A present as *beta*-carotene and the statement "Not a significant source of ————————" that is required on simplified formats for some foods (see § 101.9(f)(4)). In an apparent technical conflict, the last sentence of § 101.9(c)(8)(iii) pertaining to vitamin and mineral declaration states that "Not a significant source of ————————" should be in the same type size as nutrients that are indented (i.e., 8 point type), while sample labels in Appendices A and F of the final rule (58 FR 2079 at 2192 and 2201) show the statement in the same type size as the footnotes (i.e., 6 point type).

FDA acknowledges this technical error. To correct it, FDA is revising § 101.9(d)(1)(iii) to specify that 6 point type shall be used for all information contained within the nutrition label except for the heading "Nutrition Facts," which must be set in a type that is larger than all other print in the nutrition label, and the information required in § 101.9(d)(3), (d)(5), (d)(7), and (d)(8), which must be in type size no smaller than 8 point. This amendment is consistent with examples given in Appendices A, C, E, and F to the mandatory nutrition labeling final rule (58 FR 2079 at 2192), which show such statements in the same type size as the footnotes. In addition, FDA is removing the conflicting sentence from § 101.9(c)(8)(iii).

8. One comment pointed out that § 101.9(d)(7) did not provide for the inclusion in the nutrition label of nutrients that are not required to be declared by § 101.9(c) (i.e., voluntary nutrients such as potassium).

FDA agrees with the comment that § 101.9(d)(7) should be corrected to be inclusive of all nutrients that can be declared in the nutrition label, not only those that are required by § 101.9(c). Accordingly, the agency is amending § 101.9(d)(7) by changing "nutrient information for all nutrients required by paragraph (c) of this section" to "nutrient information for both mandatory and any voluntary nutrients listed in paragraph (c) of this section that are to be declared in the nutrition label."

9. A comment asked for clarification of § 101.9(d)(7)(i) which states that "The name of each nutrient specified in paragraph (c) of this section shall be given in a column * * *." The comment pointed out that a literal interpretation of the sentence would require all nutrients listed in § 101.9(c), even those that are voluntary, to be listed on each nutrition label.

The agency agrees that there is a need to amend § 101.9(d)(7)(i) to eliminate the chance that it would be misinterpreted to require that all nutrients listed in § 101.9(c) be listed on each nutrition label. FDA believes that the modification described in response to the previous comment eliminates some of the problem because it makes explicit that the listing of some nutrients is required, and that the listing of others is voluntary. FDA is amending § 101.9(d)(7)(i) by inserting the word "as" before "specified." As a result, it is now clear that the clause "as specified in paragraph (c) of this section," which is being set off by commas, is intended to provide the direction that the name of a nutrient to be used within the nutrition label is the name that is used in § 101.9(c). It is now also clear that the sentence in question is not, and was not, intended to be a requirement as to the nutrients that are to be listed in the nutrition label.

10. Numerous comments stated that § 101.9(d)(7)(ii), which requires that the percent DV be calculated by dividing the actual amount (i.e., the amount before rounding) of each nutrient by the Daily Reference Value (DRV), creates inconsistencies between the label declaration of rounded quantitative amounts of nutrients and the calculated percent DV. For example, calculating the percent DV for saturated fat by using an actual, unrounded, amount of 0.4 g can have the unintended consequence of necessitating a label declaration of 2 percent DV with a rounded quantitative declaration of 0 g. Comments were concerned about possible consumer confusion when such values are inconsistent (i.e., quantitative amounts by weight are zero, while the percent DV are more than zero).

Concerns also were raised about inconsistencies caused by dividing the actual amount of a nutrient before rounding by the DRV when the amount of the nutrient is much greater than zero. For example, for a product that contains from 5.50 to 6.49 g of saturated fat, the declared amount on the nutrition label would be 6 g. Dividing the amount before rounding by the DV for saturated fat of 20 g would result in a declaration of 28 percent DV at the lower end of the range and 32 percent at the upper end. Yet, if consumers were to divide the declared amount by the DV of 20 g, they would get a value of 30 percent. Concerns that this type of result could lead to consumer confusion and create consumer doubts about the accuracy of label values led the comments to recommend that the agency provide that the percent DV be calculated based on the declared (i.e., after rounding) amount.

FDA acknowledges that the required calculation of percent DV based on the actual (i.e., before rounding) amount has the unintended consequence of causing inconsistencies between the declared amounts and the percent DV for nutrients. The agency agrees that calculating the percent DV by dividing the rounded amounts by the DRV will eliminate inconsistencies between the two declared amounts, thereby reducing the potential for consumer confusion.

However, doing so has the disadvantage of masking some differences between products. This disadvantage is illustrated by considering products that make relative claims, such as "reduced" or "less" claims. If a manufacturer of a product that contains 13 g of total fat (20 percent of the DV) reduced the fat by 50 percent, the new product would contain 6.5 g total fat (10 percent of the DV). However, rounding rules in § 101.9(c)(2) require 6.5 g of fat to be declared as 7 g, and calculation of the percent DV based on the rounded 7 g value would require a declaration of 11 percent DV instead of 10 percent. Therefore, if the manufacturer wanted to make a claim of 50 percent less fat, consumers might question the accuracy of the label claim based on the percent DV declaration.

This issue of rounding procedures is also addressed in a companion document published elsewhere in this issue of the **Federal Register** pertaining to nutrient content claims. In both that document and this document, because there are legitimate advantages and disadvantages for using both rounded and unrounded values, the agency is providing for the use of either. In the case of calculating the percent DV of nutrients, the largest discrepancy that can appear between the percent DV declared when using an unrounded value rather than a rounded value will be 2 percent. This is the level below which the agency has stated that amounts are insignificant (e.g., § 101.9(c)(8)(iii) provides for amounts of vitamins and minerals present at less than 2 percent DV to be declared as zero on the nutrition label). Therefore, FDA does not believe that the consumer will be misled by the use of one value over the other.

Manufacturers are directed to use whichever value, the unrounded or rounded value, that will provide for the greatest amount of consistency on the food label. For example, where quantitative amounts by weight must be declared as zero, the rounded values should be used to calculate percent DV, so that both the quantitative amount by

weight and the percent DV are declared as zero. Similarly, when unrounded values support the basis for nutrient content claims, they should be used. This action will serve to prevent unnecessary consumer confusion that could result from inconsistencies on the food label.

Accordingly, FDA is modifying § 101.9(d)(7)(ii) to provide that the percent DV for all nutrients other than protein is to be calculated by dividing either the amount of the nutrient declared on the label or the actual amount of the nutrient (i.e., before rounding) by the DRV for that nutrient.

11. Comments have asserted that the footnote required by § 101.9(d)(10) that states that fat, carbohydrate, and protein furnish 9, 4, and 4 cal/g, respectively, can create consumer confusion because the regulations allow for four other methods of calculating calorie content. The comments stated that the other methods for determining calorie content are widely used, and when they are used, consumers will not be able to apply the 9, 4, and 4 general factors and obtain results that agree with the calorie declaration on the label. In addition, comments pointed out that discrepancies also will occur because of the use of rounding rules. For example, when a product contains 2 g of fat, the general factor of 9 cal/g of fat would indicate that there should be 18 calories from fat in the product. However, § 101.9(c)(1)(ii) requires that calories from fat be declared to the nearest 5-cal increment up to 50 cal. Therefore, the label of the product would declare 20 cal from fat. There was concern expressed in the comments that the lack of agreement caused by either the use of other methods for calculating calorie content or the rounding rules could lead consumers to question the accuracy of all of the nutrient values on the label.

The agency continues to believe that the public can benefit from having the caloric conversion factors on the label, and that these factors can be a useful rule-of-thumb to help consumers to better understand and use the nutrition information on the label. However, FDA is convinced on the basis of the comments that the number of food products using the general food factors to calculate calories (as provided for in § 101.9(c)(1)(i)(B)) is less than the agency had expected. Because the factors do not appear to be as applicable as the agency had anticipated when developing the final rules, FDA is persuaded that, on balance, there is no real need to make the information mandatory on nutrition labeling. The possible benefits are diminished if discrepancies caused by the use of alternative means of calculating calorie content lead to consumer confusion. Accordingly, FDA is revising § 101.9(d)(10) to make the use of this footnote voluntary.

However, the agency encourages manufacturers to include the calorie conversion information in nutrition labels whenever the general factors are used to calculate calories. FDA is not convinced that discrepancies caused by the use of rounding rules are of sufficient magnitude to affect the decision to use the footnote since in no case would the calorie declaration be rounded by more than 5 cal, and most often it will be less. Consumers are not expected to be bothered by such small differences.

FDA does not believe that the fact that this footnote was required on labels with more than 40 square inches (sq in) available to bear labeling from the time of publication of the final mandatory nutrition labeling rules until publication of this document has created a hardship for those manufacturers who have already printed labels including the information. The agency calculated the dimensions of intermediate-sized packages assuming the presence of the footnote, so that no manufacturer was required to include the footnote when there was insufficient space to do so.

As a result of this change, FDA is making conforming amendments to § 101.9(d)(1)(iii), (d)(11)(i), (f)(5), (j)(5)(ii), and (j)(13)(ii)(C) to delete the reference to § 101.9(d)(10) as "required" information. FDA is also providing in § 101.9(d)(11)(ii) for the presentation of the information described in § 101.9(d)(10).

12. Many comments requested greater flexibility in presenting the required nutrition information. The most frequent request was for permission to use a horizontal form of presentation for the nutrition label on packages that have more than 40 sq in available to bear labeling but that do not have sufficient space to place the full vertical format. Comments argued that the tabular display provided for use on packages with 40 or less sq in of available label space (see § 101.9(j)(13)(ii)(A)) is needed on packages such as pie boxes; bread wrappers and bags used for foods such as frozen vegetables and popcorn, where a seam is located in the center of the panel on which the nutrition label is to be placed; and plastic milk jugs, where indentations created to give strength to the jug prevent the use of a vertical display. Several of these comments asked whether it was permissible to position the nutrition label at a right angle to other print on the label or to split the list of macronutrients required in § 101.9(c)(2) through (c)(7) into two columns. Other comments requested additional flexibility to accommodate the shape (rather than just the size) of food packages, stating that contiguous space is not always available to permit placement of footnotes to the side of the nutrition label. A manufacturer of a fortified meal replacement product asked for guidance on how to accommodate a long list of vitamins and minerals whose declaration was mandatory because they were added to the product. The comment stated that the list of vitamins and minerals would not fit in the vertical display of the basic format, even when the footnotes were moved to the side.

FDA believes that it would not be consistent with section 2(b)(1)(A) of the 1990 amendments to provide the full flexibility sought by these comments. The agency decided in the final rule that if the nutrition label was to be readily observable and comprehensible, it must be presented in as consistent a manner as possible from label to label. Thus, it was the agency's determination that, whenever possible, the nutrition information must be presented in the vertical format shown in § 101.9(d)(12) or, when there is insufficient vertical space for the full length of required information, in a split presentation with the footnote to the side as provided for in § 101.9(d)(11) and shown in Appendix D of the mandatory nutrition labeling final rule (58 FR 2198). However, the agency did not take into account the fact that for a small, narrowly defined group of packages with more than 40 sq in of available label space, there is insufficient continuous vertical label space on the information panel to include either presentation of the nutrition label. According to the agency's calculations, the Nutrition Facts title, serving size information, and the 14 mandatory nutrients listed in § 101.9(c), when presented in accordance with § 101.9(d), require approximately 3 in of continuous vertical label space. FDA's final rule failed to make provision for those few packages with more than 40 sq in of available label space but without 3 in of continuous vertical label space on the information panel.

Therefore, to correct this inadvertent omission, the agency is modifying § 101.9(d)(11) by redesignating current § 101.9(d)(11) as § 101.9(d)(11)(i) and adding a new § 101.9(d)(11)(iii) to state that when there is insufficient continuous vertical label space (i.e., approximately 3 in) to accommodate the required components of the nutrition label up to and including the mandatory declaration of iron, the nutrition label

may be presented in a tabular display as shown. In this display, the footnote required by § 101.9(d)(9) is given to the far right of the label, and additional vitamins and minerals beyond the four that are required (i.e., vitamin A, vitamin C, calcium, and iron) are arrayed horizontally following the required vitamin and mineral declarations.

FDA is also responding to the comment about the placement of long lists of added vitamins and minerals in highly fortified products, where the package has sufficient continuous vertical space to list the required components of the nutrition label through the mandatory declaration of iron yet does not have sufficient space to list additional vitamins and minerals. FDA is providing in § 101.9(d)(11)(ii) for an additional break that will allow the continuation of the list of vitamins and minerals beyond the declaration of iron to be moved to the right, just above the footnote required by § 101.9(d)(9).

The agency advises that it does not consider labels with split columns of macronutrients (i.e., where the declarations of nutrients other than vitamins and minerals are split into two columns) to be in compliance with § 101.9. As explained in the preamble to the final rule (58 FR 2079 at 2136 and 2139), FDA believes that a consistent look to the required nutrition information on food packages will help consumers find and recognize the information for what it is—a profile of the nutrient content of the food. Consistent treatment of similar information is important for the effective use of the nutrition label by consumers. Therefore, the agency is concerned that a proliferation of display arrangements will lead to consumer confusion and retard public efforts to become familiar with and use the information.

Accordingly, the agency is limiting the possible types of display to the standard vertical display shown in § 101.9(d)(12) or the tabular display shown in § 101.9(d)(11)(iii). If nutrition information were to be split in different ways on different products, it would increase the likelihood that some parts of the nutrition information would be missed, contrary to section 2(b)(1)(A) of the 1990 amendments (which is incorporated into the act through section 403(q)(1) of the act as defining the labeling necessary to assist consumers in maintaining healthy dietary practices), thereby reducing the utility of the nutrition label. Therefore, FDA is not revising the regulation to allow the list of macronutrients to be split into two columns.

While FDA acknowledges that current regulations only require that the statement of identity and the net quantity of contents declaration be printed generally parallel to the base on which the package rests when it is displayed as it was designed to be displayed (§§ 101.3(d) and 101.105(f) (21 CFR 101.3(d) and 101.105(f)), respectively), the agency urges manufacturers to place the nutrition information in a position where consumers can easily read it while shopping. Such placement does not preclude positioning the standard vertical display so that the print is at a right angle to the base of the package. Unlike the statement of identity and the net quantity of contents declarations, which consumers should be able to read without removing the package from the shelf, reading the nutrition information almost always requires taking the package in hand. Once this is done, it requires little extra effort on the part of the consumer to rotate the package into position to read the nutrition information.

