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

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses 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.

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WHEN: September 26, at 9:00 am
WHERE: Denver Federal Center, Building 20 (E8 entrance on 2nd Street) Conference Room B1409, Denver, CO
RESERVATIONS: Federal Information Center 1–800–359–3997

WASHINGTON, DC

WHEN: September 30, at 9:00 am
WHERE: Office of the Federal Register First Floor Conference Room 1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240

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Presidential Documents

Title 3—

The President

Presidential Determination No. 91–52 of September 13, 1991

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under Section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination made by me on September 5, 1990 (55 FR 37309), the exercise of certain authorities under the Trading with the Enemy Act is scheduled to terminate on September 14, 1991.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by Section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1992, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505;

(3) the Cuban Assets Control Regulations, 31 CFR Part 515; and

(4) the Foreign Funds Control Regulations, 31 CFR Part 520.

This memorandum shall be published in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, September 13, 1991.

[FR Doc. 91–23267
Filed 9–23–91; 3:10 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 6338 of September 23, 1991

Fire Prevention Week, 1991

By the President of the United States of America

A Proclamation

More than 5,000 people in the United States die each year as a result of fire—most of them in their homes. Tens of thousands more suffer painful and often disfiguring fire-related injuries. If we are to prevent such tragic losses in the future, all Americans must learn how to identify and to avoid fire hazards. Moreover, all of us—especially children and older adults—must know what to do in case fire strikes.

Fire prevention begins with recognizing and changing risky behaviors such as careless smoking; fire prevention is as simple as keeping matches and lighters out of reach of children. These and other basic measures—such as safe storage of combustible materials—can save lives. Americans can also reduce their risk of dying in a home fire by installing and properly maintaining an adequate number of smoke detectors.

While smoke detectors can give an early warning of fire, planning ahead for emergencies enables individuals and families to make good use of that warning. Hence, the National Fire Protection Association (NFPA) has selected "Fire Won't Wait—Plan Your Escape" as the theme of Fire Prevention Week, 1991. The NFPA is working to remind all Americans that there is no time for planning once a fire starts, so advanced preparation is vital. In the same spirit, the United States Fire Administration continues to coordinate other public education campaigns that are designed to promote fire safety. These campaigns complement NFPA efforts.

During this annual observance of Fire Prevention Week, I urge all Americans to develop and practice a home fire escape plan. Ideally, such a plan should include two ways out of every room, as well as a designated meeting place outside for all members of the family. Parents should teach their children the importance of crawling close to the floor to avoid smoke and noxious fumes, as well as the "stop, drop, and roll" technique for extinguishing flames on one's clothing.

This week, as we dedicate ourselves to fire prevention, let us also recognize all those individuals who are working toward the same goal. These include the members of the Congressional Fire Services Institute; the International Association of Fire Fighters; the International Association of Black Professional Fire Fighters; the National Volunteer Fire Council; the International Society of Fire Service Instructors; the Fire Marshals Association of North America; the National Association of State Fire Marshals; and all other public and private organizations that conduct fire safety education programs.

On this occasion, let us offer special thanks to the Nation's volunteer and professional fire fighters, who frequently put themselves in harm's way to protect the lives and the property of their fellow Americans. And, of course, let us remember with grateful prayers those fire fighters who have made the ultimate sacrifice in the line of duty.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 6, 1991, as Fire Prevention Week. I urge all Americans to plan and to participate in fire prevention activities—this week and throughout the year.

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

George Bush

[FR Doc. 91-23288
Filed 9-23-91; 4:06 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6339 of September 23, 1991

National School Lunch Week, 1991

By the President of the United States of America

A Proclamation

One of the first aims of AMERICA 2000, our comprehensive strategy for achieving excellence in education, is ensuring that every child in the Nation starts school ready to learn. Because a hungry or undernourished child is less likely to be an eager and attentive student, the National School Lunch Program plays an important role in helping us to meet this goal.

Thanks to the National School Lunch Program, approximately 23 million students in 91,000 schools across the country are able to eat a wholesome, well-balanced lunch each day. Meals provided through the Program, which has been expanded to include the School Breakfast Program, help these children to develop the energy, stamina, and good health that they need to study and to learn.

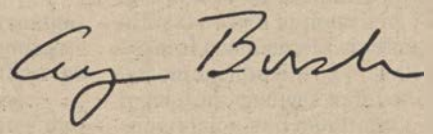
The National School Lunch Program also continues to promote healthy eating habits among the youngsters who participate. Indeed, much has changed since their parents sat at the cafeteria table. As conventional wisdom regarding diet and nutrition has changed, so have school lunches. Students now have a much wider array of healthful and nutritious options than ever before.

The success of the National School Lunch Program has been made possible by many different people, including Federal, State, and local officials, as well as parents, educators, food service specialists, and students themselves. This week, we acknowledge the many dedicated professionals and volunteers who have contributed to the National School Lunch Program since its inception in 1946.

By joint resolution approved October 9, 1962 (Public Law 87–780), the Congress designated the week beginning on the second Sunday of October in each year as "National School Lunch Week" and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning October 13, 1991, as National School Lunch Week. I call upon all Americans to recognize those dedicated and hardworking individuals who contribute to the success of the School Lunch Program.

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



[FR Doc. 91-23298
Filed 9-23-91; 4:16 pm]
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Rules and Regulations

Federal Register
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Wednesday, September 25, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The National Credit Union Administration Board (Board) has amended its rules concerning member business loans, which were initially adopted by the Board in 1987. These amendments follow two separate requests for comment. The first request was issued on January 17, 1991, (See 56 FR 2723, 1/24/91). The comment period closed on March 25, 1991, with a total of 744 comments. On April 4, 1991, the Board approved a second request for comments which, based on the earlier comments, reflected a number of changes and amendments (See FR 15053, 4/15/91). That comment period ended on June 14, 1991, with 403 comments. Numerous problems relating to member business loans have been revealed during the examination and supervision process. Business lending has resulted in high losses to credit unions, their members and the National Credit Union Share Insurance Fund. The existing rule and increased examination and supervision efforts have not been sufficient to stem losses due to problems associated with member business loans. Changes to the existing rule are necessary in order to limit certain high risk activities and are intended to reduce losses to the credit union system.

EFFECTIVE DATE: January 1, 1992.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, David M. Marquis, Deputy Director, or Timothy P. Hornbrook, Director, Department of Supervision, Office of Examination and Insurance, NCUA, at the above address, or telephone: (202) 682–9640.

SUPPLEMENTARY INFORMATION:

A. Background

The Board adopted rules and regulations addressing member business loans in 1987 (See 52 FR 12365, 4/16/87). At that time, the Board expressed its intent to evaluate the effectiveness of the rule over a 3-year period. Over that period, specialized examination methods and training have been developed in order to increase overall examiner awareness and skills in this area. In addition, data has been collected from the semiannual call reports and from examination and supervision contacts.

The proposed changes to the existing rule are intended to reduce losses to the credit union system. These changes will require greater diversification, revised collateral requirements and overall limits on certain types of lending. In addition, the changes adopted will improve the ability of the Agency to identify and monitor business lending activity.

Numerous problems relating to member business loans have been revealed during the examination and supervision process. These problems have contributed to overall weaknesses in asset quality, earnings and capital which have led to liquidations, mergers and special assistance to avoid liquidation. Business lending, when not properly carried out, has invariably caused heavy expenses to individual credit unions, their members and the National Credit Union Share Insurance Fund (NCUSIF).

Examination and supervision findings have documented the often complex and potentially high risk nature inherent in loans for business purposes. Traditionally, other industries recognize this increased risk in the form of a risk premium, e.g., higher rates charged to business borrowers. Data from the Federal Deposit Insurance Corporation, for example, indicates that even experienced commercial banks average a loss ratio related to business lending that is nearly three times higher than the average loss ratio for credit unions. Finally, NCUA experience indicates that problems related to member business loans have an extremely high correlation with problem credit unions and losses to the NCUSIF.

Call report data from June 1991 indicates that federally insured credit unions now hold a total of $1.9 billion in member business loans. This is 1.4 percent of total loans or .8 percent of total assets. Member business loans have increased $924 million/99 percent since 1987 and $212 million/13 percent over the past 6 months. The data indicate further that only 1,360 of 13,007 or about 10 percent of total federally insured credit unions are holding member business loans.

At the same time, problem credit unions (CAMEL code 3, 4, or 5), share a disproportionately higher level of member business loans than other credit unions. In addition, poorly reserved credit unions hold a larger amount of member business loans in proportion to other, better reserved credit unions. In summary, credit unions with the poorest overall condition and poorest ability to withstand losses tend to have the greatest involvement with member business loans.

The Board recognizes that loans for business purposes have been an integral part of some credit union's lending programs. Accordingly, the Board wishes to reaffirm that it does not intend to preclude well-operated credit unions from offering business-purpose loans to their members. Nevertheless, consistent with its fiduciary duty to protect the interests of all federally insured credit unions, and the NCUSIF, the Board is taking certain steps in an effort to reduce losses. These steps are intended to place reasonable limits on some of the riskiest activities, require the board of directors to establish prudent lending policies and to improve the ability of NCUA to monitor its exposure. At the same time, examination procedures will continue to emphasize safe and sound lending policies and practices in an effort to minimize operating losses. Finally, training programs will provide continuing education to agency staff in order to ensure that staff is sufficiently qualified and experienced to evaluate and provide guidance to credit union officials when appropriate. Although several commenters continue to encourage the Board to limit its regulatory changes in favor of increased supervision and monitoring, the Board is not convinced that these efforts alone

will produce the changes needed to reduce losses to an acceptable level.

B. Comments

A total of 403 comments were received as a result of the request for comments which ended on June 14, 1991. Eighty comments were received from Federal credit unions and 133 comments came from State-chartered credit unions. Seventy-five comments were received from credit union members (including 46 comments from a single credit union). Six comments were from national credit union organizations and 21 were from State credit union leagues. Four comments were from state regulators and two comments were received from other state agencies. Seventy-six comments were received from religious organizations and their affiliates. Two comments were received from law firms. Comments were also received from two State senators, an insurance group, and a city mayor.

Although nine commenters approve of the proposed rule in its entirety, most comments recommended additional changes. Numerous meetings and discussions with various individuals and groups and, as a result of this additional information, a number of changes to the April proposed rule are incorporated herein. While these amendments will cause certain changes to policies and practices, these changes are considered a reasonable accommodation in consideration of the increased risk exposure resulting from lending for business purposes.

C. Discussion

Definitions—Section 701.21(h)(1)

Section 701.21(h)(1)(i) contains the definition of member business loans. The definition of member business loans was expanded to include loans for the purpose of "investment property or venture". Several commenters requested additional clarification of this term. Such loans are characterized by a dependence on future appreciation in the value of the property or future income derived from the property in order to repay the loan in whole or in part.

Fifty-five commenters requested a separate rule for agricultural lending. At this time, the Board is convinced that agricultural and other types of business lending share common characteristics and behavioral patterns and accordingly, fall into the same general category. A separate rule has not been incorporated.