13. A few manufacturers and packers commented that the format requirements did not allow for listing of nutrition information for more than one food within a single nutrition label when the package contains an assortment of foods (e.g., individual packs of cereal in a variety of flavors). These comments asked whether this omission was a technical oversight and requested permission to use an aggregate nutrition label that would allow for inclusion of nutrition information for several different foods within one nutrition label. FDA received similar requests with respect to the current practices of declaring the nutrition information for several different flavors of ice creams or varieties of bakery items on one package with the statement of identity clearly specifying which flavor or variety was present in the particular container. In the case of the ice cream containers, the label of round containers that are used interchangeably for several different flavors includes nutrition information for each flavor, while the lid, which is the principal display panel, specifies the particular flavor in the container.

FDA acknowledges its oversight in not providing for an aggregate label display that would allow for the declaration of nutrition information for more than one product when the outer package contains a variety of foods or an assortment of foods that are intended to be eaten individually. The agency believes that one aggregate label if well executed can provide the full information in a manner that can be understood by the consumer and that minimizes the label space required for nutrition labeling. While it is concerned that the use of aggregate labels on packages that contain only one product but that may be used interchangeably for other products of the same type (e.g., round ice cream containers) may be confusing to some consumers, the agency acknowledges the practicality of using aggregate nutrition labels on these containers. In addition, the agency believes that the opportunity to compare the nutrition information on different flavors or varieties of the same product may be of interest to consumers of such products. Accordingly, FDA is adding a new paragraph, § 101.9(d)(13), to allow the use of aggregate nutrition labels on the outer labels of packages that contain two or more separately packaged foods that are intended to be eaten individually or of packages that are used interchangeably for the same type of food.

When aggregate labels are used, it is necessary to clearly identify each different food immediately under the Nutrition Facts title so that the consumer will be able to easily locate the information pertinent to each individual item. Also, both the quantitative amount by weight (i.e., g/milligram (mg) amounts) and the percent DV for each nutrient must be declared in separate columns under the name of the individual food. As discussed in the mandatory nutrition labeling final rule (58 FR 2079 at 2140), declaring more than 1 g/mg next to the nutrient name is likely to be cumbersome and confusing to consumers. The preferable alternative to minimize consumer confusion is to provide separate columns for g/mg amounts.

In all other aspects, the aggregate display must comply with the format requirements in § 101.9(d) to the maximum extent possible. An example of an aggregate label display is included in § 101.9(d)(13)(ii).

14. A few comments addressed the implications for the nutrition label of FDA's requirement in § 101.15(c)(2) (21 CFR 101.15(c)(2)) that if a label contains any representation in a second language, all required information must be given in both English and the second language. One comment requested that the definition of an intermediate-size package be increased from 40 or less sq in of available label space to 73 or less sq in when a second language is used, or that § 101.15(c)(2) be amended to not require the nutrition label to be presented in a second language. Another comment requested permission to include both languages within one

nutrition label by listing the name of the nutrient in the second language immediately after the English name (e.g., "Protein/Proteinas 2 g").

FDA advises that the options of redefining intermediate-sized packages when dual languages are used or amending § 101.15(c)(2) are beyond the scope of technical amendments. They would require full rulemaking and therefore cannot be addressed in this document. However, FDA has no objection to increasing the flexibility of the format rules to make provision for including two languages within one nutrition label (i.e., a bilingual nutrition label). Therefore, FDA is adding new § 101.9(d)(14) to specify that when nutrition labeling must appear in a second language, the nutrition information may be presented in a separate nutrition label for each language or in one nutrition label with the information in the second language following that in English. Numeric characters that are identical in the two languages need not be repeated. An example of a bilingual nutrition label is given in Appendix B of this document.

C. Dual Declaration

15. Comments pointed out an error in the serving size specified in the illustration of the dual format shown in § 101.9(e)(5) (i.e., "1/12 cup (45 g)") and suggested the serving should be revised to 1/12 cake which is the serving size currently declared on most boxes of cake mix.

The agency agrees that "1/12 cup" was an incorrect serving size for the sample label shown in § 101.9(e)(5) (58 FR 2079 at 2180). However, in its haste to correct typographical and editorial errors, the agency regretfully made a second technical error in the correction notice published on April 2, 1993, by revising the sample label to state a serving size of "1/12 cake (80 g)" (58 FR 17328 at 17330). This correction was not in accordance with regulations governing the declaration of serving size for dry product mixes. Footnote 2 to Table 2 in § 101.12(b) and (c) (21 CFR 101.12(b) and (c)) state that the reference amount for the unprepared form of a food is the amount required to make one reference amount of the prepared form. Section 101.9(b)(2)(iii) requires manufacturers to state the serving size as the household measure that most closely approximates this amount. As discussed in the document making technical corrections in the serving size regulation, published elsewhere in this issue of the **Federal Register**, the agency has determined that, for products that require further preparation before consumption, using the entire contents of a package to prepare a large discrete unit that is usually divided for consumption (e.g., a cake mix that makes a cake), the most appropriate household measure is the fraction of the package that makes a serving of the finished product. For example, if a mix makes a cake for which the serving size, as determined following the procedures specified in § 101.9(b), is one-twelfth of the cake, the serving size for the mix is one-twelfth of the package, with the metric weight of this amount expressed in parentheses. The nutrient content of the mix is then expressed, per this amount, on an "as packaged" basis. The agency has determined that a further descriptive phrase (e.g., "about 1/4 cup dry mix") would assist consumers by further clarifying the serving size declaration. The agency, also, in such cases encourages manufacturers to voluntarily provide a second column of nutrient content information for the product "as prepared." Thus, FDA is revising the serving size in the sample label given in § 101.9(e)(5) to state that the serving size for this hypothetical cake mix is "1/12 package (44 g, about 1/4 cup dry mix)."

D. Simplified Format

16. Comments pointed to a discrepancy between the preamble discussion and the codified language pertaining to the required use of the statement "Not a significant source of _____" (with the blank to be filled in by the names of nutrients present in insignificant amounts). In the preamble, FDA stated that the added statement would be required to advise consumers about the full nutritional profile of the food when claims were made as well as when nutrients are voluntarily added to a food or voluntarily declared in the nutrition label (58 FR 2079 at 2143). However, § 101.9(f)(4) only required the added statement when nutrients are added to the food or voluntarily declared in the nutrition label.

The agency acknowledges that it inadvertently failed to include in § 101.9(f)(4) that the use of claims on the label is a criterion for when the statement "Not a significant source of _____" must appear on the label. FDA continues to believe that when foods are marketed for their nutritional characteristics (as they are when claims are made), the label would be in violation of section 201(n) of the act unless consumers are advised about the full nutritional profile of the food. Accordingly, to correct this technical oversight, FDA is amending § 101.9(f)(4) to require the use of the statement "Not a significant source of _____" whenever claims are made on the label or in labeling.

E. Placement of Nutrition Label on Information Panel

17. The agency has received many comments from the food industry requesting guidance on where to locate the nutrition label, the ingredient statement, and the name and place of business of the manufacturer, packer, or distributor when there is insufficient space on the information panel for all required information. The comments stated that the type size and spacing requirements of the revised nutrition label will prevent its placement on the information panels of many foods, and they requested greater flexibility in its placement on the label.

FDA has reviewed proposed layouts that would implement the revised nutrition labeling regulations for many product labels. The agency agrees that the nutrition label under the revised regulations will often require more space than current nutrition labels, necessitating rearrangement of the required information on the food label. Section 101.9(i) specifies that the placement of the nutrition label must be in compliance with § 101.2 (21 CFR 101.2), which, in turn, specifies that the necessary information is to be on the information panel which is immediately contiguous and to the right of the principal display panel unless that panel is too small to accommodate the necessary information. In such cases, it may be moved to the next panel immediately contiguous and to the right of the information panel. Accordingly, manufacturers are currently allowed to move all required information as a unit when the previous information panel will not accommodate all such information. When all of the required information is on the information panel, § 101.2(e) specifies that there shall be no intervening material between the required information.

Section 101.2(d) also allows the required information to be split between the principal display panel and the information panel when there is insufficient space on either panel to accommodate all of it.

FDA is persuaded that increased flexibility in regard to the placement of the nutrition label would ease label overcrowding, would minimize layout problems faced by package designers, and would not hinder consumer use of the nutrition information. As a result of the graphic format requirements in § 101.9(d), the revised nutrition label format will be readily identifiable, so there is little concern that the nutrition label will be hard to locate when it

cannot be accommodated on the information panel or on the principal display panel. The only circumstance in which it may not be readily identifiable is the unusual circumstance when the required nutrition information is presented in a linear display on small or intermediate-sized packages because of severe constraints presented by the package size or shape.

On the other hand, the agency believes that it is beneficial to leave the ingredient statement (as required by § 101.4 (21 CFR 101.4)) and the name and place of business of the manufacturer, packer, or distributor (as required by § 101.5 (21 CFR 101.5)) on the information panel if there is sufficient space to accommodate them. For many years, education programs have taught consumers to look to the information panel for the ingredient statement and the manufacturer's name and place of business. In addition, the agency is concerned that because there are no graphic requirements for such information other than minimum required type size, it may be hard for consumers to locate this information if it is moved elsewhere.

Accordingly, FDA is considering the addition of a special labeling provision under § 101.9(j) to allow the nutrition label to be moved to any other panel that can be readily seen by consumers when the information panel is too small to accommodate all the necessary information. However, the agency finds that this action is beyond the scope of these technical revisions and would require proposed rulemaking. To this end, FDA is publishing elsewhere in this issue of the **Federal Register** a proposed rule to increase flexibility in the placement of the nutrition label information on packaged foods. During this rulemaking period, FDA advises that it is unlikely that the agency will take enforcement action against products that are labeled in a manner that is consistent with the proposed rule.

F. Exemptions

18. One comment from a trade association stated its belief that there was an inadvertent drafting error in that part of § 101.9(a) that would negate any exemption when a nutrition claim or any other nutrition information is included on the label or in labeling or advertising. The comment requested that the regulation be amended to negate only those exemptions for which there are statutory directives to do so. For example, section 403(q)(5)(B) of the act provides an exemption for small packages unless nutrition information is provided on the label, and sections 403(q)(5)(C) and (q)(5)(D) of the act provide exemptions for foods that contain insignificant amounts of all required nutrients and foods offered for sale by small businesses unless nutrition information was provided on the label or in labeling or advertising. The comment stated that other statutory exemptions that are not conditional (i.e., would not be negated if other nutrition information is given) include restaurant food, retail establishment food, infant formula, medical food, and food for further processing in section 403(q)(5)(A)(i) through (q)(5)(A)(v) of the act, respectively; food containing insignificant amounts of more than half the specified nutrients in section 403(q)(5)(C) of the act; food sold to restaurants in section 403(q)(5)(F) of the act; and raw agricultural commodities and fish in section 403(q)(4) of the act. Other exemptions or special labeling provisions included under § 101.9(j) (e.g., food for infants and children under 2 years of age, intermediate-sized labels, units in a multi-unit container) are nonstatutory, and the comment recommended that they not be negated by nutrition information in labeling or advertising.

FDA agrees that the negation of all exemptions when claims or other nutrition information is given on the label or in labeling or advertising is overly broad and is a technical error. To correct that error and to simplify the regulations, FDA is modifying § 101.9(a) by deleting the last sentence and § 101.9(j) by indicating the particular exemptions that are negated when claims or other nutrition information are given.

The corrections to § 101.9(j) are as follows:

a. § 101.9(j)(1) *Small business exemption*: Exemption is contingent on no claims or other nutrition information being given on the label or in labeling or advertising. This proviso is already specified in § 101.9(j)(1)(i). However, FDA has made editorial changes in this section to make its wording more consistent with that previously found in § 101.9(a). FDA has changed the term "information" to "other nutrition information in any context" and added the sentence "Claims or other nutrition information subject the food to the provisions of this section." This action is consistent with section 403(q)(5)(D) of the act.

b. § 101.9(j)(2) *Food for immediate consumption* (e.g., restaurants): Exemption in § 101.9(j)(i) through (j)(iii) is modified to be contingent on no claims or other nutrition information being given on the label or in labeling or advertising, except that in § 101.9(j)(2)(iii), the exemption for foods sold for use in restaurants will be unconditional because those food containers are not seen by consumers, and there is therefore no benefit to their bearing nutrition labeling on the food labels. Because § 101.9(j)(2)(iii) exempts both foods sold and used by restaurants, with foods sold by restaurants being conditional on claims not being made and foods used by restaurants being unconditional, to reduce possible confusion and for ease of administration, FDA is breaking § 101.9(j)(2)(iii) into two separate paragraphs, § 101.9(j)(2)(iii) and (j)(2)(iv). Section 101.9(j)(2)(iii) will address foods sold in restaurants and § 101.9(j)(2)(iv) will address foods used in restaurants. Current § 101.9(j)(2)(iv) is redesignated as § 101.9(j)(2)(v).

In new § 101.9(j)(2)(iv), which addresses foods used in restaurants, FDA is adding a clause to clarify that the paragraph addresses foods that are used in restaurants but that are not served to the consumer in the package in which they are received. Packages of food that are served to consumers (e.g., individual serving size packages of salad dressings) are covered under § 101.9(j)(2)(i) and (j)(2)(ii), and their exemption is conditioned on the absence of claims or other nutrition information.

FDA does not agree with the comment that the statutory exemption for restaurant foods is unconditional. While section 403(q)(5)(A)(i) of the act does not condition this exemption on the absence of other nutrition information, section 403(r)(5)(B) of the act notably exempts food served in restaurants or other establishments in which food is served for immediate human consumption from some but not all of the provisions that apply to nutrient content claims and does not exempt such food from the health claim provisions at all. FDA has provided for the nutrition labeling of restaurant foods that make nutrient content or health claims in § 101.10 (21 CFR 101.10).

c. § 101.9(j)(3) *Ready-to-eat foods not for immediate consumption*: Exemption is contingent on no claims or other nutrition information being made on the label or in labeling or advertising. Based on its authority under sections 201(n) and 403(a) of the act, the agency is not revising this section to make the exemption unconditional. Since 1973, when FDA first promulgated regulations governing nutrition labeling, the nutritional content of a food has been considered a material fact when a nutrition claim is made, and a food is thus misleading if it fails to bear the

required nutrition information when such a claim is made.

d. § 101.9(j)(4) *Foods that contain insignificant amounts of all required nutrients*: Exemption is contingent on no claims or other nutrition information being given on the label or in labeling or advertising. This is consistent with section 403(q)(5)(C) of the act.

e. § 101.9(j)(10) *Raw fruits, vegetables, and fish subject to the voluntary nutrition labeling program*: Exemption is contingent on no claims or other nutrition information being given on the label or in labeling or advertising. Claims or other nutrition information will subject the food to nutrition labeling in accordance with § 101.45 (21 CFR 101.45). This conclusion is based on FDA's authority under sections 201(n) and 403(a) of the act, as discussed for paragraph (j)(3) of this section above.

f. § 101.9(j)(13)(i) *Foods in small packages*: Exemption is contingent on no claims or other nutrition information being given on the label or in labeling or advertising. Even though section 403(q)(5)(B) of the act only conditions the exemption on other nutrition information present on the label, the agency is extending the conditions to other nutrition information in labeling and advertising as well based on its authority under sections 201(n) and 403(a) of the act, as discussed for paragraph (j)(3) of this section above.

The agency agrees with the comment that all of the remaining exemptions or special labeling requirements in § 101.9(j) are unconditional; that is, they will remain in effect whether or not nutrition claims or other nutrition information are provided on the label.

1. Ready-to-Eat Foods not for Immediate Consumption

19. A comment noted that the words "portioned and packaged" in the example included in § 101.9(j)(3)(v) did not agree with the preceding criteria that ready-to-eat foods that are not for immediate consumption must be "processed and prepared" primarily in the retail establishment if they are to be exempt.

The agency agrees with the comment and is amending § 101.9(j)(3)(v) to replace "portioned and packaged" with "processed and prepared." In addition, the agency is making an editorial change, modifying "sold by independent delicatessens, bakeries, and retail confectionery stores" to "sold by independent delicatessens, bakeries, or retail confectionery stores."

2. Foods for Infants and Children Less Than 4 Years of Age

20. Section 101.9(c)(7)(i) of the nutrition labeling final rule requires a statement on the nutrition label of percent of DV for protein on labels of foods intended for infants and children less than 4 years of age unless the protein quality value is less than 40 percent of the reference standard. Likewise, § 101.9(c)(8)(i) requires declaration of the percent of DV of vitamins and minerals according to the group for which the food is intended (e.g., infants or children under 4 years of age). Comments pointed out that § 101.9(c)(7)(i) and (c)(8)(i) conflict with § 101.9(j)(5)(ii) which states that nutrition labeling shall not include listings of percent of DV, including protein, vitamins, and minerals, on labels of foods represented or purported to be specifically for infants and children less than 4 years of age.

FDA agrees that the conflict in the labeling rules for foods intended for infants and children less than 4 years of age requires a technical amendment to address the declaration of percent DV of protein, vitamins, and minerals and their location on the nutrition facts panel. Accordingly, FDA is modifying § 101.9(j)(5)(ii) to state that foods, other than infant formula, represented or purported to be specifically for infants and children less than 4 years of age shall not include declarations of percent of DV for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber (see § 101.9(j)(5)(ii)(A)). Thus, the percent DV for protein, vitamins, and minerals are to be declared in accordance with § 101.9(c). Other format specifications that FDA is including are as follows:

a. Nutrient names and quantitative amounts by weight are to be presented in two separate columns (see § 101.9(j)(5)(ii)(B)) (formerly in § 101.9(j)(5)(ii)).

b. Because percent DV declarations are required on the labeling of such foods, the heading "Percent Daily Value" that is required in § 101.9(d)(6) is to be placed immediately below the quantitative information by weight for protein (see § 101.9(j)(5)(ii)(C)).

c. The declaration of percent DV for protein, and vitamins and minerals are to be declared immediately below the heading "Percent Daily Value" (see § 101.9(j)(5)(ii)(D)).

d. The footnote required in § 101.9(d)(9) is not to be included (see § 101.9(j)(5)(ii)(E) (formerly in § 101.9(j)(5)(ii)).

In response to these changes, FDA is publishing in Appendix C of this document a revised version of Appendix G that was published in the mandatory nutrition labeling final rule (58 FR 2079 at 2203 and 2204).

21. A trade association suggested that a technical correction be made to delete the word "Amount" as a column heading in the sample formats provided in Appendix G of the mandatory nutrition labeling the final rule (58 FR 2079 at 2203 and 2204) for foods for children under 2 and 4 years of age since the term is not provided for in the regulation.

FDA agrees that the term "Amount" is not required in the regulation. Furthermore, FDA notes that "Amount" is redundant with the heading "Amount Per Serving" which is a mandatory term and which appears in the example. Accordingly, in Appendix C, the term "Amount" is removed from the sample labels.

3. Foods in Small Packages

22. A number of manufacturers and a package design firm submitted design layouts for packages with less than 12 sq in of printable label area (i.e., small packages) that showed that the required nutrition information could not be accommodated in the combined 6 point and 8 point type sizes specified in § 101.9(d)(1)(iii) but could be accommodated if printed in all 6 point type. Several of these manufacturers stated that while they were not required to provide nutrition information, they wished to do so voluntarily. A grocery retailer was of the opinion that, although 6 point type is more difficult to read, consumers would be more likely to make the attempt to read such labels rather than to write a letter requesting the information. Several packaging printers, design firms, and manufacturers also stated that certain lowercase letters in 6 point type will fill in and be unreadable with the flexographic process on film surfaces. A manufacturer and a package design firm stated that in their experiences, nutrition information on small packages would be just as legible in all uppercase letters of one-sixteenth-inch minimum height as in 6 point uppercase and lowercase letters, and that all uppercase letters would reduce crowding because less vertical space would be required. A few comments also pointed out that the alternative to smaller type size is the use of the linear display, a form of presentation that will make retrieval of nutrient information more difficult for most consumers.

It was not FDA's intent to discourage manufacturers from voluntarily providing nutrition information when not required to do so. The agency agrees that more small packages will provide nutrition information if greater latitude is given in the selection of type sizes. FDA is also aware that a significant portion of food packaging is printed by

flexography. At the same time, FDA is mindful of the need to improve the legibility of nutrition information for the growing populations of older Americans and others with impaired eyesight. The conflicting need for more information on the label, while improving consumer access to the information, led to the compromise selection of 8 point type for the most important product-specific nutrient information and 6 point type for the other information.

In the mandatory nutrition labeling final rule, FDA provided several provisions designed to assist manufacturers in fitting nutrition information onto small package labels. These included the use of a linear display, specified abbreviations, and the omission of footnotes. While these same provisions apply to intermediate-sized packages when the package shape or size cannot accommodate the standard format, manufacturers of products in small packages may employ these measures in nutrition labeling their products.

FDA is persuaded, however, that an additional provision pertaining to type size on small packages would benefit the consumer by allowing nutrition information to be presented on more packages. The agency believes that allowing for smaller type size on small packages is consistent with the measures allowed in § 101.9(j)(13)(ii). It recognizes that it overlooked the need for this type of exception in the final regulations governing format requirements.

Consequently, FDA is adding new § 101.9(j)(13)(i)(B), providing for the optional use of 6 point type or all uppercase type one-sixteenth inch minimum height for packages with less than 12 sq in available to bear labeling.

23. A few comments were received from manufacturers of products that make nutrient content claims and that are packed in individual serving-size packages for service with meals in institutional food service (e.g., "low calorie" jelly, "light" cream cheese). Because of the presence of the claim, these products not only lose their exemption from nutrition labeling but are required by § 101.13 (21 CFR 101.13) to include a referral statement and possibly other accompanying information. These comments stressed the physical limitations of such packages, which often have less than 3 sq in available to bear labeling, and asked for guidance. The comments also pointed out that these foods are identical to foods sold in larger containers where nutrition labeling would be available.

The agency has been aware for many years of the special labeling needs of individual serving size packages of food served with meals in restaurants that are not intended for sale at retail. In § 101.2(c)(5), FDA allows for reduced type size on the labels of such foods. This regulation permits a type size of one thirty-second-inch in height when such packages have a total area available to bear labeling of 3 sq in or less, and it is not possible to use any larger type. The special labeling needs of these very small packages were overlooked in the final nutrition labeling regulations. Accordingly, FDA is adding to § 101.9(j)(13)(i)(B) a provision that allows compliance in accordance with § 101.2(c)(5). If, despite this provision, there are still packages for which there is insufficient area available to print all required information, the agency advises manufacturers to write to the Office of Food Labeling, FDA (HFS–150) on a case-by-case basis requesting alternative means of compliance in accordance with § 101.9(g)(9).

4. Foods in Packages With 40 or Less Square Inches of Available Area to Bear Labeling

24. One manufacturer pointed out an apparent contradiction in § 101.9(j)(13)(ii)(A) and requested clarification of whether FDA meant that package shape or label shape is the limiting factor governing use of a linear display in lieu of the tabular display for packages less than 12 sq in of surface area.

As corrected on April 2, 1993 (58 FR 17328), § 101.9(j)(13)(ii)(A) includes the provision that a tabular or linear display may be used if a product has a total surface area available to bear labeling of less than 12 sq in, or if the product has a total surface area available to bear labeling of 40 or less sq in, and the package shape or size cannot accommodate a column display. In the second sentence of paragraph (j)(13)(ii)(A) the agency provided that the linear format could be used only if the tabular display could not be accommodated. FDA inadvertently used the term "label" as the basis for determining whether the accommodation could be made. FDA meant for the package shape or size to be the determining factor, both for electing to use the tabular or linear display instead of the regular vertical column display, as well as electing the linear in lieu of the tabular display. Accordingly, FDA is modifying that sentence in § 101.9(j)(13)(ii)(A) to be consistent with the first sentence. Thus, it reads: "Nutrition information may be given in a linear fashion, only if the package shape or size will not accommodate a tabular display."

25. Several comments requested an example of a linear display that would be permitted under § 101.9(j)(13).

FDA acknowledges its oversight in not including an example of a linear display in the final regulations. The agency is therefore modifying § 101.9(j)(13)(ii)(A) to include in new paragraph (j)(13)(ii)(A)*(1)* the tabular display previously included under § 101.9(j)(13)(ii)(A) and to include the linear display in new paragraph (j)(13)(ii)(A)*(2)*. In doing so, the agency is removing the direction that any subcomponents declared be listed parenthetically after principal components. FDA has worked with the Food Safety and Inspection Service, USDA, to resolve inconsistencies between the agencies in the form of presentation for the linear display. As given in § 101.9(j)(13)(ii)(A)*(2)*, the percent DV is separated from the quantitative amount declaration by the use of parenthesis, and all nutrients (both principal components and subcomponents) are treated similarly to minimize confusion. Additionally, to avoid a cluttered appearance, bolding is required only on the title "Nutrition Facts" and is allowed for nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein." Examples are given in Appendix D of this document of presentations of the linear display that meet the requirements for the full, simplified, and shortened formats provided for in the final regulations.

Despite the continued provision for a linear display, FDA is concerned that consumers will not be able to easily understand and use nutrition information presented in a linear fashion. The interspersion of numbers and text, and the need to delineate quantitative amounts by weight from percent DV's, are complications that reduce both readability and comprehensibility of the linear format to the extent that the only justification for using the linear arrangement is a lack of available space. Therefore, FDA sees the use of a linear display as a last resort when no other arrangement can be accommodated in the available label space (e.g., when small packages would otherwise have to take advantage of the exemption allowing use of an address or telephone number in lieu of nutrition information). Consumers would be expected to be more likely to take a few extra moments to read a linear nutrition label than to write a letter or call the manufacturer. Accordingly, the final rules provided for the limited use of a

linear display only when the package label cannot accommodate any additional columnar display. FDA is not modifying this aspect of § 101.9(j)(13)(ii)(A).

26. One comment requested that additional abbreviations be allowed under § 101.9(j)(13)(ii)(B) for nutrients that, while listed in § 101.9(c) as voluntary, may be mandatory when claims are made.

As stated in the mandatory nutrition labeling final rule, while the agency is concerned about the use of abbreviations and any possible consumer confusion that they may cause, FDA believes that their use under limited and controlled conditions is preferable to overcrowding within the nutrition label (58 FR 2079 at 2155). Accordingly, the agency provided for abbreviations for those mandatory nutrients whose name exceeds 10 characters. However, in doing so, FDA overlooked the fact that voluntary nutrients do, in fact, become mandatory when claims are made about them. Therefore, to apply the same approach to all nutrients whose declaration may be required in nutrition labeling and whose name exceeds 10 characters, FDA is modifying § 101.9(j)(13)(ii)(B) to allow the following additional abbreviations on labels of packages that have a total surface area available to bear labeling of 40 or less sq in:

Calories from saturated Fat—Sat Fat Cal
Monounsaturated Fat—Monounsat Fat
Polyunsaturated Fat—Polyunsat Fat
Soluble Fiber—Sol Fiber
Insoluble Fiber—Insol Fiber
Sugar Alcohol—Sugar Alc
Other Carbohydrate—Other Carb

5. Shell Eggs

27. A package design firm pointed out that the type size requirements for nutrition information on the underside of the lid of shell eggs or on the insert (see § 101.9(j)(14)) do not state what part of the copy must be one-sixteenth inch in height, and whether the copy is to be all uppercase or uppercase and lowercase.

FDA advises that the inclusion in § 101.9(j)(14) of type size criteria for nutrition labeling on egg cartons that differs from the requirements of § 101.9(d)(1)(ii) was an oversight. Therefore, FDA is deleting the reference to one-sixteenth-inch type size in § 101.9(j)(14), thereby requiring that the nutrition label on shell eggs conform with the type size requirements of § 101.9(d).

6. Multiunit Packages

28. Section 101.9(j)(15) of the regulation, the provision on multiunit packages, requires that each of the unit containers securely enclosed within a single sleeve be labeled "This unit not labeled for retail (or individual) sale." One comment requested that a long-standing exemption from the required use of the statement "This unit not labeled for retail sale" be continued for inner tubs of margarine when they bear no labeling at all and are firmly enclosed in a sleeve or carton which bears full labeling. The comment enclosed a letter sent by FDA to the National Association of Margarine Manufacturers in 1974 granting such an exemption.

In its haste to prepare the final rules, the agency overlooked the exemption that exists for margarine tubs and some other foods when the inner units bear no labeling of any kind and are firmly enclosed in an outer carton that bears all required label information. The agency has no objection to the continuation of this exemption under those conditions and is therefore modifying § 101.9(j)(15)(iii) to provide an exemption from the required use of the statement on products that bear no labeling on the inner unit containers. Section 101.9(j)(15)(i) and (j)(15)(ii) require that the outer carton bear full nutrition labeling, and that the inner unit containers be securely enclosed within the outer retail carton, respectively. The agency advises that any labeling on the inner units (such as a statement of identity, brand name, or flavor identification) will trigger the required use of the statement "This unit not labeled for retail sale."