The existing rule contains four exclusions from the general definition of member business loans. Several modifications have been made. It is not the Board's intent to include within the context of this revised rule, loans already granted under the authority of the deleted exclusions. Similarly, recordkeeping provisions of this rule are not intended to apply to loans previously exempted from reporting requirements. Accordingly, credit unions are not required to reclassify existing loans or take any other actions with respect to loans previously granted under existing authority. All new loans granted subsequent to the effective date of the rule are covered under the revised provisions of this rule.

Section 701.21(h)(1)(i)(A) of the final rule removes the exemptions for business loans secured by a member's secondary residence or one other such dwelling. Thirty-eight commenters favored the exemptions contained in the existing rule. Loans secured by a member's primary residence are considered a lesser overall risk than loans secured by other residences. In determining whether an exemption is allowable, the credit union must determine whether the subject property is or will be the principal residence of the member-borrower. If so, the loan is not within the purview of § 701.21(h) but may be subject to rules concerning long-term mortgage lending, § 701.21(g).

Section 701.21(h)(1)(i)(C) excludes business loans of less than $25,000 from the definition of member business loans. The language contained in this section has been amended slightly for clarification purposes. Although several commenters requested an increase in the amount of the exclusion, the Board has heard no clear or compelling reasons why such an increase should be considered. By way of example, commenters pointed out that a loan for $25,000 for an automobile would be considered a consumer loan to an individual, yet the same loan would be subject to the provisions of this section if granted for a business purpose. Although true, the additional underwriting, recordkeeping and other provisions of this section is related to the risk inherent in business loans rather than the character or value of the collateral securing such a loan. In short, risks associated with consumer credit are less than those associated with business credit. In any event, the Board is excluding loans of less than $25,000 in the interest of eliminating unnecessary burdens for smaller credits. Nevertheless, regardless of amount, loans for business purposes should be underwritten as business loans and any additional risks associated with such lending should be considered by the credit union in its evaluation criteria, collateral requirements, pricing and monitoring mechanisms.

Section 701.21(h)(1)(i)(E) was added to clarify that loans granted by a corporate credit union to another credit union are not included within the scope of this rule. Several commenters indicated that while this point was clear with respect to federally chartered corporates, the issue with respect to State-chartered corporates was unclear. It was not the Board's intent to include corporate credit union transactions within the context of this rule.

Section 701.21(h)(1)(ii) defines the term "reserves" as used in this section. The proposed rule excluded the balance of the Allowance for Loan Losses account from the definition of reserves. Several commenters pointed out that this revised definition differed from the definition of reserves used elsewhere in these regulations and in other Agency references and would lead to unnecessary confusion. The Board agrees and retains the definition as used in the existing rule. At the same time, the Board reaffirms the exclusion of the Allowance for Loan Losses as a factor in the computation of various limits found elsewhere in this section. Since the Allowance for Loan Losses account is considered a provision for known and potential losses in the existing loan portfolio, these are not considered free, unallocated reserves available for use in deferring risk in other assets. Accordingly, the Allowance for Loan Losses is not considered a viable factor to be used to leverage the amount of available credit. Accordingly, §§ 701.21(h)(2)(iii) (A), (B) and (D) have been revised to exclude the Allowance for Loan Losses account from total reserves. This change accommodates the concerns of those who believe the proposed definition will be unnecessarily confusing while also providing for the concerns of the Board that allowance accounts not be leveraged.

Section 701.21(h)(1)(iii) defines the term "associated member". Several commenters requested clarification that the term be limited to shared interests with this credit union. Although no change is being made to the final rule, it is noted that the Board intends for this term to be limited to shared interests, investments or other pecuniary interests associated with the credit union where the loan has been requested. Similarly, § 701.21(2)(iii)(A) is intended to apply to member business loans to this credit union. For example, in determining the limit of loans to one borrower, this construction applies to the individual credit union to which the member

applies for a member business loan and does not require each credit union to determine the aggregate member business loans made collectively by all credit unions or other financial institutions.

Section 701.21(h)(1)(v) defines the term "loan-to-value" as used elsewhere in this section. This amendment to the existing regulation received no comment or discussion and is being left as proposed.

Section 701.21(h)(1)(vi) defines the term "construction or development loan" as used elsewhere in this section. Commenters requested additional clarification in order to ensure that such loans are distinctly identified. Construction or development loans are for the acquisition of land or property upon which improvements are planned. Examples of these types of loans included: (1) The purchase of raw land to be developed for resale as building lots; (2) the purchase of raw or developed land for the purpose of constructing housing or a commercial building; and (3) the purchase of an existing structure for rehabilitation in order to improve the economic value for resale or to improve income-producing potential. This term does not include loans for the construction of a member's residence. Loans for construction of a member's residence are normally consumer loans granted under other provisions of these rules and regulations.

Requirements—Section 701.21(h)(2)

Section 701.21(h)(2)(i) establishes a requirement that the board of directors adopt written business loan policies. Section 701.21(h)(2)(i)(F) requires that the board of directors establish qualification requirements for personnel. This section has been revised to require at least 2 years direct experience of personnel involved in making and administering business loans. Although 14 commenters objected to this requirement, the Board remains convinced that minimum experience requirements are necessary. The responsibility of determining the criteria to be used to establish the minimum qualifications rests with the board of directors.

The intent of this section is to ensure that each type of credit offered is properly underwritten and administered. For example, the lending process involved with commercial real estate differs significantly from that of lending for business inventory or equipment. In this example, a credit union involved in both types of business lending would be required to establish qualified personnel for each type credit. In some cases, this may require that more than one individual be used. Credit unions are not required to hire staff but must ensure that the expertise is available, as necessary, to meet the requirements of this section. This could be met, for example, by hiring contract assistance on a case-by-case basis.

Section 701.21(h)(2)(i)(H) clarifies the documentation requirements needed to support extensions of credit for business purposes. This section has been amended to clarify that documentation is necessary except when it is not generally available. This reduces somewhat, the discretion of the board of directors to determine that documentation is not necessary. The Board will normally expect that each business loan is well-documented as noted in the regulation.

Section 701.21(h)(2)(ii)(A) establishes new requirements that business loans be secured and establishes loan-to-value (LTV) ratios. Six commenters approved of these provisions, while 33 commenters objected. Those objecting did so on the basis that such limits are unrealistic and that creditworthiness should be the primary concern as opposed to collateral requirements. The Board agrees and notes that lending criteria should place primary emphasis on the borrower's creditworthiness, secondary emphasis on viability of the enterprise and lastly, on the collateral value securing the loan.

As recent events in New England have demonstrated, material declines in regional economies impact creditworthiness and collateral adequacy simultaneously. Collateral requirements are imposed as a hedge against the potential for borrower default. Additionally, LTV ratios implicitly produce powerful incentives to encourage borrowers to repay, e.g., to protect the borrower's equity interest in the property. These incentives do not exist with high LTV ratios where the borrower has little, if any, equity at risk. Accordingly, it is critical that sufficient equity be available to protect the lender's interest. For these reasons, LTV ratios consistent with generally accepted industry standards have been established as a part of this rule.

Section 701.21(h)(2)(ii)(B) adds a requirement that member business loans include the personal liability and guarantee of principals. The final rule exempts loans to not-for-profit organizations such as churches, cooperatives, charitable organizations and similar groups from the signature requirement of this provision. Comments to the rule proposed in January 1991, argued that, given the low level of losses with such groups, the provision requiring the signature of the principal should not be imposed where the borrower is organized or incorporated as a nonprofit corporation. The Board recognizes that the structure of such organizations normally does not provide for a principal.

Section 701.21(h)(2)(ii)(C) has been added to the rule to exempt state-chartered credit unions from the general prohibition against unsecured credit with respect to corporate credit card accounts. Several comments pointed out that such credit is normally short-term, entails strong underwriting criteria and is generally made available only to the most creditworthy applicants. Although State-chartered credit unions are not prohibited from offering such unsecured credit by these regulations, State law provisions must also be followed, if applicable. In any event, this exemption is intended to apply only with respect to traditional credit card uses. Such uses may include employee travel reimbursement and similar credit arrangements. Further, examiners will be closely reviewing such credit extensions and will expect sound underwriting criteria including careful documentation with collateral required when appropriate. Examiners will also review policies and procedures to ensure adequate administration and monitoring. This exemption does not affect federal credit unions since the standard Federal Credit Union Bylaws generally limit credit to nonnatural persons to the extent of shares on deposit as the credit union.

Section 701.21(h)(2)(iii)(A) establishes a limit on the amount of loans that may be made to one borrower. Sixty commenters objected to this provision. A number of these comments indicated that they believe that reducing the limit to 10 percent of reserves will have a substantially negative impact on agricultural credit unions. Consistent with the intent expressed by the Board to increase the diversification of member business loan portfolios, the rule has been amended to a loans to one borrower limit of 15 percent of reserves (less the Allowance for Loan Losses account) or $75,000, whichever is the higher. At the same time, the Board acknowledges that circumstances have been demonstrated to indicate that loans in excess of this amount are sometimes clearly warranted. Exceptions to the loans to one borrower limitation may be obtained through the regional director serving the area where the credit union is located. Clarification of the information required to be submitted in support of an exception are discussed elsewhere. As indicated

earlier, it is not the Board's intent to curtail sound lending programs but rather, to improve upon weak programs. Although credit unions may apply for a loan-by-loan exception, an application for a higher overall limit will oftentimes prove a more practical alternative.

This section has been amended to eliminate the exclusion of an interest in the borrower's residence(s) from calculation of the loans to one borrower limit. This exclusion had no practical effect in the existing rule, since such loans were already excluded from the rule by definition. Eliminating these exclusions from this final rule maintains consistency between the definition of member business loans and the loans which, when added together, establish the loans to one borrower limit.

Section 701.21(h)(2)(iii)(A) has also been modified slightly to clarify that the Board intends to exclude from the calculation of the loans to one borrower limit, any portion of a member business loan secured by shares in the credit union or by deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to, an advance commitment to purchase by any agency of the federal government or of a state or any of its political subdivisions. This has been accomplished by changing the term "fully secured" in the second sentence of this section to "secured".

Several comments expressed concern regarding loans which presently exceed the revised loans to one borrower limit. This would include loans which have been fully funded, binding commitments, letters of credit or lines of credit issued. As with other provisions contained in this section, the effective date applies to loans which are granted or committed on or after the effective date. Loans granted, committed or funded prior to the effective date of this rule are not affected by these provisions.

The proposed rules each contained an aggregate limit on member business loans. This issue created considerable comment and debate regarding the merits and problems related to an aggregate cap. At this time, the Board has determined that an aggregate cap shall not be established by regulation. Although cognizant that a cap alone will not reduce losses, it is important to note, however, that each board of directors is required by this rule to establish its own aggregate member business loan limit. Such limits shall be reviewed during regular supervisory examinations. Additionally, the Board will monitor the activity of credit unions through the reporting requirements of this rule. The need to readdress this issue will be reviewed periodically to ensure that aggregate limits established by each credit union are meaningful and provide for the safe and sound operation of the credit union.

Section 701.21(h)(2)(iii)(B) establishes criteria for credit unions seeking exceptions to the loans to one borrower limit or those contained in the construction, development and speculative lending section of these rules. Thirty-seven comments opposed the involvement of the regional director in the process. Previous comments expressed concern regarding the impartiality of the regional directors' views concerning member business loans and requested clarification of the criteria to be used to evaluate requests for exceptions. The Board believes that it is necessary that an exception process be available to credit unions who wish to avail themselves of limits in excess of those established by regulation, whatever that limit should be. Further, the regional directors clearly have the best resources to investigate and act on requests in the most timely manner. Finally, as indicated previously, the Board has made it clear that member business loans are a necessary service for many credit unions and regional directors support these views as well.

This section clarifies, in specific detail, those items which shall be included in the requests for exception. The Board intends that requests which are well-supported by sound financial condition, experience, and thorough analysis shall be favorably viewed. Further, the final rule provides that credit unions may assume approval has been granted if notification has not been provided within 30 days of receipt of the request in the regional office. In any event, regional directors will make every reasonable effort to act on each request as expeditiously as possible. As with other actions, appeal of the decision of the regional directors may be directed to the NCUA Board. The Board will monitor this process to assure that applications for exception are processed timely and effectively in conformance with the intent of the Board.

Section 701.21(h)(2)(iii)(C) requires that member business loans be granted for periods consistent with the purpose, security, creditworthiness of the borrower and sound lending policies. Additionally, it is noted that the board of directors is responsible for establishing maturity limits on these loans. Although the proposed rules established maximum maturity limits, these are deleted from this final rule. In the case of federal credit unions, member business loans may not be granted for periods in excess of 12 years. This limit is established by the Federal Credit Union Act. State-chartered credit unions are limited to the maturity established under state law.

Section 701.21(h)(2)(iii)(D) establishes monitoring requirements for credit unions which have member business loans outstanding in excess of 100 percent of reserves (less the Allowance for Loan Losses account). Forty-six comments objected to this monitoring requirement. Experience with problem credit unions has indicated that, frequently, losses or liquidations could have been avoided or minimized if poor underwriting and similar problems were detected earlier and corrective action taken. Short of imposing a mandatory cap on such lending, the Board believes that requiring credit unions to provide a monitoring report, once a substantial commitment of credit union equity is at risk, is a reasonable method of detecting such problems at an earlier stage.

Although the proposed rule required a monthly report, this requirement has been modified slightly to require such reports on a quarterly basis. In addition, information regarding delinquent member business loans is modified from 10 days delinquent to 30 days delinquent. Monitoring requirements may be modified or amended through separate request or agreement with the regional director.

Section 701.21(h)(2)(iv) has been amended slightly in order to reference the Appendix to § 701.21(h). No change in intent or meaning to derived from this modification.

Construction and Development Lending—Section 701.21(h)(3)

Section 701.21(h)(3) establishes additional rules concerning construction and development lending. The Board has determined that this particular segment of the member business lending market contains the largest overall risks. The final rule establishes an aggregate portfolio cap on such loans, requires a minimum 35 percent equity in the project by the borrower, and requires on-site inspection prior to release of funds.

In general, most comments and discussions support the provisions of this section. Several individuals suggested that NCUA prohibit such lending by federally insured credit unions. Lending for speculative purposes is not appropriate for federally insured credit unions. Speculation, in general, is purchasing something (land, a building) in hopes of future returns or appreciation. Speculative construction means construction that begins without signed contract(s) for the ultimate

purchase of the building or lease of space.

A number of comments, although not objecting to the provision, suggested increasing the portfolio cap above the proposed 15 percent of reserves level. A number of comments recommended excluding any portion of a loan secured by shares or guaranteed by a government agency. This final recommendation has been adopted in the final rule while maintaining the proposed aggregate cap on such lending of 15 percent of reserves, less the Allowance for Loan Losses account. This exclusion language should provide some relief to credit unions such as community development credit unions which offer government guaranteed or assisted loans to low income groups and others. Rehab of existing structures for low income housing would often fall into this same category of exclusion.

A number of comments requested clarification concerning whether this rule is intended to apply to loans for the construction of a member's residence. It is not the intent of the Board that this rule apply to loans for the purpose of constructing a member's personal residence. Such loans would not generally meet the definition of member business loans since the purpose is for a residence and not for business, commercial, investment or similar purpose.

Section 701.21(5) establishes recordkeeping requirements. The final rule requires that loans which meet the general definition of a member loan, regardless of exclusions or exemptions, be identified as such in the records of the credit union and reported on the financial and statistical reports required by NCUA. In view of the record of losses and high risk involved with such lending, the Board has determined that accurate recordkeeping and reporting rules are necessary.

This requirement adds a recordkeeping burden to credit unions which grant loans for business purposes that are excluded from the underwriting and other requirements of these rules due to one or more exclusion to the general definition. This added burden is necessary to determine the extent of business lending by credit unions, associated losses and the effect of regulation in limiting such losses. Further, this new requirement only affects loans made prospectively and does not apply to loans existing within the portfolio prior to the effective date of this rule. Periodic review of the need for such a recordkeeping burden will be performed as required by the Office of Management and Budget.

Section 701.21(h)(6) establishes an effective date of January 1, 1992. This rule was proposed in January, 1991 and affected parties have had a significant period of time to determine the potential effect of any regulatory changes. The Board is confident that the effective date should provide adequate time for credit unions to make any changes necessary to comply with this revised rule.

As indicated earlier, this rule applies only to loans granted or committed after the effective date of the rule. Loans granted or committed prior to the effective date are not required to comply with the revised provisions of this rule.

Requirements of Insurance—Section 741.3

No change is being made to this section. State regulatory authorities and federally insured state-chartered credit unions are advised, however, that exemptions previously obtained by states under the existing regulations are no longer valid to the extent that existing state regulations are not substantially equivalent to these final regulations. Such states must reapply for exemption as provided in this section.

D. Regulatory Procedures

Regulatory Flexibility Act

The Board certifies that the proposed rule will not have a significant impact on a substantial number of small credit unions because the rule applies only to the federally insured credit unions which make member business loans. Approximately 78 federally insured credit unions with assets less than $1 million grant member business loans. In addition, loans of less than $25,000 are exempt from most provisions of this rule. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This rule will increase the collection and recordkeeping requirements of the Paperwork Reduction Act. A separate request is being submitted to the Office of Management and Budget for approval prior to the effective date of this regulation.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that "Federal action limiting the policy making discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope." The issue of member business loans and their risks to federally insured credit unions are concerns of national scope. This regulation is enacted in order to enable NCUA and the NCUSIF to have an operable mechanism in place to ensure the safety and soundness of federally insured credit unions. This regulation will apply to all federally insured credit unions. The NCUA Board believes that the protection of the NCUSIF warrants these new restrictions and that the increased restrictions in the amendments will not unduly burden federally insured state-chartered credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that this rule may have an occasional direct effect on the states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government. Further the amendments may supersede provisions of state law or regulations concerning member business loans which do not substantially meet the requirements of § 701.21(h).

List of Subjects in 12 CFR Part 701

Civil rights, Conflict of interests, Credit, Credit unions, Fair housing, Insurance, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, Surety bonds.

By the National Credit Union Administration Board on September 13, 1991.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789 and P.L. 101–73.

Section 701.6 is also authorized by 31 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. In § 701.21, paragraph (h) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(h) *Member business loans*—(1) *Definitions.* (i) *Member business loans* mean any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or

venture, or agricultural purpose, except that the following shall not be considered member business loans for the purposes of this section:

(A) A loan or loans fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence.

(B) A loan that is fully secured by shares in the credit union or deposits in other financial institutions.

(C) A loan meeting the general definition of *member business loans* under this paragraph (h)(1)(i), and, made to a borrower or an associated member (as defined in paragraph (h)(1)(iii) of this section), which, when added to other such loans to the borrower or associated member, is less than $25,000.

(D) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the federal government or of a state or any of its political subdivisions.

(E) A loan granted by a corporate credit union operating under the provisions of part 704 of this chapter, to another credit union.

(ii) *Reserves* mean all reserves, including the Allowance for Loan Losses and undivided earnings or surplus.

(iii) *Associated Member* means any member with a shared ownership, investment or other pecuniary interest in a business or commercial endeavor with the borrower.

(iv) *Immediate Family Member* means a spouse or other family member living in the same household.

(v) *Loan-to-value* (LTV) ratio means the quotient of the aggregate amount of all sums borrowed from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

(vi) *Construction or development loan* means a financing arrangement for the purpose of acquisition of property or rights to property including land or structures with the intent of conversion into income-producing property including residential housing for rental or sale, commercial, or industrial use, or a similar use.

(2) *Requirements.* Member business loans, as defined in § 701.21(h)(1)(i), may be made by federal credit unions only in accordance with the applicable provisions of § 701.21 (a) through (g), to the extent that they are not inconsistent with this section, and the following additional requirements:

(i) *Written loan policies.* The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:

(A) Types of business loans that will be made;

(B) The credit union's trade area for business loans;

(C) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans;

(D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan;

(E) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to § 701.21(h)(2)(iii)(A);

(F) Qualifications and experience of personnel involved in making and administering business loans with a minimum of 2 years direct experience with this type of lending;

(G) Analysis of the ability of the borrower to repay the loan;

(H) Documentation supporting each request for an extension of credit or an increase in an existing loan or line of credit shall (except where the board of directors finds that such documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the credit union's written policies) include the following: balance sheet, cash flow analysis, income statement, tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation; including tax returns;

(I) Collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated;

(J) Appropriate interest rates and maturities of business loans;

(K) Loan monitoring, servicing and follow-up procedures, including collection procedures;

(L) Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans;

(M) Identification, by position, of those senior management employees prohibited by paragraph (h)(3) of this section from receiving member business loans.

(ii) *Other policies.* The following minimum limits and policies shall also be established in writing and reviewed at least annually for loans granted under this section:

(A) Loans shall be granted on a fully secured basis by collateral as follows:

(*1*) Second lien for LTV ratios of up to 70 percent;

(*2*) First lien for LTV ratios of up to 80 percent;

(*3*) First lien with an LTV ratio in excess of 80 percent shall be granted only where the value in excess of 80 percent is covered through acquisition of private mortgage, or equivalent type, insurance provided by an insurer acceptable to the credit union or insurance or guarantees by or subject to advance commitment to purchase by, an agency of the federal government or of a state or any of its political subdivisions, and in no event shall the LTV ratio exceed 95 percent;

(B) Loans shall not be granted without the personal liability and guarantees of the principals (natural person members) except where the borrower is a not-for-profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501);

(C) Federally insured, state-chartered credit unions are exempt from the provisions of § 701.21(h)(2)(ii)(A) with respect to credit card line of credit programs offered to nonnatural person members which are limited to routine purposes normally made available under such programs.