IV. Clarifications

A. Nutrient Declaration

29. A comment sought clarification of the statement in § 101.9(c) that no nutrients or food components other than those listed as mandatory or voluntary may be included within the nutrition label. The comment sought assurance that other nutrition information that was accurate and truthful could be placed outside of the nutrition label (i.e., elsewhere on the label or in labeling).

FDA did not intend to limit the nutrition information that could be provided on food labels to that which is required or allowed within the nutrition label. The agency has no objections to other truthful and nonmisleading nutrition information being placed outside of the nutrition label. Reference to this point is made in comment number 164 of the mandatory nutrition labeling final rule (58 FR 2079 at 2138). The agency states there that supplementary information outside of the nutrition label can help consumers to better understand the characteristics of the individual food in relation to the total diet, but that such supplementary information must be consistent with the requirements for any applicable nutrient content or health claim.

30. One comment objected to the use of 4 cal/g of soluble fiber for caloric calculations, stating that there is scientific support for a factor of 2 cal/g.

FDA believes that there is sufficient flexibility in the regulations to allow for the use of more specific factors for caloric calculation where they exist. Section 101.9(c)(1)(i) provides five methods for determining the caloric content of foods. In addition to the use of the general factor of 4 cal/g of carbohydrate, § 101.9(c)(1)(i)(A) and (c)(1)(i)(D) allow for the use of specific food factors. To establish alternate caloric values for specific food ingredients, manufacturers may submit information on the digestibility of the substance to FDA for consideration as discussed in the preamble to the final mandatory nutrition labeling rule (58 FR 2079 at 2111).

31. A comment stated that the preamble to the final rule (58 FR 2079 at 2087) limits the discussion on the use of digestibility coefficients to the declaration for total fat and omits from the discussion the use of digestibility coefficients for the corresponding declarations for saturated fat, polyunsaturated fat, and monounsaturated fat.

The agency acknowledges that limiting the preamble discussion on digestibility coefficients for long-chain fatty ingredients to total fat is an oversight and recognizes that the digestibility coefficients would also affect the calorie contribution to the specific subcategories to which the fatty acids belong.

B. Format

32. A package design firm called attention to the fact that a given point size of type will not be the same measured height for all type styles.

FDA is aware that the actual height, for example, of the lowercase "o" will vary somewhat above or below 1/16 inch in 8 point size type, depending on the particular type style selected. FDA did not intend to imply in the preamble discussion in response to comment 161 in the mandatory nutrition labeling final rule (58 FR 2079 at 2136) that type styles were to be limited to those styles that, in 8 point size, produce a lowercase "o" at least 1/16 inch in height, nor did § 101.9(d)(1)(iii) add a minimum height requirement in addition to specifying 8 point and 6 point type sizes. Based on examination of a number of type styles, FDA

concludes that variations in type height result from type style at a given point size are not large enough to materially alter legibility, and therefore no technical correction to the regulation is necessary.

33. Several comments stated that it would not be possible to fit the format into available label space if all the type specifications listed in Appendix B to part 101 were followed. The majority of comments interpreted the specifications in Appendix B to part 101 as mandatory.

FDA points out that the mandatory type requirements are listed in § 101.9(d). These requirements are fewer than the illustrative specifications shown in Appendix B to part 101. Appendix B to part 101 was included to illustrate how FDA produced the various format examples. FDA encourages manufacturers to follow the type specifications of Appendix B to part 101 when package space permits to promote consistency of appearance and thus to facilitate consumer access to the nutrition information across the food supply. However, manufacturers should take note that the following type characteristics used for illustration purposes in Appendix B to part 101 are optional and not mandatory:

a. Thirteen point type for the heading "Nutrition Facts" is optional. Section 101.9(d)(2) requires only that the heading be set in a type size larger than all other type in the nutrition label (i.e., larger than the 8 point type required for the information required in § 101.9(d)(7) and (d)(8)), and that the heading be set the full width of the nutrition label unless impractical.

b. The thickness of the rules separating the groupings of information in the label example of Appendix B to part 101 (i.e., 7 point and 3 point, respectively) is optional. Section 101.9(d) does not specify minimum sizes.

c. The use of Helvetica style type is optional. Section 101.9(d)(1)(ii)(A) requires only that the style be easy to read.

34. A trade association commented that industry members will seek acceptance of alternate labeling under § 101.9(g)(9) to allow distribution of the required nutrition information between the principal display panel and information panel or to wrap it around the package to cover two or more panels.

Nutrition information may not be interrupted by splitting it between the principal display panel and the information panel or by wrapping it around adjoining panels. In establishing the requirements for the nutrition label, the agency went to great lengths to give the format a distinctive look (e.g., through the use of a prominent heading, highlighting of key nutrient information, and enclosure of the information in a box) to facilitate consumer recognition of the label and to encourage use of the information. Consistency of appearance begins to be lost if the label can wrap around panels in an unrestrained variety of ways. Furthermore, the likelihood increases that consumers will fail to recognize that some information is on another panel not within immediate view. For this reason, FDA is taking no action at this time and will require a very compelling justification to permit such a departure under § 101.9(g)(9).

35. Several comments stated that industry should have the flexibility to use reduced leading, optionally to omit hairlines, and to use nutrient abbreviations on packages where space limitations are encountered. Package designs were submitted in support of arguments that there is no loss in legibility when leading is reduced, and the hairlines separating nutrient names omitted. One trade association stated that a 1/4 point hairline rule cannot with certainty be kept from wavering and touching the type with the high speed printers and flexible films used by many manufacturers.

For the reasons given in the preceding comment about the agency's desire to have nutrition labels maintain a consistent and distinctive format, FDA is not providing the flexibility requested. Many of the changes made in this document will help reduce space requirements (e.g., removal of required use of calorie conversion footnote). If a manufacturer finds that it is still technologically infeasible or impracticable to fit the nutrition label on a particular package, it may write to the Office of Food Labeling as directed in § 101.9(g)(9).

36. One comment from industry stated that generally accepted writing styles and recommendations of the National Bureau of Standards regarding the use of the metric system require that when a symbol follows after a number to which it refers, a space must be left between the number and the symbol (e.g., "2 g"). This contrasts with the designations used by FDA in sample labels which do not leave a space between the number and symbol (e.g., "2g"). The comment requested that FDA correct the sample labels to include the space.

FDA acknowledges that the preferred form of presenting metric values is to leave a space between a number and the symbol that refers to it. The agency did not include the space to minimize the space requirements of the nutrition label. Because of the great number of comments that the agency has received about the problems industry faces in fitting the nutrition label onto food packages, FDA does not intend to require that the space be used between numbers and symbols. However, the agency advises that it has no problem if a manufacturer decides to include the space because it wishes to do so.

C. Simplified Format

37. Comments questioned whether it is permissible to use tabular or linear displays with the simplified format. A manufacturer argued that both the tabular and linear displays will become familiar to consumers because they will be used on a number of small and intermediate-sized packages.

FDA advises that nothing in the regulations would prohibit the use of the tabular or linear displays when a product qualifies for a simplified format as long as the package shape and size meet the criteria in revised § 101.9(d)(11)(iii) or in § 101.9(j)(13)(ii) for using the tabular display. Examples of the simplified format in linear and tabular displays are given in Appendices D and Appendix E of this document, respectively.

D. Compliance

38. One comment suggested that the 120 percent compliance criteria in § 101.9(g)(5) for fat and saturated fat be applied only when declared values are greater than 1 g. It noted that as new or altered foods are developed with lower levels of total fat and saturated fat, foods containing 0.7 g of saturated fat per serving, for example, would be out of compliance when 0.5 g of saturated fat is declared.

As discussed in the preamble to the mandatory nutrition labeling final rule (58 FR 2079 at 2162), the agency is not convinced that the criteria for compliance evaluation should be changed. Any effect caused by rounding of labeled values to meet the agency's requirements in § 101.9(c) would be included in the evaluation of a "reasonable deficiency" as provided for in § 101.9(g)(6).

39. One comment expressed concern that it would be misleading to label vitamin A content in paprika, chili powder, and other capsicums (e.g., cayenne pepper) because they are used for their sensory value, and because in the amounts used in an average recipe, they would make minimal vitamin A contribution to a finished product. Furthermore, the comment argued that vitamin A-labeled capsicums would be

misleading because the vitamin A content is known to diminish throughout the shelf life of the product.

The agency is not providing the exemption for capsicums that this comment suggested because the 1990 amendments only provide for an exemption for foods that contain "insignificant amounts" of all the required nutrients. FDA has defined an "insignificant amount" of vitamins and minerals as an amount that is less than 2 percent of the Reference Daily Intake (RDI) for that nutrient per reference amount. No variations are allowed for particular categories of foods. In addition, many foods change in nutrient content over the shelf life of the product as a result of factors such as growing conditions, product transport, processing practices, and product storage. Procedures discussed in "FDA Nutrition Labeling Manual—A Guide for Developing and Using Data Bases" can be used to arrive at a label value that will meet compliance requirements over the shelf life of a product. Section 101.9(g)(8) gives directions for obtaining copies of this manual.

40. A few comments requested guidance on how to determine the amount of saturated fat to declare when "and/or" labeling is used on the ingredient statement for fats as provided for in § 101.4(b)(14) (e.g., "vegetable oil shortening (contains one or more of the following: cottonseed oil, corn oil, soybean oil)").

FDA advises that nutrition labels on products using "and/or" labeling for fats within the ingredient statement should base the declaration of saturated fat on the selection of the oil or oils with the highest saturated fat content. Section 101.9(g)(5) states that "A food with a label declaration of calories, sugars, total fat, saturated fat, cholesterol, or sodium shall be deemed to be misbranded under section 403(a) of the act if the nutrient content of the composite is greater than 20 percent in excess of the value for that nutrient declared on the label." Accordingly, to meet the compliance criteria, the amount declared on the nutrition label must always be less than 120 percent of what is found analytically in the product. There is a greater likelihood of meeting these criteria when the amount declared is equal to the highest level of saturated fat found in the types of fat or oil that may be used in the food product (i.e., that are listed in the ingredient statement).

E. Exemptions

1. Foods for Immediate Consumption

41. A comment requested clarification on the exemption under § 101.9(j)(2)(ii) for home-delivered foods, in particular whether this exemption covers home deliveries of dairy products, which could be considered "ready-to-eat," and other grocery items.

Section 101.9(j)(2)(ii) exempts foods that are served in "establishments in which food is served for immediate human consumption" and includes as an example of such foods those foods that are furnished by "food delivery systems or establishments where ready-to-eat foods are delivered to homes or offices." The agency advises that this exemption was adopted to cover food delivery systems such as meals-on-wheels programs providing meals to home-bound citizens and establishments that deliver foods for immediate consumption, such as companies delivering hot pizzas that are ready-to-eat upon receipt. The coverage of this exemption does not include home delivered grocery items such as milk, ice cream, produce, and frozen meats. Such foods are generally not purchased "for immediate consumption." They are put into refrigerators, freezers, or other storage areas for consumption at a later time.

2. Small and Intermediate-Sized Packages

42. In reference to the definitions of small and intermediate-sized packages in § 101.9(j)(13), several manufacturers and design firms requested further clarification of how to calculate the "surface area available to bear labeling."

Historically, FDA has defined package area for purposes of defining the principal display panel and in setting out exemptions and type size requirements in §§ 101.1(c) (21 CFR 101.1(c) and 101.2(c)(1), respectively. Based on these regulations, surface area calculations generally exclude tops, bottoms, flanges at tops and bottom of cans, shoulders, necks, and caps of bottles and jars, folded flaps and bottoms of boxes, and other unusable label space. However, packages that provide label information on tops, bottoms, or necks should include those areas in the calculation of space available to bear labeling.

FDA advises that bottoms of boxes should be counted as surface area available to bear labeling when normal handling of such boxes by the consumer would result in the bottom of the box being easily seen, such as in single-use frozen food boxes where directions for preparation are presented on the bottom. The bottoms of other boxes, such as boxes containing multiple servings of crackers or ready-to-eat cereal which are generally stored on end, would not be considered "available to bear labeling" since consumers do not look at the bottoms of such packages during normal handling. Likewise, the bottoms of cans and jars are not normally seen and would therefore be excluded from calculations of "space available to bear labeling."

Since §§ 101.1 and 101.2 were promulgated, many types of new packaging have come on the market. Therefore, in addition to the traditionally excluded areas, the agency advises that molded parts of containers (seen primarily with newer glass and plastic containers) that do not have a smooth surface to attach labeling generally need not be included in calculations of total surface area available to bear labeling. Also, crimps, seals, and folds of flexible plastic packages, which are not appropriate for legible labeling, and transparent "windows," which do not bear labeling, can also be excluded.

Because of the myriad shapes and sizes of food containers and the surface qualities of packaging materials used today, it is difficult to set precise guidelines to define "surface area available to bear labeling." However, the agency advises that it intends to apply a common sense interpretation to this term. If it is technologically feasible and practicable to apply a label to the surface area, and it is an area likely to be seen by the consumer under normal handling conditions, it should be considered as "area available to bear labeling."

43. Several comments inquired about whether calculations of surface area available to bear labeling may take into consideration limitations on the manufacturer's current printing and label attachment capabilities. The comments asked whether, if manufacturers' labeling practices do not allow for affixing labels over the entire available surface, the manufacturers must count areas not currently labeled, and, if so, whether they will have to purchase new equipment to add additional labeling.

The 1990 amendments are silent with respect to how the additional nutrition information required by the act is to be accommodated when manufacturers' current labeling capabilities do not allow sufficient space to accommodate nutrition labels. Based on several instances in which manufacturers have indicated an inability to meet the requirements of § 101.9 because of equipment limitations, FDA has concluded that the circumstances are unique to each individual case. Consequently, the agency has determined that the issues cannot satisfactorily be resolved by modifying the regulations and instead expects that

manufacturers desiring relief from the nutrition labeling requirements for reasons of equipment limitations or other technological considerations will address their request for relief in writing to FDA in accordance with § 101.9(g)(9).

However, FDA advises that, in light of the lack of congressional provision for exemptions based on a company's current labeling practices, and in consideration of the public health significance of mandatory nutrition labeling, only in the most compelling circumstances with extraordinary implications is the agency likely to consider providing additional exemptions or alternative means of compliance. If and when such requests are granted, the agency is likely to grant only an extended period of time for firms to come into full compliance rather than a permanent exemption or an alternative means of compliance.

44. One comment inquired whether the mandatory listing under § 101.5(c) of the manufacturer's name and address is required to be repeated under § 101.9(j)(13)(i) for packages less than 12 sq in that are not required to provide nutrition information on the label but need to provide an address or phone number where nutrition information can be obtained.

FDA has no objection to a single listing of the manufacturer's, packer's, or distributor's name and address, as long as a statement adjacent to the address makes it clear that nutrition information may be obtained by writing to that address.