(iii) *Loan limits.*—(A) *Loans to one borrower.* Unless a greater amount is approved by the NCUA regional director, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 15% of the credit union's reserves (less the Allowance for Loan Losses account), or $75,000, whichever is higher. If any portion of a member business loan is secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 15% limit.

(B) *Exceptions.* Credit unions seeking an exception from the limits of § 701.21(h)(2)(iii)(A) or § 701.21(h)(3) must present the regional director with, at a minimum: the higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. The analysis of credit union experience in making member business loans shall document the history of loan losses, loan delinquency, volume and cyclical or seasonal patterns, diversification, concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of reserves (less the Allowance for Loan

Losses account), underwriting standards and practices, types of loans grouped by purpose and collateral and qualifications of personnel responsible for underwriting and administering member business loans. Regional directors shall consider, in addition to the information submitted by the credit union, the historical CAMEL ratings. If the credit union does not receive notification of the action taken within 30 calendar days of the date the request was received by the regional office, the credit union may assume approval of the request to exceed the limit.

(C) *Maturity.* Member business loans shall be granted for periods consistent with the purpose, security, creditworthiness of the borrower and sound lending policies.

(D) *Monitoring requirement.* Credit unions with member business loans in excess of 100 percent of reserves (less the Allowance for Loan Losses account) shall submit the following information regarding member business loans to their respective regional director on a quarterly basis: the aggregate total of loans outstanding; the amount of loans delinquent in excess of 30 days; the balance of the allowance for member business loan losses; the aggregate total of all concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of reserves (less the Allowance for Loan Losses account); the total number and amount of all construction, development or speculative loans; and any other information pertinent to the safe and sound condition of the member business loan portfolio.

(iv) *Allowance for loan losses.* (A) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation. The criteria for determining the classification of loans is contained in the appendix to § 701.21(h)—Classifications.

(B) Loans classified shall be reserved as follows:

(*1*) Loss loans at 100% of outstanding amount;

(*2*) Doubtful loans at 50% of outstanding amounts; and

(*3*) Substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

(3) *Construction and development lending.* Loans granted under this section to finance the construction or development of commercial or residential property shall be subject to the following additional provisions:

(i) The aggregate of all such loans, excluding any portion of a loan secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal Government or of a State or any of its political subdivisions, shall not exceed 15 percent of reserves (less the Allowance for Loan Losses account);

(ii) The borrower shall have a minimum of 35 percent equity interest in the project being financed;

(iii) Funds for such projects shall be released following on-site inspections by independent, qualified personnel in accordance with a preapproved draw schedule.

(4) *Prohibitions.*—(i) *Senior management employees.* A federal credit union may not make member business loans to the following:

(A) Any member of the board of directors who is compensated as such;

(B) The credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager);

(C) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager);

(D) The chief financial officer (Comptroller);

(E) Any associated member or immediate family member of the senior management employees listed in paragraphs (h)(4)(i) (A) through (D) of this section.

(ii) *Equity kickers/joint ventures.* A federal credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(5) *Recordkeeping.* All loans, lines of credit, or letters of credit, the proceeds of which will be used for a commercial, corporate, business, investment property or venture, or agricultural purpose, shall be separately identified in the records of the credit union and reported as such in financial and statistical reports required by the National Credit Union Administration.

(6) *Effective date.* Section 701.21(h) is effective January 1, 1992. All member business loans granted on or after that date must be in full compliance with § 701.21(h).

[FR Doc. 91-22746 Filed 9-24-91; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ANM-15]

Amendment, Aspen Transition Area, Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Aspen, Colorado, 1200 foot Transition Area. The increase in aeronautical operations at Colorado "Ski Country" airports, and the attendant development of Instrument Flight Rules (IFR) procedures, necessitates the establishment of this additional controlled airspace. This change will facilitate further procedure development and provide point-to-point air navigation routings within controlled airspace where none presently exists.

EFFECTIVE DATE: 0901 u.t.c., November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 90-ANM-15, 1601 Lind Avenue SW. Renton, WA 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

On January 29, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Transition Area at Aspen, Colorado (56 FR 3231). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The proposed coordinates have been changed to (1) exclude the eastern portion of the proposal that is part of the Denver Transition Area, (2) exclude a southwest portion of the proposal which is part of controlled airspace at Grand Junction, Colorado, and (3) include airspace west of the proposal which is currently part of the Meeker, Colorado, Transition Area. These changes to the proposal do not result in an increase in the volume of existing controlled airspace. Accordingly, the rule is adopted as

proposed, with the changes mentioned above. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Aspen, Colorado, 1200 foot Transition Area. The development of new IFR procedures necessitates additional controlled airspace to accommodate aeronautical growth at Colorado "Ski Country" airports.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Aspen, Colorado [Amended]

By removing all words following "that airspace extending upward from 1,200 feet above the surface" and substituting the words * * * "within the area bounded by a line beginning at lat. 40°50'00"N, long. 108°00'00"W; to lat. 40°50'00"N, long. 107°30'00"W; to lat. 40°32'00"N, long. 106°00'00"W; to lat. 39°19'00"N, long. 106°00'00"W; to lat. 39°19'00"N, long. 106°30'00"W; to lat. 39°00'00"N, long. 106°30'00"W; to lat. 39°00'00"N, long. 108°11'00"W; to lat. 39°30'00"N, long. 108°50'00"W, to lat. 40°25'30"N, long. 108°54'30"W: to lat. 40°28'00"N, long. 108°12'15"W; to the point of beginning, excluding the airspace in any Federal Airway that overlaps."

Issued in Seattle, Washington, on August 14, 1991.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 91–23033 Filed 9–24–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AEA–12]

Revocation of Transition Area; Broadway, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice revokes the 700 foot Transition Area established at Broadway, NJ, surrounding the Broadway VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) air navigation facility. This action returns that amount of controlled airspace not needed by the FAA, back to the public.

EFFECTIVE DATE: 0901 u.t.c. November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area established at Broadway, NJ (56 FR 32521). The proposed action would return that amount of controlled airspace not needed by the FAA, back to the public.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G, September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700 foot Transition Area established at Broadway, NJ.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Broadway, NJ—[Removed]

Issued in Jamaica, New York, on September 11, 1991.

John S. Walker,

Acting Manager, Air Traffic Division.

[FR Doc. 91–23031 Filed 9–24–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AEA–08]

Revocation of Transition Area; Grundy, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice revokes the 700 foot Transition Area established at Grundy, VA, due to the continued non-availability of Standard Instrument Approach Procedures (SIAPs) to the Grundy Municipal Airport, Grundy, VA. This action would release that amount of controlled airspace not needed by the FAA to contain aircraft operating under instrument meteorological conditions back to the public.

EFFECTIVE DATE: 0901 u.t.c., November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On May 24, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area established at Grundy, VA, due to the continued non-availability of any SIAP to the Grundy Municipal Airport, Grundy, VA (56 FR 32991). The proposed action would release that amount of controlled airspace not needed by the FAA to contain aircraft operating under instrument flight rules back to the public.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G, September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700 foot Transition Area established at Grundy, VA, due to the continued non-availability of any SIAP to the Grundy Municipal Airport, Grundy, VA.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Grundy, VA [Removed]

Issued in Jamaica, New York, on September 11, 1991.

John S. Walker,

Acting Manager, Air Traffic Division.

[FR Doc. 91-23030 Filed 9-24-91; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1266

RIN 2700-AB00

Cross-Waiver of Liability

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA published a notice of proposed rulemaking on April 13, 1990 (55 FR 13912), concerning cross-waivers of liability for Shuttle operations, NASA Expendable Launch Vehicle (ELV) launches, and for Space Station Freedom activities. Having reviewed public comments on the proposed rule, NASA is publishing this final rule establishing cross-waivers of liability, with minor changes to the provisions set forth in the proposed rule, as the regulatory basis for cross-waiver provisions to be included in agreements for NASA Space Shuttle launches and agreements for NASA ELV program launches planned to occur after July 1, 1994. To be made fully effective for launches planned to occur subsequent to this date, the cross-waivers required by this rule will necessitate concomitant changes to NASA procurement contracts. NASA plans to implement these changes as expeditiously as possible, in order that, where possible, the new cross-waivers will be incorporated in agreements for certain launches planned to occur prior to July 1, 1994. However, all necessary procurement actions will be completed in time for the cross-waivers established by this rule to be effective for launches occurring after this date. The final rule also re-publishes, for comparative purposes, the cross-waiver provision of the Intergovernmental Agreement for Space Station Freedom (Article 16), signed in September 1988, that was also set forth in the Proposed Rule. This provision is the basis for the cross-waiver clauses currently being incorporated in NASA procurement contracts for design and development (Phase C/D) of Space Station Freedom. It is also the basis for cross-waiver provisions that will be included in NASA agreements for utilization of the Space Station. The new regulatory cross-waiver provisions that will be the basis for Shuttle launch services agreements and agreements for ELV program launches are more consistent with the cross-waiver in effect for Space Station activities. The coverage of the new cross-waiver for Shuttle launches is broader than the interparty waiver of liability during Shuttle operations currently being utilized in Shuttle launch services agreements because the new cross-waiver is not limited to activities conducted in a specific locale (e.g., U.S. Government installations). The coverage of the new cross-waiver for ELV program launches is broader than the contractual interparty waiver of liability currently being utilized because it contains a provision "flowing down" the waiver to related entities—certain parties contractually related to NASA or to the other party signatory. NASA believes that the use of these broader cross-waivers of liability will encourage space exploration and investment by reducing insurance costs and the potential for litigation.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. June Edwards or Mr. Jay Steptoe, 202/453-2432.

SUPPLEMENTARY INFORMATION: By incorporating similar cross-waivers of liability in its agreements for Shuttle

launch services, ELV program launches and Space Station Freedom activities, NASA and the other signatories pledge not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time a cross-waiver is in effect. The agreements also require the signatories to "flow down" these cross-waivers to their related entities, ensuring that contractors, subcontractors, customers and other users also waive their right to sue the other Party or its similarly related entities for damages sustained in connection with activities conducted under the agreements. This rule establishes the regulatory basis for inclusion of these new cross-waivers in agreements for Shuttle launch service and ELV program launches. Until now, Shuttle launch services agreements have contained cross-waivers that generally come into effect only after specified activities begin on U.S. Government installations or in the course of transfer of equipment or personnel to such installations via U.S. Government conveyance. Also, until now, agreements for NASA ELV program launches have not contained flow down provisions. In contrast, the cross-waiver for Space Station Freedom is effective anywhere in the world where activities are conducted to implement Space Station Freedom agreements, and it contains extensive flow down provisions. As the number and scope of activities required to implement Space Station Freedom agreements increase, it is becoming increasingly complex for users, customers, contractors, and NASA to work under somewhat inconsistent cross-waivers of liability for Space Station Freedom activities, ELV launch services (required to be purchased by NASA as part of its contribution to cooperative space programs pursuant to agreements with non-U.S. Government entities), and Shuttle launch services not related to Space Station. By establishing broad, consistent cross-waivers, NASA intends to establish a known regime of liability limitation to encourage space exploration and investment by reducing insurance costs and the potential for litigation.

For these reasons, NASA is adopting, for use in future Shuttle launch services agreements and agreements for ELV program launches, the new cross-waivers set forth in this rule. Like the Space Station Freedom cross-waiver, the new Shuttle and ELV cross-waivers will apply to all activities done in implementation of Shuttle and ELV agreements. Also, the language and structure of the cross-waivers closely parallel the Space Station Freedom cross-waiver. However, when an activity that involves Shuttle launch services or a NASA ELV program launch is to be conducted under the Space Station Freedom Program, the Space Station cross-waiver, not the respective Shuttle or ELV cross-waiver, will be utilized in the agreement governing that activity.

NASA received one written comment in response to the notice of proposed rulemaking. The comment suggested that (1) the definition of "payload" should exclude transfer vehicles and (2) transfer vehicles should be included in the definition of "launch vehicle." The Final Rule leaves the definitions of "launch vehicle" and "payload" unchanged. The customary definitions of launch vehicle and payload may evolve as new technologies are introduced. For purposes of this rule, however, it does not matter whether transfer vehicles are included in the definition of either launch vehicle or payload. A transfer vehicle would be covered by the cross-waiver in either case.

In addition to the written comment, NASA received five telephone inquiries which, while necessitating no changes to the text of the proposed rule, indicate that clarification of the following points may be warranted: (1) The procurement regulation (48 CFR 1828.373) prescribing the Space Station Freedom cross-waiver clause for NASA contractors (48 CFR 1852.228–76) is already in effect. This rule merely re-publishes, for comparative purposes, the cross-waiver provision of the Intergovernmental Agreement for Space Station Freedom (Article 16), signed September 1988. More specific regulatory guidance to be used in drafting provisions for inclusion in NASA agreements for Space Station utilization will be published at an appropriate time; (2) the cross-waivers established by this rule do not apply to claims between NASA and its own contractors or subcontractors; and (3) existing procurement regulations (48 CFR 1828.371) prescribing the cross-waiver clauses for inclusion in procurement contracts for the Space Shuttle program (48 CFR 1852.228–72) will be amended to incorporate the new Shuttle cross-waiver being established by this Rule. New regulations prescribing cross-waiver clauses for inclusion in procurement contracts for NASA ELV program launches will be issued subsequently.

Upon internal review, NASA has determined that the following changes to Shuttle and ELV cross-waivers in the Proposed Rule are necessary for purposes of clarity:

(1) In §§ 1266.103(b)(4) and 1266.104(b)(4), the definition of "launch vehicle" is deleted as unnecessary. Consequently, paragraphs (b)(5) and (b)(6) are renumbered as (b)(4) and (b)(5), respectively. In § 1266.103(b)(5)(i) the term "launch vehicle" is replaced with the term "Space Shuttle." Also, in § 1266.104(b)(5)(i), the term launch vehicle is replaced with the term "ELV."

(2) In the renumbered sections § 1266.103(b)(4) and § 1266.104(b)(4), the word "all" in the definition of Payload is changed to "any," to reflect the more inclusive definition currently being used in NASA launch service agreements.

(3) The last sentences of renumbered §§ 1266.103(b)(5) and 1266.104(b)(5) read, respectively: 'Protected Space Operations' excludes activities on Earth which are conducted on return from space to develop further a payload's product or process for use other than for [Shuttle-related] [ELV-related] activities necessary to complete implementation of this agreement.

(4) A new § 1266.103(c)(1)(ii) is added to read "any party who has signed a NASA agreement that includes a Shuttle flight." Section 1266.103(c)(1) (ii) and (iii) found in the proposed rule are renumbered (c)(1)(iii) and (c)(1)(iv), respectively. Also, the paragraphs referred to within the new (c)(1)(iv) are changed from (c)(1)(i) to (c)(1)(iii).

(5) An additional exclusion is added §§ 1266.103(c)(4)(vi) and 1266.104(c)(4)(vi) which reads: "claims for damage based on a failure of the Parties or their related entities to flow down the cross-waiver."

This regulation does not constitute a major rule for the purpose of Executive Order 12291 and is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

List of Subjects in 14 CFR Part 1266

Cross-waiver, Liability, Shuttle, Space transportation and exploration.

Accordingly, NASA is amending Chapter V of title 14 by adding part 1266 to read as follows:

PART 1266—CROSS-WAIVER OF LIABILITY

Sec.

1266.100 Purpose.
1266.101 Scope.
1266.102 Cross-waiver of liability for Space Station Freedom activities.
1266.103 Cross-waiver of liability during Shuttle Operations.
1266.104 Cross-waiver of liability for NASA expendable launch vehicle (ELV) program launches.

Authority: 42 U.S.C. 2473 (c)(1) and (c)(5).

§ 1266.100 Purpose.

The purpose of this regulation is to ensure that consistent cross-waivers of liability are included in NASA agreements for Space Station Freedom activities, Shuttle launch services, and NASA Expendable Launch Vehicle (ELV) program launches.

§ 1266.101 Scope.

These provisions at § 1266.102, contained in Article 16 of the "Intergovernmental Agreement among the United States, the Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation and Utilization of the Permanently Manned Civil Space Station," form the regulatory basis for cross-waivers to be incorporated in NASA agreements implementing the Intergovernmental Agreement and the memoranda of understanding between the U.S. and its respective international partners on Space Station Freedom. The provisions at § 1266.103 of this part provide the regulatory basis for cross-waiver clauses to be incorporated in agreements for Shuttle launch services that do not involve activities in connection with Space Station Freedom. The provisions at § 1266.104 of this part provide the regulatory basis for cross-waiver clauses to be incorporated in agreements for NASA ELV program launches that do not involve activities in connection with Space Station Freedom.

§ 1266.102 Cross-waiver of liability for Space Station Freedom activities.

(a) The objective of this section is to establish a cross-waiver of liability ("cross-waiver") by the Partner States and related entities in the interest of encouraging participation in exploration, exploitation, and use of outer space through the Space Station. This cross-waiver of liability shall be broadly construed to achieve this objective.

(b) For the purposes of this section:

(1) (i) A *Partner State* is each contracting Party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement.

(ii) A Partner State includes its Cooperating Agency. The National Aeronautics and Space Administration (NASA) for the United States, the European Space Agency (ESA) for the European Governments, the Canadian Space Agency (CSA) for the Government of Canada, and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(2) The term *related entity* means:

(i) A contractor or subcontractor of a Partner State at any tier;

(ii) A user or customer of a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Partner State at any tier. "Contractors" and "subcontractors" include suppliers of any kind.

(3) The term *damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(4) The term *launch vehicle* means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(5) The term *payload* means all property to be flown or used on or in a launch vehicle or the Space Station.

(6) The term *Protected Space Operations* means all launch vehicle activities, Space Station Freedom activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space done in implementation of this Agreement, the MOU's, and implementing arrangements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. *Protected Space Operations* also includes all activities related to evolution of the Space Station, as provided for in Article 14 of the Intergovernmental Agreement. *Protected Space Operations* excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station-related activities in implementation of this Agreement.

(c)(1) Each Partner State agrees to a cross-waiver of liability pursuant to which each Partner State waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Partner State;

(ii) A related entity of another Partner State;

(iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) In addition, each Partner State shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Liability Convention where the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Partner State and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims.

(5) Nothing in this section shall be construed to create the basis for a claim

or suit where none would otherwise exist.

§ 1266.103 Cross-waiver of liability during Shuttle operations.

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to Shuttle launch services agreements and to other NASA agreements that involve Shuttle flights, and the parties' related entities, in the interest of encouraging participation in space exploration, exploitation, and investment. The cross-waiver of liability shall be broadly construed to achieve this objective.

(b) As used in this cross-waiver, the term:

(1) *Party* means a person or entity that signs an agreement involving a Shuttle flight;

(2) *Related Entity* means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier. *Contractors* and *Subcontractors* include suppliers of any kind;

(3) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(4) *Payload* means any property to be flown or used on or in the Shuttle; and

(5) *Protected Space Operations* means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space done in implementation of an agreement for Shuttle launch services. Protected Space Operations begin at the signature of the agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of: the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. *Protected Space Operations* excludes activities on Earth which are conducted on return from space to develop further a payload's product or process for use other than for Shuttle-related activities necessary to complete implementation of the agreement.

(c)(1) Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Party;

(ii) Any Party who has signed a NASA agreement that includes a Shuttle flight;

(iii) A related entity of any party in paragraph (c)(1)(ii) of this section;

(iv) The employees of any of the entities identified in (c)(1)(i) through (c)(1)(iii) of this section.

(2) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (Mar. 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Contract claims between the Parties based on the express contractual provisions of the agreement;

(vi) Claims for damage based on a failure of the Parties or their related entities to flow down the cross-waiver.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

§ 1266.104 Cross-waiver of liability for NASA expendable launch vehicle (ELV) program launches.

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to agreements for NASA ELV program launches, and the parties' related entities, in the interest of encouraging space exploration and investment. The cross-waiver of liability shall be broadly construed to achieve this objective.

(b) As used in this section, the term:

(1) *Party* means a person or entity that signs an agreement involving an ELV launch;

(2) *Related Entity* means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) a contractor or subcontractor of a user or customer of a Party at any tier. *Contractors* and "Subcontractors" include suppliers of any kind.

(3) *Damage* means:

(i) Bodily injury to, or other impairment to health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(4) *Payload* means any property to be flown or used on or in an ELV; and

(5) *Protected Space Operations* means all expendable launch vehicle and payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the agreement. Protected Space Operations begins at the signature of the agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of: expendable launch vehicles (ELV), transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. *Protected Space Operations* excludes activities on Earth which are conducted on return from space to develop further a

payload's product or process for use other than for ELV-related activities necessary to complete implementation of the agreement.

(c)(1) Each Party agrees to a cross-waiver of liability pursuant to which each Party waivers all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Party;

(ii) A related entity of another Party;

(iii) The employees of any of the entities identified in paragraphs (c)(1) (i) and (ii) of this section.

(2) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (Mar. 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Contract claims between the Parties based on the express contractual provisions of the agreement;

(vi) Claims for damage based on a failure of the Parties or their related entities to flow-down the cross-waiver.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. app. 2615) is applicable.

Dated: September 16, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91-22836 Filed 9-24-91; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8367]

RINS 1545-AL29, 1545-AM13, 1545-AN53

Transition Rules for Certain Qualified Business Units Using a Profit and Loss or a Net Worth Method of Accounting for Tax Years Beginning Before January 1, 1987 and the Definition of the Weighted Average Exchange Rate

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations setting forth transition rules for qualified business unit (QBU) branches of United States persons, and regulations providing the definition of the weighted average exchange rate. Generally, the regulations providing transition rules apply to QBU branches that used a profit and loss or a net worth method of accounting prior to the enactment of the Tax Reform Act of 1986 and do not elect (or are not required) to use the United States dollar approximate separate transactions method for taxable years beginning after December 31, 1986. Changes to the applicable tax law were made by the Tax Reform Act of 1986. These final regulations provide guidance for taxpayers who must use the statutory profit and loss method of accounting for taxable years beginning after December 31, 1986. Generally, the regulation providing the definition of the weighted average exchange rate defines such exchange rate as the simple average of the daily exchange rates.