3. Multiunit Containers

45. A package design firm pointed out that the type size requirement for the statement "This unit not labeled for retail sale" on the unit container of multiunit food packages (see § 101.9(j)(15)) does not state what part of the copy must be one-sixteenth inch in height, or whether the copy is to be all uppercase or uppercase and lowercase.

FDA advises that this requirement, which is identical to that in § 1.24(a)(14) (21 CFR 1.24(a)(14)) for exemptions from required label statements, is not subject to the requirements in § 101.9(d) for type size and style that pertain to information declared within the nutrition label. The statement "This unit not labeled for retail sale" may use uppercase or uppercase and lowercase letters at the manufacturer's discretion. Section 101.105(h)(2) states that "Letter heights pertain to upper case or capital letters. When upper and lower case or all lower case letters are used, it is the lower case letter 'o' or its equivalent that shall meet the minimum standards."

V. Economic Impact

FDA has examined the economic implications of this final rule to provide for certain technical amendments to nutrition labeling of food, according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96–354). The modifications are intended to clarify certain provisions of the regulation and do not add new requirements. Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

VI. 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 impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The changes in this document are technical in nature and do not affect the overall intent of the regulation.

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, 21 CFR part 101 is 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 101.9 effective May 8, 1994, is amended by removing the second sentence in the introductory text of paragraph (a); by revising paragraphs (c)(1)(i), (c)(2), (c)(8)(vi), (d)(1)(ii)(D), (d)(1)(iii), (d)(7), the first sentence of paragraph (d)(10) and paragraph (d)(11); by adding new paragraphs (d)(13) and (d)(14); by revising the sample label in paragraph (e)(5); by revising paragraphs (f)(4), (f)(5), (j)(1)(i), (j)(2)(i) through (j)(2)(iii); by redesignating paragraph (j)(2)(iv) as paragraph (j)(2)(v), and adding new paragraph (j)(2)(iv); by revising paragraphs (j)(3)(v), (j)(4), (j)(5)(ii), (j)(10), (j)(13)(i), (j)(13)(ii)(A) through (j)(13)(ii)(C), (j)(14), and (j)(15)(iii) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(c) * * *

(1) * * *

(i) Caloric content may be calculated by the following methods. Where either specific or general food factors are used, the factors shall be applied to the actual amount (i.e., before rounding) of food components (e.g., fat, carbohydrate, protein, or ingredients with specific food factors) present per serving.

* * * * *

(2) "Fat, total" or "Total fat": A statement of the number of grams of total fat in a serving defined as total lipid fatty acids and expressed as triglycerides. Amounts shall be expressed to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(i) "Saturated fat," or "Saturated": A statement of the number of grams of saturated fat in a serving defined as the sum of all fatty acids containing no double bonds, except that label declaration of saturated fat content information is not required for products that contain less than 0.5 gram of total fat in a serving if no claims are made about fat or cholesterol content, and if "calories from saturated fat" is not declared. Except as provided for in paragraph (f) of this section, if a statement of the saturated fat content is not required and, as a result, not declared, the statement "Not a significant source of saturated fat" shall be placed at the bottom of the table of nutrient values in the same type size. Saturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(ii) "Polyunsaturated fat" or "Polyunsaturated" (VOLUNTARY): A statement of the number of grams of polyunsaturated fat in a serving defined as cis,cis-methylene-interrupted polyunsaturated fatty acids may be declared voluntarily, except that when monounsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a food other than one that meets the criteria in § 101.62(b)(1) for a claim for "fat free," label declaration of polyunsaturated fat is required. Polyunsaturated fat content shall be indented and expressed as grams per

serving to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(iii) "Monounsaturated fat" or "Monounsaturated" (VOLUNTARY): A statement of the number of grams of monounsaturated fat in a serving defined as cis-monounsaturated fatty acids may be declared voluntarily except that when polyunsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a food other than one that meets the criteria in § 101.62(b)(1) for a claim for "fat free," label declaration of monounsaturated fat is required. Monounsaturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

* * * * *

(8) * * *

(vi) A statement of the percent of vitamin A that is present as *beta*-carotene may be declared voluntarily. When the vitamins and minerals are listed in a single column, the statement shall be indented under the information on vitamin A. When vitamins and minerals are arrayed horizontally, the statement of percent shall be presented in parenthesis following the declaration of vitamin A and the percent DV of vitamin A in the food (e.g., "Percent Daily Value: Vitamin A 50 (90 percent as *beta*-carotene)"). When declared, the percentages shall be expressed in the same increments as are provided for vitamins and minerals in paragraph (c)(8)(iii) of this section.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) Letters should never touch.

(iii) Information required in paragraphs (d)(3), (d)(5), (d)(7), and (d)(8) of this section shall be in type size no smaller than 8 point. Except for the heading "Nutrition Facts," the information required in paragraphs (d)(4), (d)(6), and (d)(9) of this section and all other information contained within the nutrition label shall be in type size no smaller than 6 point. When provided, the information described in paragraph (d)(10) of this section shall also be in type no smaller than 6 point.

* * * * *

(7) Except as provided for in paragraph (j)(13) of this section, nutrient information for both mandatory and any voluntary nutrients listed in paragraph (c) of this section that are to be declared in the nutrition label, except vitamins and minerals, shall be declared as follows:

(i) The name of each nutrient, as specified in paragraph (c) of this section, shall be given in a column and followed immediately by the quantitative amount by weight for that nutrient appended with a "g" for grams or "mg" for milligrams as shown in paragraph (d)(12) of this section.

(ii) A listing of the percent of the DRV as established in paragraphs (c)(7)(iii) and (c)(9) of this section shall be given in a column aligned under the heading "% Daily Value" established in paragraph (d)(6) of this section with the percent expressed to the nearest whole percent for each nutrient declared in the column described in paragraph (d)(7)(i) of this section for which a DRV has been established, except that the percent for protein may be omitted as provided in paragraph (c)(7) of this section. The percent shall be calculated by dividing either the amount declared on the label for each nutrient or the actual amount of each nutrient (i.e., before rounding) by the DRV for the nutrient, except that the percent for protein shall be calculated as specified in paragraph (c)(7)(ii) of this section. The numerical value shall be followed by the symbol for percent (i.e., %).

* * * * *

(10) Caloric conversion information on a per gram basis for fat, carbohydrate, and protein may be presented beneath the information required in paragraph (d)(9) of this section, separated from that information by a hairline. * * *

(11)(i) If the space beneath the information on vitamins and minerals is not adequate to accommodate the information required in paragraph (d)(9) of this section, the information required in paragraph (d)(9) may be moved to the right of the column required in paragraph (d)(7)(ii) of this section and set off by a line that distinguishes it and sets it apart from the percent Daily Value information. The caloric conversion information provided for in paragraph (d)(10) of this section may be presented beneath either side or along the full length of the nutrition label.

(ii) If the space beneath the mandatory declaration of iron is not adequate to accommodate any remaining vitamins and minerals to be declared or the information required in paragraph (d)(9) of this section, the remaining information may be moved to the right and set off by a line that distinguishes it and sets it apart from the nutrients and the percent DV information given to the left. The caloric conversion information provided for in paragraph (d)(10) of this section may be presented beneath either side or along the full length of the nutrition label.

(iii) If there is not sufficient continuous vertical space (i.e., approximately 3 in) to accommodate the required components of the nutrition label up to and including the mandatory declaration of iron, the nutrition label may be presented in a tabular display as shown below.

BILLING CODE 4160-01-F

Nutrition Facts

Serving Size 2 slices (56g)
Servings Per Container 10

Calories 140
Calories from Fat 10

Amount/serving	% Daily Value*
Total Fat 1.5g	2%
Saturated Fat 0g	0%
Cholesterol 0mg	0%
Sodium 280mg	12%
Total Carbohydrate 26g	9%
Dietary Fiber 2g	8%
Sugars 1g	
Protein 4g	

Vitamin A 0% • Vitamin C 0% • Calcium 6% • Iron 6%
Thiamin 15% • Riboflavin 8% • Niacin 10%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

BILLING CODE 4160-01-C

* * * * *

(13)(i) Nutrition labels on the outer label of packages of products that contain two or more separately packaged foods that are intended to be eaten individually (e.g., variety packs of cereals or snack foods) or of packages that are used interchangeably for the same type of food (e.g., round ice cream containers) may use an aggregate display.

(ii) Aggregate displays shall comply with the format requirements of paragraph (d) of this section to the maximum extent possible, except that the identity of each food shall be specified immediately under the "Nutrition Facts" title, and both the quantitative amount by weight (i.e., g/mg amounts) and the percent Daily Value for each nutrient shall be listed in separate columns under the name of each food. The following sample label illustrates an aggregate display.

BILLING CODE 4160-01-F

Nutrition Facts

	Wheat Squares Sweetened		Corn Flakes Not Sweetened		Mixed Grain Flakes Sweetened	
Serving Size 1 Box	(35g)		(19g)		(27g)	
Servings Per Container	1		1		1	
Amount Per Serving						
Calories	**120**		**70**		**100**	
Calories from Fat	0		0		0	
		% Daily Value*		% Daily Value*		% Daily Value*
Total Fat	0g	**0%**	0g	**0%**	0g	**0%**
Saturated Fat	0g	**0%**	0g	**0%**	0g	**0%**
Cholesterol	0mg	**0%**	0mg	**0%**	0mg	**0%**
Sodium	0mg	**0%**	200mg	**8%**	120mg	**5%**
Potassium	125mg	**4%**	25mg	**1%**	30mg	**1%**
Total Carbohydrate	29g	**10%**	17g	**6%**	24g	**8%**
Dietary Fiber	3g	**12%**	1g	**4%**	1g	**4%**
Sugars	8g		6g		13g	
Protein	4g		1g		1g	
Vitamin A	0%		10%		10%	
Vitamin C	0%		15%		90%	
Calcium	0%		0%		0%	
Iron	10%		6%		20%	
Thiamin	30%		15%		20%	
Riboflavin	30%		15%		20%	
Niacin	30%		15%		20%	
Vitamin B_6	30%		15%		20%	

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

BILLING CODE 4160-01-C

(14) In accordance with § 101.15(c)(2), when nutrition labeling must appear in a second language, the nutrition information may be presented in a separate nutrition label for each language or in one nutrition label with the information in the second language following that in English. Numeric characters that are identical in both languages need not be repeated (e.g., "Protein/Proteinas 2 g"). All required information must be included in both languages.

(e) * * *

(5) * * *

BILLING CODE 4160-01-F

Nutrition Facts

Serving Size 1/12 package
(44g, about 1/4 cup dry mix)
Servings Per Container 12

Amount Per Serving	Mix	Baked
Calories	190	280
Calories from Fat	45	140
	% Daily Value**	
Total Fat 5g*	**8%**	**24%**
Saturated Fat 2g	**10%**	**13%**
Cholesterol 0mg	**0%**	**23%**
Sodium 300mg	**13%**	**13%**
Total Carbohydrate 34g	**11%**	**11%**
Dietary Fiber 0g	**0%**	**0%**
Sugars 18g		
Protein 2g		
Vitamin A	0%	0%
Vitamin C	0%	0%
Calcium	6%	8%
Iron	2%	4%

* Amount in Mix

** Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

BILLING CODE 4160-01-C

(f) * * *

(4) If any nutrients are declared as provided in paragraphs (f)(2)(iii), (f)(2)(iv), or (f)(3) of this section as part of the simplified format or if any nutrition claims are made on the label or in labeling, the statement "Not a significant source of ————" (with the blank filled in with the name(s) of any nutrient(s) identified in § 101.9(f) and calories from fat that are present in insignificant amounts) shall be included at the bottom of the nutrition label.

(5) Except as provided for in paragraphs (j)(5) and (j)(13) of this section, nutrient information declared in the simplified format shall be presented in the same manner as specified in paragraphs (d) or (e) of this section, except that the footnote required in paragraph (d)(9) of this section is not required. When the footnote is omitted, an asterisk shall be placed at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

(j) * * *

(1)(i) Food offered for sale by a manufacturer, packer, or distributor who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

* * * * *

(2) * * *

(i) Served in restaurants, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(ii) Served in other establishments in which food is served for immediate human consumption (e.g., institutional food service establishments, such as schools, hospitals, and cafeterias; transportation carriers, such as trains and airplanes; bakeries, delicatessens, and retail confectionery stores where there are facilities for immediate consumption on the premises; food service vendors, such as lunch wagons, ice cream shops, mall cookie counters, vending machines, and sidewalk carts where foods are generally consumed immediately where purchased or while the consumer is walking away, including similar foods sold from convenience stores; and food delivery systems or establishments where ready-to-eat foods are delivered to homes or offices), *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(iii) Sold only in such facilities, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section;

(iv) Used only in such facilities and not served to the consumer in the package in which they are received (e.g., foods that are not packaged in individual serving containers); or

* * * * *

(3) * * *

(v) Not offered for sale outside of that establishment (e.g., ready-to-eat foods that are processed and prepared on-site and sold by independent delicatessens, bakeries, or retail confectionery stores where there are no facilities for immediate human consumption; by in-store delicatessen, bakery, or candy departments; or at self-service food bars such as salad bars), *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

(4) Foods that contain insignificant amounts of all of the nutrients and food components required to be included in the declaration of nutrition information under paragraph (c) of this section, *Provided*, That the food bears no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section. An insignificant amount of a nutrient or food component shall be that amount that allows a declaration of zero in nutrition labeling, except that for total carbohydrate, dietary fiber, and protein, it shall be an amount that allows a declaration of "less than 1 gram." Foods that are exempt under this paragraph include coffee beans (whole or ground), tea leaves, plain unsweetened instant coffee and tea, condiment-type dehydrated vegetables, flavor extracts, and food colors.

(5) * * *

(ii) Foods, other than infant formula, represented or purported to be specifically for infants and children less than 4 years of age shall bear nutrition labeling, except that:

(A) Such labeling shall not include declarations of percent of Daily Value for total fat, saturated fat, cholesterol, sodium, potassium, total carbohydrate, and dietary fiber;

(B) Nutrient names and quantitative amounts by weight shall be presented in two separate columns.

(C) The heading "Percent Daily Value" required in paragraph (d)(6) of this section shall be placed immediately below the quantitative information by weight for protein;

(D) Percent of Daily Value for protein, vitamins, and minerals shall be listed immediately below the heading "Percent Daily Value"; and

(E) Such labeling shall not include the footnote specified in paragraph (d)(9) of this section.

* * * * *

(10) Raw fruits, vegetables, and fish subject to section 403(q)(4) of the act, except that the labeling of such foods should adhere to guidelines in § 101.45. This exemption is contingent on the food bearing no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to nutrition labeling in accordance with § 101.45. The term "fish" includes freshwater or marine fin fish, crustaceans, and mollusks, including shellfish, amphibians, and other forms of aquatic animal life.

* * * * *

(13)(i) Foods in small packages that have a total surface area available to bear labeling of less than 12 square inches, *Provided*, That the labels for these foods bear no nutrition claims or other nutrition information in any context on the label or in labeling or advertising. Claims or other nutrition information subject the food to the provisions of this section.

(A) The manufacturer, packer, or distributor shall provide on the label of packages that qualify for and use this exemption an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information, call 1–800–123–4567").

(B) When such products bear nutrition labeling, either voluntarily or because nutrition claims or other nutrition information is provided, all required information shall be in type size no smaller than 5 point or all uppercase type of 1/16 inches minimum

height, except that individual serving-size packages of food served with meals in restaurants, institutions, and on board passenger carriers, and not intended for sale at retail, may comply with § 101.2(c)(5).

(ii) * * *

(A) Presenting the required nutrition information in a tabular or, as provided below, linear (i.e., string) fashion rather than in vertical columns if the product has a total surface area available to bear labeling of less than 12 square inches, or if the product has a total surface area available to bear labeling of 40 or less square inches and the package shape or size cannot accommodate a standard vertical column or tabular display on any label panel. Nutrition information may be given in a linear fashion only if the label will not accommodate a tabular display.

(*1*) The following sample label illustrates the tabular display. * * *

Nutrition Facts

Serv. Size 1/3 cup (56g)
Servings about 3
Calories 80
Fat Cal. 10
*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Amount/serving	% DV*	Amount/serving	% DV*
Total Fat 1g	**2%**	**Total Carb.** 0g	**0%**
Sat.Fat 0g	**0%**	Fiber 0g	**0%**
Cholest. 10mg	**3%**	Sugars 0g	
Sodium 200mg	**8%**	**Protein** 17g	

Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 6%

(*2*) The following sample label illustrates the linear display. When nutrition information is given in a linear fashion, bolding is required only on the title "Nutrition Facts" and is allowed voluntarily for the nutrient names for "Calories," "Total fat," "Cholesterol," "Sodium," "Total carbohydrate," and "Protein."

Nutrition Facts Serv size: 1 package, Amount Per Serving: **Calories** 45, Fat Cal. 10, **Total Fat** 1g (2% DV), Sat. Fat 1g (5% DV), **Cholest.** 0mg (0% DV), **Sodium** 50mg (2% DV), **Total carb.** 8g (3% DV), Fiber 1g (4% DV), Sugars 4g, **Protein** 1g, Vitamin A (8% DV), Vitamin C (8% DV), Calcium (0% DV), Iron (2 % DV). Percent Daily Values (DV) are based on a 2,000 calorie diet.

(B) Using any of the following abbreviations:
Serving size—Serv size
Servings per container—Servings
Calories from fat—Fat cal
Calories from saturated fat—Sat fat cal
Saturated fat—Sat fat
Monounsaturated fat—Monounsat fat
Polyunsaturated fat—olyunsat fat
Cholesterol—Cholest
Total carbohydrate—Total carb
Dietary fiber—Fiber
Soluble fiber—Sol fiber
Insoluble fiber—Insol fiber
Sugar alcohol—Sugar alc
Other carbohydrate—Other carb

(C) Omitting the footnote required in paragraph (d)(9) of this section and placing another asterisk at the bottom of the label followed by the statement "Percent Daily Values are based on a 2,000 calorie diet" and, if the term "Daily Value" is not spelled out in the heading, a statement that "DV" represents "Daily Value."

* * * * *

(14) Shell eggs packaged in a carton that has a top lid designed to conform to the shape of the eggs are exempt from outer carton label requirements where the required nutrition information is clearly presented immediately beneath the carton lid or in an insert that can be clearly seen when the carton is opened.

(15) * * *

(iii) Each unit container is labeled with the statement "This Unit Not Labeled For Retail Sale" in type size not less than 1/16-inch in height, except that this statement shall not be required when the inner unit containers bear no labeling at all. The word "individual" may be used in lieu of or immediately preceding the word "Retail" in the statement.

* * * * *

Dated: August 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

Note: The following appendixes will not appear in the annual Code of Federal Regulations.

BILLING CODE 4160-01-F

Appendix A:
Tabular display on package with more than 40 square inches of surface area available to bear labeling (sliced bread)

Nutrition Facts

Serving Size 2 slices (56g)
Servings Per Container 10

Calories 140
Calories from Fat 10

Amount/serving	% Daily Value*	Amount/serving	% Daily Value*
Total Fat 1.5g	**2%**	**Total Carbohydrate** 26g	**9%**
Saturated Fat 0g	**0%**	Dietary Fiber 2g	**8%**
Cholesterol 0mg	**0%**	Sugars 1g	
Sodium 280mg	**12%**	**Protein** 4g	

Vitamin A 0% • Vitamin C 0% • Calcium 6% • Iron 6%
Thiamin 15% • Riboflavin 8% • Niacin 10%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Appendix B:
Bilingual Nutrition Label

Nutrition Facts/Datos De Nutricion

Serving Size/Tamano por Racion 1 cup/1 taza (228g)
Servings Per Container/Raciones por Envase 2

Amount Per Serving/Cantidad por Racion

Calories/Calorias 260 Calories from Fat/Calorias de Grasa 120

	% Daily Value*/ % Valor Diario*
Total Fat/Grasa Total 13g	**20%**
Saturated Fat/Grasa Saturada 5g	**25%**
Cholesterol/Colesterol 30mg	**10%**
Sodium /Sodio 660mg	**28%**
Total Carbohydrate/Carbohidrato Total 31g	**11%**
Dietary Fiber/Fibra Dietetica 0g	**0%**
Sugars/Azucares 5g	
Protein/Proteinas 5g	

Vitamin/Vitamina A 4% • Vitamin/Vitamina C 2%

Calcium/Calcio 15% • Iron/Hierro 4%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

* Los porcentajes de Valores Diarios estan basados en una dieta de 2,000 calorias. Sus valores diarios pueden ser mayores o menores dependiendo de sus necesidades caloricas:

	Calories/Calorias:	2,000	2,500
Total Fat/Grasa Total	Less than/Menos de	65g	80g
Saturated Fat/Grasa Saturada	Less than/Menos de	20g	25g
Cholesterol/Colesterol	Less than/Menos de	300mg	300mg
Sodium/Sodio	Less than/Menos de	2,400mg	2,400mg
Total Carbohydrate/Carbohidratos Total		300g	375g
Dietary Fiber/Fibra Dietetica		25g	30g

Appendix C:
Format for foods for children less than 4 years of age (Fruit Dessert)

Nutrition Facts

Serving Size 1 jar (140g)

Amount Per Serving	
Calories 110	Calories from Fat 0
Total Fat	0g
Saturated Fat	0g
Cholesterol	0mg
Sodium	10mg
Total Carbohydrate	27g
Dietary Fiber	4g
Sugars	18g
Protein	0g

% Daily Value		
Protein 0%	•	Vitamin A 6%
Vitamin C 45%	•	Calcium 2%
Iron 2%		

Appendix C:
Format for same food represented to be specifically for children less than 2 years of age (Fruit Dessert)

Nutrition Facts

Serving Size 1 jar (140g)

Amount Per Serving	
Calories 110	
Total Fat	0g
Sodium	10mg
Total Carbohydrate	27g
Dietary Fiber	4g
Sugars	18g
Protein	0g

% Daily Value		
Protein 0%	•	Vitamin A 6%
Vitamin C 45%	•	Calcium 2%
Iron 2%		

Appendix D:
Examples of Linear Display

Full Linear Display

Nutrition Facts Serv size: 1 package, Amount Per Serving: **Calories** 45, Fat Cal. 10, **Total Fat** 1g (2% DV), Sat. Fat 1g (5% DV), **Cholest.** 0mg (0% DV), **Sodium** 50mg (2% DV), **Total carb.** 8g (3% DV), Fiber 1g (4% DV), Sugars 4g, **Protein** 1g, Vitamin A (8% DV), Vitamin C (8% DV), Calcium (0% DV), Iron (2 % DV). Percent Daily Values (DV) are based on a 2,000 calorie diet.

Simplified Linear Display

Nutrition Facts Serv size: 3 pieces, Servings: 4, Amount Per Serving : **Calories** 20, **Total Fat** 0g (0% DV), **Sodium** 20mg (1% DV), **Total carb.** 5g (2% DV), Sugars 5g, **Protein** 0g, Percent Daily Value (DV) are based on a 2,000 calorie diet.

Shortened Linear Display

Nutrition Facts Serv size: 1 package, Amount Per Serving: **Calories** 40, **Total Fat** 0g (0% DV), **Sodium** 50mg (2% DV), **Total carb.** 8g (3% DV), Fiber 1g (4% DV), Sugars 4g, **Protein** 1g, Vitamin A (8% DV), Vitamin C (8% DV), Iron (2% DV), Not a significant source of calories from fat, saturated fat, cholesterol, or calcium. Percent Daily Values (DV) are based on a 2,000 calorie diet.

Appendix E:
Simplified format in tabular display (Pickle slices)

Nutrition Facts

Serving Size 1 oz.
(28g/about 12 slices)
Servings Per Container 16
Calories 20

* Percent Daily Values are based on a 2,000 calorie diet.

Amount/serving	% Daily Value*
Total Fat 0g	**0%**
Sodium 190mg	**8%**
Total Carbohydrate 5g	**2%**
Sugars 5g	
Protein 0g	

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N-0283]

Food Labeling; Placement of the Nutrition Label on Food Packages

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations concerning the placement of nutrition information on packaged foods. If finalized, this action will provide increased flexibility in the placement of nutrition information when the principal display and information panels cannot accommodate all of the required information. In January of 1993, the agency published a document entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" that gave interested persons 30 days to comment on technical issues not raised by earlier comments. This document addresses concerns raised in comments to that document.

DATES: Written comments by October 18, 1993. The agency is proposing that any final rule that may issue, based upon this proposal, become effective on May 8, 1994, which is consistent with the effective date for the nutrition labeling regulations that FDA adopted in January 1993.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5483.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Principal Display Panel and Information Panel

Under FDA's regulations (§ 101.1 (21 CFR 101.1)), the part of a label that is most likely to be displayed, presented, shown, or examined by a consumer under customary conditions of display for retail sale is called "the principal display panel." This panel must include the statement of identity for the product and its net weight. In addition, to provide consistency and uniformity in the presentation of label information to consumers, FDA has provided for an alternate display panel for mandatory label information that is not required to appear on the principal display panel. This alternate panel is called "the information panel" (§ 101.2 (21 CFR 101.2)).

The information panel is defined in § 101.2(a) as that part of the label that is immediately contiguous and to the right of the principal display panel. Section 101.2(a)(1) specifies that if the first panel to the right of the principal display panel is too small to accommodate the necessary information, or is otherwise unusable label space, the panel immediately contiguous and to the right of that part of the label may be used as the information panel. Accordingly, FDA's regulations direct manufacturers to move the information required to appear on the information panel as a unit when the first available information panel will not accommodate all the required information. Pursuant to § 101.2(e), all information appearing on the information panel must be presented in one place without other intervening material.

Section 101.2(b) states that the ingredient listing; name and place of business of the manufacturer, packer, or distributor; and nutrition information must appear either on the principal display panel or on the information panel, unless otherwise specified by regulation. Section 101.2(d)(1) requires that all information required to appear on the principal display panel or the information panel appear on the same panel unless there is insufficient space, in which case it may be divided between the principal display panel and information panel in accordance with §§ 101.1 and 101.2. In determining the sufficiency of the available space, under § 101.2(d)(1), any vignettes, designs, and other nonmandatory label information are not to be considered.

B. Mandatory Nutrition Labeling

In the **Federal Register** of January 6, 1993, FDA issued a final rule entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition label" (58 FR 2079) (hereinafter referred to as "the mandatory nutrition labeling final rule"), which included provisions to require nutrition labeling on most foods that are regulated by FDA and to specify a new format for declaring nutrition labeling. This action was taken, in part, to implement the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) (the 1990 amendments), which amended the Federal Food, Drug, and Cosmetic Act (the act). Section 101.9(i) (21 CFR 101.9(i)), which was added by this final rule, states that except as provided in § 101.9(j)(13), the location of the nutrition label must be in accordance with § 101.2.

In recognizing the demands for label space made by nutrition labeling, the agency included a provision in the mandatory nutrition labeling final rule that allows nutrition information to be presented on any label panel on packages that have a total surface area available to bear labeling of 40 or less square inches (sq in), § 101.9(j)(13)(ii)(D). The flexibility provided by this provision reflects the agency's recognition that it is more important that the nutrition information be presented on the immediate package than that it be presented in any particular place. FDA expects that given the consistent appearance of the nutrition information that will be produced by the format elements that it is requiring, and the educational efforts of government, industry, and consumer organizations, consumers will know to look for and be able to recognize nutrition information, even if it is not presented to the right of the principal display panel. Section 101.9(j)(13)(ii)(D) does not make any exception, however, for the placement of nutrition information on packages of more than 40 sq in when the principal display and information panels of those packages cannot accommodate all of the required information.

In the **Federal Register** of January 6, 1993, FDA also issued a final rule entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments" (58 FR 2066) (hereinafter referred to as the "implementation final rule"). The implementation final rule, among other things, provided 30 days for the submission of comments on technical issues. FDA advised that if the comments identified any provisions of the final rule that FDA agrees should be changed, FDA would take action to modify those provisions.

Following publication of the mandatory nutrition labeling final rule, FDA received many comments from the food industry requesting guidance on where to place the required nutrition information when there is insufficient space on information panels for it, the ingredient statement, and the information identifying the manufacturer, packer, or distributor. The comments stated that the type size and spacing requirements of the revised

nutrition label will prevent its placement in compliance with current regulations, and they requested greater flexibility in the placement of the nutrition label on the product label.

FDA has reviewed layouts that would implement the new nutrition labeling regulations for many product labels. The agency agrees that the new nutrition label will often require more space than current nutrition labels, and that difficulties in fitting on the information panel all of the information that is required to appear there will result. Based on this review and its review of the comments, FDA has tentatively concluded that increased flexibility in regard to the placement of the nutrition label is necessary to ensure that the information panel is readable and not overcrowded. FDA believes that this flexibility can be achieved without in any way hindering consumer use of the nutrition information.