EFFECTIVE DATE: Taxable years beginning on or after October 25, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Murphy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, (Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-393-88, INTL-964-86 and INTL-472-89) (202-566-6795, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations relating to procedures to be followed by qualified business unit (QBU) branches of United States persons, using a profit and loss or a net worth method of accounting prior to the enactment of Subpart J of the Internal Revenue Code of 1986, and final regulations relating to the definition of the weighted average exchange rate. On June 3, 1988, the Internal Revenue Service published proposed regulations under section 987 of the Internal Revenue Code of 1986 in the **Federal Register** (53 FR 32405). On August 25, 1988, the Internal Revenue Service published proposed regulations under section 989 of the Internal Revenue Code of 1986 in the **Federal Register** (53 FR 20651). Two written comments were received. No public hearing was requested or held. After consideration of the comments regarding the proposed regulations, those regulations are adopted by this Treasury Decision with revisions. The comments and revisions are discussed below. On September 20, 1989 the Internal Revenue Service published proposed regulations under section 989 of the Internal Revenue Code of 1986 in the **Federal Register** (54 FR 38664). No written comments were received. No public hearing was requested or held. Those regulations are adopted by this Treasury Decision without revisions.

Explanation of Provisions

The terminology used in the proposed regulations has been changed in some instances. A QBU is now referred to as a QBU branch, capital contribution is now a transfer to a QBU branch, and exchange gain or loss is now a section 987 gain or loss. The post-86 QBU earnings (also referred to in the proposed regulations as the unremitted post-86 functional currency earnings) are now referred to as the post-86 profits pool.

Sections 1.987-5(c)(2) and 1.989(c)-1(c)(2) provide that the post-86 profits pool and the EQ pool shall be combined for taxable years beginning on or after October 25, 1991. This reduces the complexity of maintaining multiple pools and eases the calculation of section 987 gain or loss upon a

remittance. The effect of combining the pools is to average the deferred section 987 gain or loss attributable to all of the unremitted profits and capital of a QBU branch when a remittance is made in a post-1986 tax year.

Sections 1.987–5(a)(2) and 1.989(c)–1(a)(2) allow taxpayers to apply §§ 1.987–5 and 1.989(c)–1 to insolvent QBU branches for taxable years beginning before October 25, 1991 and makes such application mandatory for taxable years beginning on or after October 25, 1991. This expansion has been made because both solvent and insolvent QBU branches will recognize section 987 gain or loss upon termination of the QBU branch.

These regulations clarify the composition and treatment of the post-86 profits pool. They also provide clarification concerning the dollar basis of the post-86 profits pool.

These regulations provide that adjustments to the pools must be made for transfers that are not remittances from the QBU branch. It is anticipated that future regulations will provide that a transfer may include all contributions of property to and distributions of property from a QBU branch within a given time period.

These regulations provide that the district director may allow additional adjustments to prevent the recognition of section 987 gain or loss due to factors unrelated to the movement of exchange rates. Such an adjustment would prevent the recognition of 987 gain or loss from an event that is unrelated to changes in exchange rates.

One comment received suggested that post-86 contribution transfers should either be kept as a separate pool or included with the post-86 profits pool rather than merging them with the EQ pool, as the temporary regulations provided. As explained above, it was decided instead to consolidate the pools. The other comment suggested that taxpayers be allowed to translate the net change in account balances between a branch and its headquarters at an average rate for the year, and that some specific guidance should be provided with regard to the treatment of an 80/20 corporation operating exclusively through a foreign branch and proper treatment of deemed dividends under § 1.1502–32(f)(2). These issues may be addressed in subsequent regulations under section 987.

The principles contained in these regulations apply to QBU branches of foreign persons.

Temporary regulations providing the definition of the weighted average exchange rate are also finalized. No comments were received concerning this regulation and it is finalized without revision.

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 final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, regulations § 1.989(b)–1 was 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 final regulations is Carol Murphy of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.985–0 through 1.989(c)–1T

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by removing the citations for §§ 1.987–0T, 1.987–1T, 1.989(c)–0T, and 1.989(c)–1T and adding the following citations.

Authority: Section 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * Sections 1.987–1 through 1.987.5 are also issued under 26 U.S.C. 987 * * * Section 1.989(b)–1 is also issued under 26 U.S.C. 989(b). Section 1.989–1(c) is also issued under 26 U.S.C. 989(c) * * *.

Par. 2. Sections 1.987–0T and 1.987–1T are removed as of October 25, 1991.

Par. 3. New §§ 1.987–1 through 1.987–5 are added to read as follows:

§ 1.987–1 Profit and loss method of accounting for a qualified business unit of a taxpayer having a different functional currency from the taxpayer. [Reserved]

§ 1.987–2 Accounting for gain or loss on certain transfers of property. [Reserved]

§ 1.987–3 Termination. [Reserved]

§ 1.987–4 Special rules relating to QBU branches of foreign taxpayers. [Reserved]

§ 1.987–5 Transition rules for certain qualified business units using a profit and loss method of accounting for taxable years beginning before January 1, 1987.

(a) *Applicability*—(1) *In general.* This section applies to qualified business unit (QBU) branches of United States persons, whose functional currency (as defined in section 985 of the Code and the regulations thereunder) is other than the United States dollar (dollar) and that used a profit and loss method of accounting for their last taxable year beginning before January 1, 1987. Generally, a profit and loss method of accounting is any method of accounting under which the taxpayer calculates the profits of a QBU branch in its functional currency and translates the net result into dollars. For all taxable years beginning after December 31, 1986, such QBU branches must use the profit and loss method of accounting as described in section 987, except to the extent otherwise provided in regulations under section 985 or any other provision of the Code. See § 1.989(c)–1 regarding transition rules for QBU branches of United States persons that have a nondollar functional currency and that used a net worth method of accounting for their last taxable year beginning before January 1, 1987.

(2) *Insolvent QBU branches.* A taxpayer may apply the principles of this section to a QBU branch that used a profit and loss method of accounting for its last taxable year beginning before January 1, 1987, whose $E pool (as defined in paragraph (d)(3)(i) of this section) is negative. For taxable years beginning on or after October 25, 1991, the principles of this section shall apply to insolvent QBU branches.

(b) *General rules.* Generally, section 987 gain or loss occurs when a QBU branch makes a remittance. A remittance is considered to be made from one or more functional currency pools under rules provided in paragraph (c) of this section. In general, the amount of section 987 gain or loss from a remittance equals the difference between the dollar value of the functional currency adjusted basis of the property remitted and the portion of the dollar basis in the applicable pool.

Section 987 gain or loss is calculated under a 4-step procedure described in paragraph (d) of this section. Section 987 gain or loss attributable to a remittance is realized and must be recognized in the taxable year of the remittance except to the extent otherwise provided in regulations.

(c) *Determining the pool(s) from which a remittance is made*—(1) *Remittances made during taxable years beginning after December 31, 1986, and before October 25, 1991.* A remittance made during taxable years beginning after December 31, 1986 and before October 25, 1991, first represents an amount of the QBU branch's post-86 profits pool (including functional currency profits for the current taxable year determined without regard to remittances made during the current year). To the extent the functional currency amount of the remittance exceeds the post-86 profits pool, it is considered to come out of the EQ pool. Paragraph (d)(2) of this section describes the EQ pool and the post-86 profits pool.

(2) *Remittances made in taxable years beginning on or after October 25, 1991.* For remittances made in taxable years beginning on or after October 25, 1991, the post-86 profits and EQ pools are combined into one pool called the equity pool. Therefore, remittances made during those taxable years will only come from the equity pool. The dollar basis of, and section 987 gain or loss on, such remittances shall be calculated utilizing the principles set forth in paragraph (d) (4) and (5) of this section.

(d) *Calculation of section 987 gain or loss*—(1) *In general.* This paragraph (d) describes the 4-step procedure for calculating section 987 gain or loss.

(2) *Step 1—Calculate the amount of the functional currency pools*—(i) *EQ pool.* (A) *Beginning pool.* The beginning amount of the EQ pool is equal to the functional currency adjusted bases of a QBU branch's assets less the functional currency amount of the QBU branch's liabilities at the end of the taxpayer's last taxable year beginning before January 1, 1987, as these amounts are determined under the rules of paragraphs (e) and (f) of the section. The district director may allow for additional adjustments to the beginning amount of the EQ pool to prevent the recognition of section 987 gain or loss due to factors unrelated to the movement of exchange rates.

(B) *Adjusting the EQ pool.* The EQ pool is increased by the functional currency amount of any transfer (as determined under section 987) to the QBU branch made during the current taxable year or any prior taxable year beginning after December 31, 1986. If the transfer is made in a nonfunctional currency, this amount is translated into the QBU branch's functional currency at the spot rate (determined under the principles of section 988 and the regulations thereunder) on the date of the transfer. The method for determining the rate must be applied consistently each quarter. The EQ pool is decreased by the functional currency amount of any remittance (as determined under section 987) made during a prior taxable year beginning after December 31, 1986, that is considered remitted from the EQ pool under paragraph (c) of this section. The EQ pool must also be decreased by any transfer from the QBU branch that is not a remittance.

(ii) *Post-86 profits pool.* The amount of a QBU branch's post-86 profits pool is calculated at the end of each taxable year beginning after December 31, 1986. The opening balance of the post-86 profits pool at the beginning of the first taxable year beginning after December 31, 1986, is zero. The post-86 profits pool is increased by the functional currency amount of the QBU branch's profits (determined under section 987) for the taxable year. The post-86 profits pool is decreased by the functional currency amount of the QBU branch's losses (determined under section 987) for the taxable year and the amount of any remittances by the QBU branch during the taxable year from the post-86 profits pool as provided under paragraph (c) of this section.

(iii) *Adjustments to the equity pool.* For remittances made in taxable years beginning on or after October 25, 1991 under paragraph (c)(2) of this section, the post-86 profits and EQ pools are combined into one pool called the equity pool. Additions to and subtractions from the equity pool shall be made utilizing the principles of paragraphs (d)(2) (i)(B) and (ii) of this section. For example, remittances shall reduce the equity pool.

(3) *Step 2—Calculate the dollar basis of the pools*—(i) *Dollar basis of the EQ pool*—(A) *Beginning dollar basis.* The beginning dollar basis of the EQ pool (hereinafter referred to as the $E pool) equals:

(*1*) The dollar amount of all the QBU branch's profits reported on the taxpayer's income tax returns for taxable years beginning before January 1, 1987, plus the total dollar amount of all transfers to the QBU branch during that period (properly reflected on the taxpayer's books), less

(*2*) The dollar amount of all the QBU branch's losses reported on the taxpayer's income tax returns for such years, and the total dollar basis of all remittances and all transfers made by the QBU branch during that period (properly reflected on the taxpayer's books).