II. Proposed Rule

FDA is proposing to add § 101.9(j)(17) to deal with the situation in which a package has a total surface area available to bear labeling of greater than 40 sq in, but its principal display panel and information panel cannot accommodate all required information. In such circumstances, FDA is proposing to allow the nutrition label to be placed on any panel that can be readily seen by consumers. This action will provide increased flexibility to allow manufacturers to position the nutrition label to reduce crowding of required information. At the same time, as stated earlier, FDA expects that given the consistent appearance of the nutrition information that will be produced by the format elements that it is requiring, and the educational efforts of government, industry, and consumer organizations, consumers will know to look for and be able to readily recognize the nutrition label, even if it is not presented to the right of the principal display panel. Thus, FDA tentatively concludes that providing for this flexibility will not produce any loss of comprehensibility, understandability, or information for consumers.

In deciding whether the space on the principal display panel and the information panel is adequate for presentation of the nutrition label, FDA is proposing to provide that the space needed for the presentation of vignettes, designs, and other nonmandatory label information on the principal display panel can be taken into account. In permitting consideration of the space needed to present such information, this proposed rule is in contrast to the general rule for determining the space available to bear required information in § 101.2(d)(1). That provision states that in determining the sufficiency of the available space, vignettes, designs, and other nonmandatory label information on the principal display panel cannot be taken into account. The purpose of § 101.2(d)(1) is to ensure that required labeling information is prominently displayed on food labels, so that the information is easy for consumers to locate.

FDA has tentatively concluded that a different treatment of nonmandatory information on the principal display panel is appropriate in deciding where nutrition labeling is to be presented because the graphic requirements for nutrition information required by § 101.9 inherently result in a "Nutrition Facts" panel that is easy to locate regardless of where it is placed on the label. Given the demand for label space made by the nutrition information panel, FDA does not believe that it is reasonable to require that vignettes, designs, and other nonmandatory information on the principal display panel not be considered in calculating the amount of available space for determining the panel on which nutrition information should appear. To do so, could significantly affect the appearance of many packages with little gain in comprehensibility for consumers. Current industry practice almost never places the nutrition label on the principal display panel unless there is no alternative panel on the package. The agency does not believe it is necessary to change this practice inasmuch as the nutrition label will be conspicuous and easily distinguishable from other labeling information.

This proposed action requires an ancillary modification to the regulations pertaining to relative nutrient content claims (e.g., "less," "more"). Section 101.13(j)(2)(iv)(B) (21 CFR 101.13(j)(2)(iv)(B)) requires that when a relative nutrient content claim is made, clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that in the reference food shall appear adjacent to the most prominent claim or on the information panel. This requirement is repeated in each regulation in part 101 (21 CFR part 101) pertaining to relative claims (i.e., "more" claims: § 101.54(e)(1)(iii)(B) and (e)(2)(iii)(B); "light" claims: § 101.56(b)(3)(ii), (c)(1)(ii)(B), (c)(2)(iii)(B), and (g); calorie claims: § 101.60(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B); sodium claims: § 101.61(b)(6)(ii)(B), and (b)(7)(ii)(B); and fat, fatty acid, and cholesterol claims: § 101.62(b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), (c)(5)(ii)(B), (d)(1)(ii)(F)(*2*), (d)(2)(iii)(E)(*2*), (d)(2)(iv)(E)(*2*), (d)(4)(i)(C)(*2*), (d)(4)(ii)(D)(*2*), (d)(5)(i)(C)(*2*), and (d)(5)(ii)(D)(*2*)). FDA is proposing to amend these regulations to require that the comparative quantitative information be placed adjacent to the most prominent claim or to the nutrition label. Likewise, the agency is proposing to modify § 101.61(c)(2)(iii) that pertains to the placement of the statement "not a sodium free food" on foods that are not sodium free and yet whose label bears a claim of "unsalted." The agency is proposing to require that the statement be placed adjacent to the nutrition label.

FDA tentatively finds that these comparative statements and the statement about the sodium content of food provide information about the nutritional content of the food. They make most sense, and are of the greatest value to consumers, when presented in conjunction with other nutrition information about the food. Thus, because that nutrition information may or may not appear on the information panel, FDA tentatively concludes that it makes most sense to tie the location of the comparative statements and the statement on sodium content to the placement of the nutrition information rather than require that they always appear on the information panel.

The agency tentatively finds that it is appropriate to take steps to ensure that the ingredient statement (as required by § 101.4) and the name and place of business of the manufacturer, packer, or distributor (as required by § 101.5) remain on either the principal display panel or information panel. For many years, education programs have taught consumers to look to the information panel for the ingredient statement and the manufacture's name and place of business when the information is not present on the principal display panel. In addition, the agency is concerned that because there are no graphic requirements for such information, other than minimum required type size, it may be difficult for consumers to locate this information if it is moved elsewhere.

To provide for these proposed labeling provisions, FDA is proposing to revise § 101.9(i) to include a reference to the exemption for products covered by the provisions of proposed § 101.9(j)(17) from compliance with § 101.2.

FDA is also proposing to revise § 101.2(d)(1) to exclude from its coverage products that are exempt under § 101.9(j)(13) as well as § 101.9(j)(17). Because of an oversight in publishing the mandatory nutrition

labeling final rule, the agency failed to include a reference to § 101.9(j)(13) in the regulation.

FDA hopes that its proposed action will ease label crowding and design problems and encourage firms to provide more information that will be useful to consumers. The increased flexibility provided by this proposal should also ease the burden of providing nutrition information about a food when it is prepared according to package directions. Because many products undergo a substantial change in nutrient profile after preparation (e.g., cake mixes made with oil and eggs; cooked cereal made with milk), if sufficient space is available, manufacturers may voluntarily provide additional nutrition information regarding one or more methods of preparation in addition to the required "as packaged" information.

III. 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.

IV. Economic Impact

FDA has examined the economic implications of this proposed rule amending 21 CFR part 101 as required by the Regulatory Flexibility Act and Executive Order 12291. The Regulatory Flexibility Act requires regulatory relief for small business where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that this proposed rule will result in positive net benefits because it will allow for increased flexibility in complying with labeling rules. Therefore, it does not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has determined that this proposed rule will not have a significant impact on small businesses.

V. Comments

Interested persons may, on or before October 18, 1993, 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 the 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.

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: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (5 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 101.2 is amended by revising paragraph (d)(1) to read as follows:

§ 101.2 Information panel of package form food.

* * * * *

(d)(1) Except as provided by § 101.9(j)(13) and (j)(17), all information required to appear on the principal display panel or on the information panel pursuant to this section shall appear on the same panel unless there is insufficient space. In determining the sufficiency of the available space, except as provided by § 101.9(j)(17), any vignettes, designs, and other nonmandatory label information shall not be considered. If there is insufficient space for all of this information to appear on a single panel, it may be divided between these two panels except that the information required pursuant to any given section or part shall all appear on the same panel. A food whose label is required to bear the ingredient statement on the principal display panel may bear all other information specified in paragraph (b) of this section on the information panel.

* * * * *

3. Section 101.9 effective May 8, 1994, is amended by revising paragraph (i) and by adding new paragraph (j)(17) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(i) Except as provided in paragraphs (j)(13) and (j)(17) of this section, the location of nutrition information on a label shall be in compliance with § 101.2.

* * * * *

(j) * * *

(17) Foods in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required information may use any alternate panel that can be readily seen by consumers for the nutrition label. In determining the sufficiency of available space for the nutrition label, the space needed for vignettes, designs, and other nonmandatory label information on the principal display panel may be considered.

* * * * *

4. Section 101.13 effective May 8, 1994, is amended by revising paragraph (j)(2)(iv)(B) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(j) * * *

(2) * * *

(iv) * * *

(B) This statement shall appear adjacent to the most prominent claim or to the nutrition label.

* * * * *

5. Section 101.54 is amended by revising paragraphs (e)(1)(iii)(B) and (e)(2)(iii)(B) to read as follows:

§ 101.54 Nutrient content claims for "good source," "high," and "more."

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per labeled serving, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "Fiber content of white bread is 1 gram (g) per serving; (this product) 3.5 g per serving").

(2) * * *

(iii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "the fiber content of 'X brand of product' is 2 g per 3 oz. This product contains 4.5 g per 3 oz").

6. Section 101.56 is amended by revising paragraphs (b)(3)(ii), (c)(1)(ii)(B), (c)(2)(ii)(B), and (g) to read as follows:

§ 101.56 Nutrient content claims for "light" or "lite."

* * * * *

(b) * * *

(3) * * *

(ii) Quantitative information comparing the level of calories and fat

content in the product per labeled serving size, with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "lite cheesecake—200 calories, 4 gram (g) fat; regular cheesecake—300 calories, 8 g fat per serving); and

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium per labeled serving size with that of the reference food it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "lite soy sauce 500 milligrams (mg) sodium per serving, regular soy sauce 1,000 mg per serving").

* * * * *

(2) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sodium per labeled serving size with that of the reference food it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "lite canned peas, 175 milligrams (mg) sodium per serving, regular canned peas 350 mg per serving.")

* * * * *

(g) The term "lightly salted" may be used on a product to which has been added 50 percent less sodium than is normally added to the reference food as described in § 101.13(j)(1)(i)(B) and (j)(1)(ii)(B), provided that if the product is not "low in sodium" as defined in § 101.61(b)(4), the statement "not a low sodium food," shall appear adjacent to the nutrition label and the information required to accompany a relative claim shall appear on the label or labeling as specified in § 101.13(j)(2).

7. Section 101.60 is amended by revising paragraphs (b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), and (c)(5)(ii)(B) to read as follows:

§ 101.60 Nutrient content claims for the calorie content of foods.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per labeled serving size with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "calorie content has been reduced from 150 to 100 calories per serving").

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., calorie content has been reduced from 108 calories per 3 oz to 83 calories per 3 oz).

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sugar in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "sugar content has been lowered from 8 g to 6 g per serving").

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of the nutrient in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., sugar content has been reduced from 17 g per 3 oz to 13 g per 3 oz).

8. Section 101.61 is amended by revising paragraphs (b)(6)(ii)(B), (b)(7)(ii)(B), and (c)(2)(iii) to read as follows:

§ 101.61 Nutrient content claims for the sodium content of foods.

* * * * *

(b) * * *

(6) * * *

(ii) * * *

(B) Quantitative information comparing the level of the sodium in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "sodium content has been lowered from 300 to 150 mg per serving").

* * * * *

(7) * * *

(ii) * * *

(B) Quantitative information comparing the level of sodium in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., sodium content has been reduced from 217 mg per 3 oz to 150 mg per 3 oz).

* * * * *

(c) * * *

(2) * * *

(iii) If the food is not sodium free, the statement, "not a sodium free food" or "not for control of sodium in the diet" appears adjacent to the nutrition label of the food bearing the claim.

* * * * *

9. Section 101.62 is amended by revising paragraphs (b)(4)(ii)(B), (b)(5)(ii)(B), (c)(4)(ii)(B), (c)(5)(ii)(B), (d)(1)(ii)(F)(*2*), (d)(2)(iii)(E)(*2*), (d)(2)(iv)(E)(*2*), (d)(4)(i)(C)(*2*), (d)(4)(ii)(D)(*2*), (d)(5)(i)(C)(*2*), and (d)(5)(ii)(D)(*2*) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of fat in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "fat content has been reduced from 8 g to 4 g per serving").

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of fat in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent such claim or to the nutrition label (e.g., fat content has been reduced from 7.5 g per 3 oz to 5 g per 3 oz).

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(B) Quantitative information comparing the level of saturated fat in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "saturated fat reduced from 3 g to 1.5 g per serving").

* * * * *

(5) * * *

(ii) * * *

(B) Quantitative information comparing the level of saturated fat in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., saturated fat content has been reduced from 2.5 g per 3 oz to 1.7 g per 3 oz).

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(F) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of

the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "contains no cholesterol compared with 30 mg in one serving of butter. Contains 11 g of fat per serving.").

(2) * * *

(iii) * * *

(E) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "cholesterol lowered from 30 mg to 5 mg per serving, contains 13 g of fat per serving").

(iv) * * *

(E) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "cholesterol lowered from 30 mg to 5 mg per serving, contains 13 g of fat per serving").

* * * * *

(4) * * *

(i) * * *

(C) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label.

(ii) * * *

(D) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per labeled serving with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "Cholesterol lowered from 55 mg to 30 mg per serving. Contains 13 g of fat per serving").

* * * * *

(5) * * *

(i) * * *

(C) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., Cholesterol content has been reduced from 35 mg per 3 oz to 25 mg per 3 oz).

(ii) * * *

(D) * * *

(*2*) Quantitative information comparing the level of cholesterol in the product per specified weight with that of the reference food that it replaces is declared adjacent to the most prominent claim or to the nutrition label (e.g., "cholesterol lowered from 30 mg to 22 mg per 3 oz of product.")

* * * * *

Dated: August 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19446 Filed 8–12–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0293]

Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Food Labeling, Questions and Answers" that addresses various questions concerning the regulations that FDA issued to implement the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). The agency has received a large number of inquiries about these final rules, and it has prepared "Food Labeling, Questions and Answers" to respond generally to the most frequently asked questions. FDA believes that this document will facilitate compliance with the new rules.

DATES: Written comments by October 18, 1993.

ADDRESSES: Submit written requests for single copies of the document "Food Labeling, Questions and Answers" to the Industry Activities Staff (HFS–565), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on "Food Labeling, Questions and Answers" to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. "Food Labeling, Questions and Answers" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a document entitled "Food Labeling, Questions and Answers." In the **Federal Register** of January 6, 1993 (58 FR 2066 *et seq.*), FDA published final rules implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). Subsequently, the agency received a vast number of inquiries from industry, consumers, and others concerning the interpretation of the implementing regulations. In addition to responding individually to inquiries, the Office of Food Labeling, Center for Food Safety and Applied Nutrition, FDA, has prepared the document "Food Labeling, Questions and Answers" to serve as general guidance on the nutrition labeling regulations. This document provides answers to the most frequently asked questions that the agency has received.

"Food Labeling, Questions and Answers" is intended only to be guidance to facilitate compliance with the new regulations. It does not bind the agency nor does it create or confer any rights, privileges, or benefits for or on any person. While "Food Labeling, Questions and Answers" represents the best advice of the Office of Food Labeling, it does not have the force and effect of law. The interpretations presented herein are obviously subject to the requirements of law both in the statute and in the regulations.

Interested persons may, on or before October 18, 1993, submit written comments on "Food Labeling, Questions and Answers" to the Dockets Management Branch (address above). FDA will consider these comments in determining whether revisions to the document are warranted. Two copies of any comments should 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. The document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 6, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 93–19258 Filed 8–12–93; 8:45 am]

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federal register

Wednesday
August 18, 1993

Part XVIII

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting and Proposed Actions Under the Guidelines for Research Involving Recombinant DNA Molecules; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on September 9–10, 1993. The meeting will be held at the National Institutes of Health, Shannon Building, Building 1, Wilson Hall, 3rd Floor, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. on September 9, 1993, to adjournment at approximately 5 p.m. on September 10, 1993. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of 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, Phone (301) 496–9638, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. 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 11, 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: August 3, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–20063 Filed 8–17–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under the NIH guidelines for research involving recombinant DNA molecules (51 FR 16958).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 9–10, 1993. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by September 1, 1993, will be reproduced and distributed to the RAC for consideration at its September 9–10, 1993, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Economou, Glaspy

On July 12, 1993, Drs. James S. Economou and John Glaspy of the University of California, Los Angeles, California, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Genetically Engineered Autologous Tumor Vaccines Producing Interleukin-2 for the Treatment of Metastatic Melanoma.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. O'Shaughnessy

In a letter dated September 9, 1992, a letter was received indicating the intention of Dr. Joyce A. O'Shaughnessy, National Institutes of Health, Bethesda, Maryland, to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Retroviral Mediated Transfer of the Human Multi-Drug Resistance Gene (MDR–1) into Hematopoietic Stem Cells During Autologous Transplantation After Intensive Chemotherapy for Breast Cancer.

During the December 3–4, 1992, Recombinant DNA Advisory Committee meeting, approval of the protocol was deferred until the investigators returned to the committee with the following:

(1) Data demonstrating that human CD34(+) cells can be transduced *in vitro* with the actual vector that will be used for the human clinical protocol;

(2) A description of the methods that will be used to monitor gene expression in bone marrow and tumor cells; and

(3) A description of the endpoint for determining bone marrow recovery, i.e., comparison of gene amplification and the rate of polymorphonuclear leukocyte recovery following taxol administration.

On July 14, 1993, Dr. Joyce O'Shaughnessy of the National Institutes of Health, Bethesda, Maryland, resubmitted a human gene

therapy protocol for review and approval.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Das Gupta and Cohen

In a letter dated February 26, 1993, Drs. Tapas K. Gas Gupta and Edward P. Cohen of the University of Illinois College of Medicine, Illinois, and Dr. Jon M. Richards of the University of Chicago, Chicago, Illinois, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: *Immunization of Malignant Melanoma Patients With Interleukin-2-Secreting Melanoma Cells Expressing Defined Allogeneic Histocompatibility Antigens.*

During the June 7–8, 1993, Recombinant DNA Advisory Committee meeting, approval of the protocol was deferred until the investigators returned to the committee with the following:

(1) Data demonstrating the efficiency of transduction in Mel-4 cells;

(2) Data demonstrating viability, IL–2 production, and *in vivo* murine effect of irradiated transduced cells (either 5,000 or 10,000 rads);

(3) Rationale for ethnic eligibility criteria;

(4) Complete responses to the *Points to Consider*; and

(5) RCR testing data demonstrating safety of the vector preparation.

On July 13, 1993, Drs. Tapas K. Das Gupta and Edward P. Cohen, University of Illinois at Chicago, Chicago, Illinois, resubmitted a human gene therapy protocol for formal review and approval. The revised title of this protocol is: *Pilot Study of Toxicity of Immunization of Patients with Unresetable Melanoma with IL–2 Secreting Allogeneic Human Melanoma Cells.*

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Cassileth, Podack, Sridhar, and Savaraj

In a letter dated December 22, 1992, Drs. Peter A. Cassileth and Eckhard Podack, University of Miami, Miami, Florida, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: *Phase I Study of Transfected Cancer Cells Expressing the Interleukin-2 Gene Product in Limited Stage Small-cell Lung Cancer.*

During the Match 1–2, 1993, Recombinant DNA Advisory Committee meeting, approval of the protocol was deferred until the investigators returned to the committee with the following:

(1) A definition of the clinical endpoints;

(2) Clonogenic assays using irradiated tumor cells; and

(3) A revised Informed Consent document, including a statement that some patients selected for gene therapy will require a second surgical procedure to obtain material for the study.

In a letter dated July 14, 1993, Drs. Peter Cassileth, Eckhard R. Podack, Kasi Sridhar, and Niramol Savaraj of the University of Miami School of Medicine, Miami, Florida, resubmitted a human gene therapy protocol for formal review and approval.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Kun, Sanford, Brenner, Heideman, Oldfield

On July 12, 1993, Drs. Larry E. Kun, R.A. Sanford, Malcolm Brenner, and Richard L. Heideman of St. Jude Children's Research Hospital Memphis, Tennessee, and Dr. Edward H. Oldfield of the National Institutes of Health, Bethesda, Maryland, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: *Gene Therapy for Recurrent Pediatric Brain Tumors.*

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Wong-Staal, Poeschla

In a letter dated July 14, 1993, Drs. Flossie Wong-Staal, Eric Poeschla, and David Looney of the University of California, San Diego, La Jolla, California, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Phase I Clinical Trial to Evaluate the Safety and Effects in HIV–1 Infected Humans of Autologous Lymphocytes Transduced with a Ribozyme that Cleaves HIV–1 RNA.

VII. Amendment to Appendix D–XXVII of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Greenberg, Riddell

On July 9, 1993, Drs. Philip Greenberg and Stanley R. Riddell of the Fred Hutchinson Cancer Research Center, Seattle, Washington, indicated their intention to submit a major modification to a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The current title of this protocol is: A Phase I Study of Cellular Adoptive Immunotherapy Using Genetically Modified CD8+ HIV-Specific T Cells for HIV-Seropositive Patients Undergoing Allogeneic Bone Marrow Transplant. The revised title of this protocol is: Phase I Study to Evaluate the Safety of Cellular Adoptive Immunotherapy using Genetically Modified CD8+ HIV-Specific T Cells in HIV Seropositive Individuals.

VIII. Addition to Appendix D of the NIH Guidelines Regarding Semliki Forest Virus/Dr. Temple

In a letter dated February 8, 1993, Dr. Gary F. Temple of Life Technologies, Inc., Gathersburg, Maryland, submitted a request for a reduction in physical containment from Biosafety Level 3 to Biosafety Level 2 for a Semliki Forest Virus (SFV) vector expression system.

During the June 7–8, 1993, Recombinant DNA Advisory Committee meeting, approval was deferred until the investigators returned to the Committee with the following:

(1) A product information sheet informing customers of the potential health risk of the expression system, standard methods to be used for virus inactivation, a helper virus assay to detect SFV, and a description of symptoms and procedures to be followed in the event that SFV infection occurs in a laboratory worker (including methods to prevent transfer to insect vectors and environmental spread); and

(2) SFV inactivation data.

In a letter dated February 8, 1993, Dr. Gary F. Temple of Life Technologies, Inc., Gaithersburg, Maryland, resubmitted a request for a reduction in physical containment from Biosafety Level 3 to Biosafety Level 2 for an SFV vector expression system.

IX. Amendments to Section III and Appendix F of the NIH Guidelines Regarding the Cloning of Toxin Molecules

In a letter dated July 28, 1993, Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland, requested amendments to sections III, IV, and V, and appendices C and F regarding the review process for experiments involving the cloning of toxin molecules.

X. Report on Minor Modifications to NIH-Approved Human Gene Transfer Protocols

Dr. LeRoy Walters, Chair of the Recombinant DNA Advisory Committee, will present an update on minor modifications to NIH-approved human gene transfer protocols.

XI. Working Group Report on Categories of Human Gene Transfer Experiments That Are Exempt From RAC Review/ Dr. Parkman

Dr. Robertson Parkman, Chair of the Working Group on Categorization of Protocols, will present a report on proposed categories of human gene transfer experiments that would be exempt from the RAC review process.

XII. Amendment to Appendix D of the NIH Guidelines Regarding Actions Taken Under the Guidelines

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland, requests an amendment to appendix D. Appendix D is proposed to read:

"Appendix D—Actions Taken Under the Guidelines.

"As noted in the subsection of Section IV–C–1–b–(1), the Director, NIH, may take certain actions with regard to the Guidelines after the issues have been considered by the RAC. An updated list of these actions are available from the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892."

XIII. Amendment to the Guidelines for the Submission of Human Gene Transfer/Therapy Protocols for Review by the RAC of the Points to Consider/ NIH Guidelines

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), National Institutes of Health, Bethesda, Maryland, requests an amendment to the *Guidelines for the Submission of Human Gene Transfer/Therapy Protocols for Review by the RAC* (**Federal Register**, February 18, 1993, page 9104). This amendment will establish consistency in protocol submissions and will focus oral responses by the principal investigators. The title and section I is proposed to read:

Guidelines for the Submission of Human Gene Transfer Protocols for Review by the Recombinant DNA Advisory Committee

I. Investigator Submitted Material:

Written proposals must be submitted in the following order: (1) Scientific abstract—1 page; (2) non-technical abstract—1 page; (3) IBC and IRB approvals; (4) Points to Consider—5 pages; (6) protocol—20 pages excluding appendices; (7) Informed Consent Document—approved by the IRB; (8) appendices including tables, figures, and manuscripts; and (9) CVs—2 pages in Biosketch format. When a proposal has been submitted previously, there should be a short section (≤200 words) immediately following the abstracts that summarizes the major revisions since the last review. Data provided * * *.

* * * written responses (including critical data in response to the primary reviewers' comments) must be submitted by the Principal Investigators to ORDA ≥2 weeks before the RAC meeting.

Oral Responses to the RAC. Principal Investigators must limit their oral responses to the RAC only to those questions that are raised during the meeting. Oral presentations of previously submitted material and/or critical data that was not submitted ≥2 weeks prior to the RAC meeting is prohibited.

Currently, the title and section I reads:

Guidelines for the Submission of Human Gene Transfer/Therapy Protocols for Review by the Recombinant DNA Advisory Committee

I. Investigator Submitted Material:

"Written proposals should begin with the lay and scientific abstracts, followed by the *Points to Consider* and material provided in the body of an R01 format (section A–D). When a proposal has been submitted previously, there should be a short section (≤200 words) immediately following the abstracts that summarizes the major revisions since the last review. Length limitations are 4–5 pages for the *Points to Consider*, 2 pages each for CVs (Biosketch format) and 20 pages for the body of the proposal (excluding tables, figures, appendices, and manuscripts). Data provided * * *.

* * * written responses from the Principal Investigators ≥2 weeks before the RAC meeting.

Oral Presentations at RAC Meetings provide only a brief overview of the proposal; they should concentrate on questions raised by the reviewers before and at the meeting. Oral presentations should be ≤20 minutes: ≤10 minutes for the overview and ≤10 minutes for responses to the reviewers' questions.

XIV. Amendments to Appendix B of the NIH Guidelines Regarding Updating the Classification of Microorganisms/ Fleming

In a letter dated June 24, 1993, Dr. Diane O. Fleming, President of the Mid-Atlantic Biological Safety Association requests updating Appendix B: *Classification of Microorganisms on the Basis of Hazard*. The Mid-Atlantic Biological Safety Association submitted an updated list of the classification of microorganisms for the committee to review which includes the latest taxomomy and agent risk group classifications as defined by the Centers for Disease Control.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 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.

Daryl A. Chamblee,

Acting Deputy Director for Science Policy and Technology Transfer.

[FR Doc. 93–20064 Filed 8–17–93; 8:45 am]

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Wednesday, August 18, 1993

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LIST OF PUBLIC LAWS

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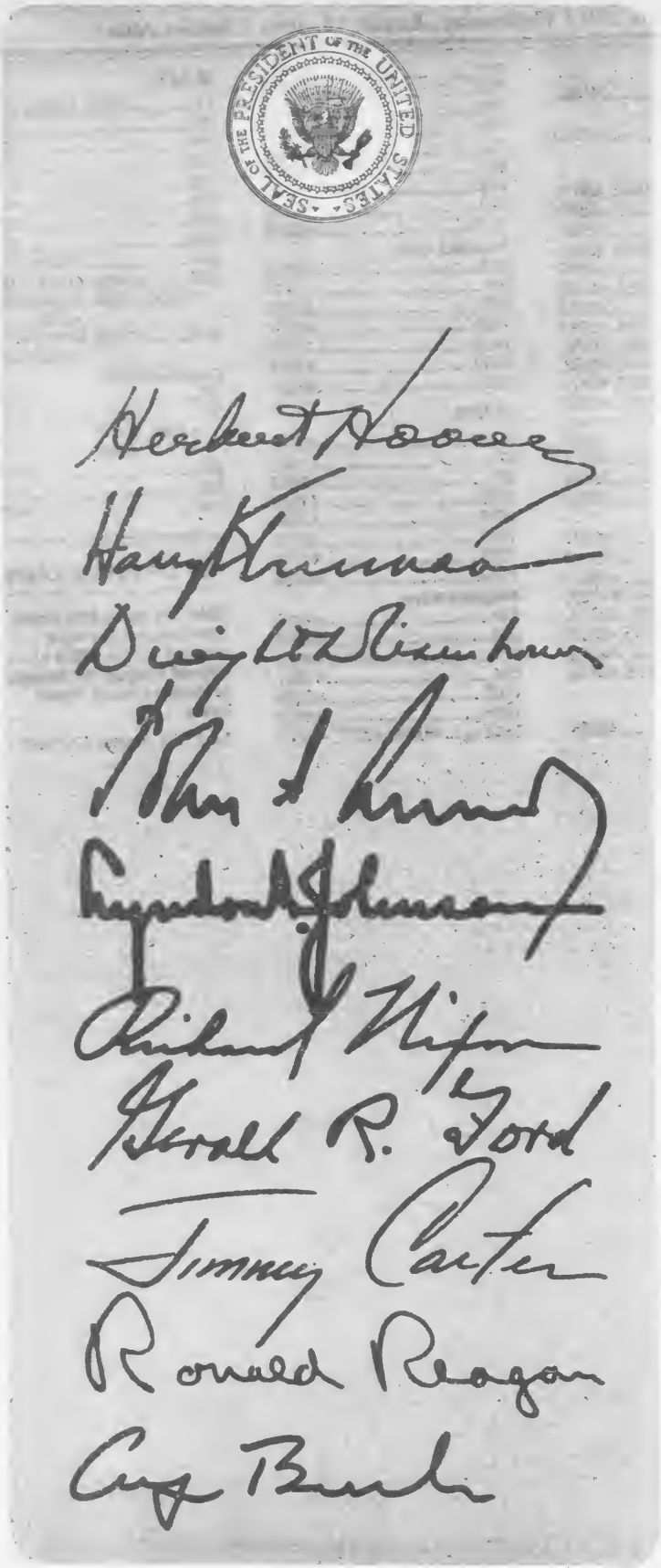
Last List August 17, 1993



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