A QBU branch's profits and losses shall be properly adjusted for foreign taxes of the QBU branch.

(B) *Adjusting the $E pool.* The $E pool is increased by the dollar amount of any transfers to the QBU branch made during the current taxable year or any prior taxable year beginning after December 31, 1986. If a transfer is made in a currency other than the dollar, the amount of the currency is translated into dollars at the spot rate (determined under the principles of section 988 and the regulations thereunder) on the date of the transfer. The $E pool is decreased by the dollar basis of any remittance made during a prior taxable year beginning after December 31, 1986, that is considered remitted from the $E pool under paragraphs (c) and (d)(4) of these section. The $E pool is also reduced by the amount of a transfer (other than a remittance) from the QBU branch translated into dollars at the spot rate (determined under the principles of section 988 and the regulations thereunder) on the date of the transfer. The method for determining the spot rate must be applied consistently to all transfers to and from a QBU branch.

(ii) *Dollar basis of the post-86 profits pool.* The amount of a QBU branch's dollar basis in the post-86 profits pool (the $P pool) is calculated at the end of each taxable year beginning after December 31, 1986. The opening balance of the $P pool at the beginning of the first taxable year beginning after December 31, 1986, is zero. The $P pool is increased by the functional currency amount of the QBU branch's profits (determined under section 987) for the taxable year translated into dollars at the weighted average exchange rate (as defined in § 1.989 (b)–1) for the year. The $P pool is decreased by the functional currency amount of the QBU branch's losses (determined under section 987) for the taxable year translated into dollars at the weighted average exchange rate for the year and by the dollar basis of any remittances made by the QBU branch during the taxable year from the post-86 profits pool under paragraph (c)(1) of this section.

(iii) *Combination of the $E and the $P pools.* For taxable years beginning on or after October 25, 1991 the $P and the $E pools are combined into one pool called the basis pool. Additions to and subtractions from the basis pool shall be made utilizing the principles set forth in

paragraph (d)(3) (i) and (ii) of this section.

(4) *Step 3—Calculation of the dollar basis of a remittance.* For all taxable years beginning after December 31, 1986, the dollar basis of a remittance is calculated using the following formula:

$$\frac{\text{Amount of remittance (in QBU branch's functional currency) from the applicable pool (EQ, post-86 profits, or equity pool)}}{\text{Balance of the applicable pool (EQ, post-86 profits or equity pool) reduced by prior remittances}} \times \text{The dollar basis of the applicable pool (\$E, \$P, or basis pool) reduced by prior remittances}$$

(5) *Step 4—Calculation of the section 987 gain or loss on a remittance.* Section 987 gains or loss equals the difference between—

(i) The dollar amount of the remittance, and

(ii) The dollar basis of the remittance as calculated under paragraph (d)(4) of this section.

(e) *Functional currency adjusted basis of QBU branch assets acquired in taxable years beginning before January 1, 1987*—(1) *Basis of asset.* For taxable years beginning after December 31, 1986, the functional currency adjusted basis of a QBU branch asset acquired in a taxable year beginning before January 1, 1987, is the functional currency basis of the asset at the date of acquisition, as adjusted according to United States tax principles. The functional currency adjusted basis of an asset for which a functional currency basis was not determined at the date of acquisition is the nonfunctional currency basis of the asset at the date of acquisition multiplied by the spot exchange rate on the date of acquisition, as adjusted according to United States tax principles.

(2) *Adjustment to basis of asset.* Any future adjustments to the functional currency adjusted basis of such an asset are determined with respect to the appropriate functional currency adjusted basis of the asset as determined under this paragraph (e).

(f) *Functional currency amount of QBU branch liabilities acquired in taxable years beginning before January 1, 1987.* For the first taxable year beginning after December 31, 1986, the amount of a QBU branch liability incurred in a taxable year beginning before January 1, 1987, is the functional currency amount of the liability at the date incurred, as adjusted according to United States tax principles. The functional currency amount of a liability for which a functional currency amount was not determined at the date incurred is the nonfunctional currency amount of the liability at the date incurred multiplied by the spot exchange rate on the date incurred, as adjusted according to United States tax principles.

(g) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1—(i) *Facts.* U.S. is a domestic corporation. B, a QBU branch of U.S., operates in country X and was established in 1985. B's functional currency is the FC. U.S. is on a calendar taxable year and, prior to January 1, 1987, accounted for the operations of B by the profit and loss method of accounting as set forth in Rev. Rul. 75–107, 1975–1 C.B. 32. B's books and records were kept according to United States tax principles. B received a transfer of $2,000 in 1985, and had profits of $3,000 in 1985 and $5,000 in 1986. B made a remittance in 1986, the dollar basis of which was $1,000. As of December 31, 1986, the adjusted basis of B's functional currency assets exceeded the functional currency amount of its liabilities by 15,000 FC (the beginning pool of EQ). Under section 987, B has profits of 8,000 FC in 1987, which are worth $1,000 when translated at the weighted average exchange rate for 1987 as required by sections 987(2) and 989(b)(4). B has no profits or loss in 1988. There are no transfers to B in 1987 and 1988. B remits 18,000 FC in 1988. Under section 987, the appropriate exchange rate for the 1988 remittance is 10 FC/$1.

(ii) *Calculation of section 987 loss on remittance*—(A) *Post-86 profits.* Under paragraph (c)(i) of this section, the 18,000 FC remittance comes first out of the post-86 profits pool (8,000 FC) and second out of EQ (10,000 FC). The loss on the 1988 remittance out of the post-86 profits pool equals:

Dollar value of post-86 profits remitted − Dollar basis of post-86 profits remitted = (8,000 FC × 10 FC/$1) − $1,000 = $800 − $1,000 = <$200> loss.

(B) *EQ.* Under paragraph (d) of this section, U.S. calculates 987 gain or loss on the 10,000 FC remittance of EQ from B as follows:

Step 1. The total EQ pool equals 15,000 FC (the functional currency adjusted bases of its assets less the functional currency amount of its liabilities as of December 31, 1986). There are no adjustments necessary under paragraph (d)(2)(i)(B) of this section.

Step 2. The $E pool is $9,000 (the $2,000 transfer in 1985 plus profits of $3,000 in 1985 and $5,000 in 1986 and less than $1,000 dollar basis of the1986 remittance). There are no adjustments necessary under paragraph (d)(3)(i)(B) of this section.

Step 3. The entire 10,000 FC remittance is deemed to come out of EQ.

Step 4. The dollar basis of the EQ remitted equals: N x $E determined under paragraph (d)(3)(i) =

$$\frac{10{,}000\ \text{FC}}{15{,}000\ \text{FC}} \times \$9{,}000 = \$6{,}000$$

Where:

$$N = \frac{\text{Portion of remittance out of EQ}}{\text{EQ balance determined under paragraph (d)(2)(i) of this section}}$$

Step 5. Section 987 loss of U.S. on remittance equals:

Dollar value of the EQ remitted − Dollar basis of the EQ remitted = (10,000 FC × 10 FC/$1) − $6,000 = $1,000 − $6,000 = <$5,000> loss.

(C) *Total loss on remittance.* The total combined loss on the remittance is <$5,200>. The total of amounts determined in paragraphs (ii) (A) and (B) of this Example 1.

Example 2—(i) *Facts.* D is a domestic corporation. B, a QBU branch of D, operates in country X. B's functional currency is the FC. At the end of B's last taxable year beginning before October 25, 1991, B's EQ pool equals 15,000 FC and B's post-86 profits pool equals 8,000 FC. B's $E amount equals $9,000, and the $P pool equals $1,000. In B's first taxable year beginning on or after October 25, 1991, B remits 18,000 FC. Under section 987, the appropriate exchange rate for this remittance is 10FC:$1.

(ii) *Computation of the equity pool.*

15,000 FC (EQ pool) + 8,000 FC (post-86 profits pool) = 23,000 FC (equity pool)

(iii) *Computation of the basis pool.*

$9,000 ($E amount) + $1,000 ($P amount) = $10,000

(iv) *dollar basis in remittance.*

$$\frac{18{,}000 \text{ FC (amount of remittance)}}{23{,}000 \text{ FC (equity pool)}} \times \$10{,}000 = \$7{,}826$$

(v) *Computation of section 987 loss by U.S. on remittance.*

$1,800 (dollar value of remittance) — $7,826 (dollar basis in remittance) = ($6,026) (loss on remittance)

(h) *Character and source of section 987 gain or loss.* Section 987 gain or loss is sourced and characterized as provided by section 987 and regulations issued under that section.

Par. 4. Section 1.989(b) is redesignated as § 1.989(b)–1 and the language "(temporary)" is removed from the section heading.

Par. 5. New § 1.989(c)–1 is added to read as follows:

§ 1.989(c)–1 Transition rules for certain branches of United States persons using a net worth method of accounting for taxable years beginning before January 1, 1987.

(a) *Applicability*—(1) *In general.* This section applies to qualified business units (QBU) branches of United States persons, whose functional currency (as defined in section 985 of the Code and regulations issued thereunder) is other than the United States dollar (dollar) and that used a net worth method of accounting for their last taxable year beginning before January 1, 1987. Generally, a net worth method of accounting is any method of accounting under which the taxpayer calculates the taxable income of a QBU branch based on the net change in the dollar value of the QBU branch's equity over the course of a taxable year, taking into account any remittance made during the year. QBU branch equity is the excess of QBU branch assets over QBU branch liabilities. For all taxable years beginning after December 31, 1986, such QBU branches must use the profit and loss method of accounting as described in section 987, except to the extent otherwise provided in regulations under section 985 or any other provision of the Code.

(2) *Insolvent QBU branches.* A taxpayer may apply the principles of this section to a QBU branch that used a net worth method of accounting for its last taxable year beginning before January 1, 1987, whose $E pool (as defined in paragraph (d)(3)(i) of this section) is negative. For taxable years beginning on or after October 25, 1991, the principles of this section shall apply to insolvent QBU branches.

(b) *General rules.* For the general rules, see § 1.987–5(b).

(c) *Determining the pool(s) from which a remittance is made.* To determine from which pool(s) a remittance is made, see § 1.987–5(c).

(d) *Calculation of Section 987 gain or loss*—(1) *In general.* See § 1.987–5(d)(1) for rules to make this calculation.

(2) *Step 1—Calculate the amount of the functional currency pools.* For calculation of the amount of the functional currency pools, see § 1.987–5(d)(2).

(3) *Step 2—Calculate the dollar basis pools*—(i) *Dollar basis of the EQ pool*—(A) *Beginning dollar basis.* The beginning dollar basis of the EQ pool (hereinafter referred to as the $E pool) equals the final net worth of the QBU branch. Final net worth of the QBU branch equals the QBU branch's equity value (assets less liabilities) measured in dollars at the end of the taxpayer's last taxable year beginning before January 1, 1987, determined on the basis of the QBU branch's books and records as adjusted according to United States tax principles.

(B) *Adjusting the $E pool.* For adjustments to be made to the $E pool, see § 1.987–5(d)(3)(i)(B).

(ii) *Dollar basis of the post-86 profits pool.* To calculate the dollar basis of the post-86 profits pool, see § 1.987–5(d)(3)(ii).

(iii) *Dollar basis of the equity pool.* To calculate the dollar basis of the equity pool, see § 1.987–5(d)(3)(iii).

(4) *Step 3—Calculation of the dollar basis of a remittance.* To calculate the dollar basis of the EQ remitted, see § 1.987–5(d)(4).

(5) *Step 4—Calculation of the section 987 gain or loss on a remittance.* To calculate 987 gain or loss determined on a remittance, see § 1.987–5(d)(5).

(e) *Functional currency adjusted basis of QBU branch assets acquired in taxable years beginning before January 1, 1987.* To determine the functional currency adjusted basis of QBU branch assets acquired in taxable years beginning before January 1, 1987, see § 1.987–5(e).

(f) *Functional currency amount of QBU branch liabilities acquired in taxable years beginning before January 1, 1987.* To determine the functional currency amount of QBU branch liabilities acquired in taxable years beginning before January 1, 1987, see § 1.987–5(f).

Par. 6. Sections 1.989(c)–0T and 1.989(c)–1T are removed as of October 25, 1991.

Dated: August 16, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Michael J. Graetz,

Acting Assistant Secretary of the Treasury.

[FR Doc. 91–22856 filed 9–24–91; 8:45 am]

BILLING CODE 4830–01–M

POSTAL SERVICE

39 CFR Part 111

Building Construction Materials

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Section 124.7 is added to the Domestic Mail Manual to specify conditions under which building construction materials will not be mailable.

EFFECTIVE DATE: September 25, 1991.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–5903. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Martin L. Cohen, (202) 268–5169.

SUPPLEMENTARY INFORMATION: Current law requires, as a condition of mailability, that the item "[w]hile in the custody of the Postal Service is not likely to become damaged itself, to damage other pieces of mail, to cause injury to Postal Service employees or to damage Postal Service property." Domestic Mail Classification Schedule section § 6000.010(b). Postal regulations implement this rule, and state that "[t]he basic premise of the postal mailability statutes is that anything 'which may kill or injure another, or injure the mails or other property' is nonmailable." Domestic Mail Manual § 124.11.

The Postal Service has found that certain mailings of building construction materials run afoul of these mailability requirements, not necessarily because of the particular characteristics of the material mailed but because of the weight and number of individual pieces. These mailings, which consist of bulk mailings of matter such as bricks, stone, or cement, lumber, insulation material, etc., are often intended to supply a construction project and, when assembled, will constitute a building or series of buildings. One recent example consisted of more than 8,000 packages of insulation, each weighing more than 40 pounds, or a total of more than 320,000 pounds.

This matter may not comply with the mailability criteria described above, particularly when entered in large quantities. Depending upon the means used for the processing and transportation of mail in an area and the size of postal facilities, the acceptance of bulk quantities of mail may impede the flow of mail in the transportation used by the Postal Service as well as in the Postal Service distribution system. This would delay other mail matter.

Large volume mailings also may create storage and security problems for the Postal Service, particularly where facilities are not of adequate size to house the entire shipment. In these instances, exposure to the elements may cause damage to the matter mailed, particularly if it is packaged in material that can break or be punctured. Finally, the mailings may create a hazard to postal employees, due to the sheer weight and number of packages involved and, at times, the nature of the matter mailed (*e.g.*, certain insulation materials, and the health hazards associated with them, particularly where the packaging may be broken or punctured).

Accordingly, while the general standard established in current rules is sufficient to reject these materials as nonmailable, the Postal Service has determined to amend its regulations to provide more explicit guidance concerning the mailability of building construction materials. The new rule provides that these materials, whether mailed in bulk at one time or in separate mailings, may be found to be nonmailable if they are likely to impede the transportation or distribution of mail matter; create storage or security problems; create hazards for postal employees; or if the acceptance of the materials may for other reasons create a likelihood of damage or harm to the mails, postal employees, or property.

Furthermore, the Postal Service has determined that the public interest requires that this rule be made effective immediately and without prior public comment. The efficient and timely flow of mail is crucial to the public. The need to minimize the hazards faced by postal employees further dictates against any delay in implementation. The Postal Service also finds that the immediate adoption of this rule does not unfairly prejudice the shippers of building construction materials. There is generally other transportation available for this matter. Finally, since the new regulation is consistent with and clarifies existing rules, there is not the same need for comment and delay in implementation as there would be with a new rule that creates new substantive restrictions. Nevertheless, the Postal Service invites public comments concerning the new rule. These should be submitted within 30 days from the date of this notice to the address set forth above. At the end of this period, the Postal Service will evaluate the comments and consider whether the new rule should be revised.

The Postal Service adopts the following amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Section 124.7 is added to the Domestic Mail Manual and reads as follows:

124.7 Building Construction Materials.

Building construction materials are not mailable if their acceptance and processing is likely to result in damage or injury to mail, postal employees, or postal property. Factors that may be considered include, but are not limited to: Potential storage problems at the facilities which may handle and store the matter; whether the volume of materials is likely to impede the flow of mail in the mail transportation system or in the mail distribution system of the Postal Service; whether the volume of materials may create a security problem; and whether the processing of the matter may create a safety hazard for postal employees.

A transmittal letter making this change in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–23097 Filed 9–24–91; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4012–2]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

This action adds the White Chemical Corp. site in Newark, New Jersey, to the NPL. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency ("EPA") in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be October 25, 1991. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

ADDRESSES: Addresses for the Headquarters and Region 2 dockets are provided below. For further details on

what these dockets contain, see the Public Comment Section, section I, of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/260-3046.

Ben Conetta, Region 2, 26 Federal Plaza, 7th Floor, room 740, New York, NY 10278, 212/264-6696.

FOR FURTHER INFORMATION CONTACT: Agnes Ortiz, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 or (703) 920-9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This NPL Final Rule
IV. Regulatory Impact Analysis
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled or abandoned hazardous substance sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq*. To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are often taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of 40 CFR part 300, July 16, 1982 and amended on December 14, 1990 (55 FR 51532).

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. See 40 CFR 300.425(c)(2).

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of an HRS score, if all of the following occur:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepares a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of 40 CFR part 300, is the NPL.

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on February 11, 1991 (56 FR 5598). The Agency also has proposed adding new sites to the NPL, most recently on July 29, 1991 (56 FR 35840).

The NPL includes two sections, one of sites evaluated and cleaned up by EPA (the "EPA section"), and one of sites being addressed by other Federal agencies (the "Federal facilities section"). Under Executive Order 12580 and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score; EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal facilities section includes those facilities at which EPA is not the lead agency.

This rule results in an EPA section of 1,069 sites and a Federal facilities section of 116 sites, for a total of 1,185 sites on the NPL. An additional 22 sites are proposed to the NPL, 19 in the EPA section and 3 in the Federal facilities section.

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 38 sites from the final NPL, most recently on September 10, 1991 (56 FR 46121). In addition, 12 sites in the EPA section are in the construction completion category (56 FR 5634, February 11, 1991) and 13 others are awaiting final documentation before they can be formally placed in the construction completion category. The construction completion category includes sites awaiting deletion, sites awaiting first 5-year review after completion of the remedial action, and sites undergoing long-term remedial actions at which the construction phase of the action is complete.

Thus, a total of 63 sites have been deleted, placed in the construction completion category, or are awaiting final documentation before being placed in the construction completion category.

Pursuant to the NCP at 40 CFR 300.425(c)(3), this notice adds one site to the NPL.

Information Available to the Public

The Headquarters and Region 2 public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the decision to add the White Chemical Corp. site in Newark, New Jersey, to the NPL. Both dockets contain the public health advisory issued by ATSDR and EPA memoranda supporting the findings that the release poses a significant threat to public health and that it would be more cost-effective to use remedial rather than removal authorities at the site. They also contain the one comment letter received following proposal. The dockets are available for viewing, by appointment only. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. The hours of operation for the Region 2 docket are from 8 a.m. to 5

p.m., Monday through Friday excluding Federal holidays.

An informal written request, rather than a formal request under the Freedom of Information Act (FOIA), should be the ordinary procedure for obtaining copies of any of these documents.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent that potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits the expenditure of Trust Fund monies for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against potential responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the main focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site whether listed or not, that meets the criteria of the NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990). Information on removals is available from the Superfund Hotline.

EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

The ranking of sites by HRS scores does not determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it was already underway. In addition, certain sites, such as the White Chemical Corp. site, are based on other criteria. Thus, EPA relies on further, more detailed studies including the Remedial Investigation/Feasibility Study (RI/FS) that typically follows listing.

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990). It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart E of the NCP (55 FR 8839, March 8, 1990). After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

III. Contents of This NPL Final Rule

The White Chemical Corp. (WCC) site, in Newark, Essex County, New Jersey, is being added to the NPL on the basis of section 425(c)(3) of the NCP, 40 CFR 300.425(c)(3) (55 FR 8845, March 8, 1990). It was proposed to the NPL on May 9, 1991 (56 FR 21460). A description of the site and EPA's basis for listing it were included in that proposal.

The comment period ended on June 10, 1991 and one comment was received. In that comment, Mr. John Scagnelli, on behalf of AZS Corporation, asked that the docket be amended to reflect: (1) That the bankruptcy court dismissed the WCC bankruptcy petition and removed WCC from bankruptcy protection; (2) that EPA issued a unilateral order requiring WCC to vacate the site and suspend all business activities; and (3) that EPA was granted exclusive access to the WCC site. The commenter also reserved the right to supplement his comments as additional information becomes known.

EPA has placed Mr. Scagnelli's comments in the docket. However, as these comments have no effect on EPA's basis (section 425(c)(3) of the NCP) for listing the site, EPA has not otherwise responded to the comment except to update the narrative summary to include information provided by the commenter. EPA cannot change already existing documents, as the commenter requested.

IV. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to inclusion on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's final rule adding one new site to the NPL, and finds that the kinds of economic effects associated with this revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed

(50 FR 5882, February 12, 1985). This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this final rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the site included in this final rulemaking. The listing of a site on the NPL may be followed by a search for potentially responsible parties and a Remedial Investigation/Feasibility Study (RI/FS) to determine if remedial actions will be undertaken at a site. The selection of a remedial alternative, and design and construction of that alternative, follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may enter into consent orders or agreements to conduct or pay the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs up front and subsequently bring an action for cost recovery.

The State's share of site cleanup costs for Fund-financed actions is governed by CERCLA section 104. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs of the remedial action, leaving 10% to the State. For publicly-operated sites, the State's share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the ownership criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share the cost of a remedy until it is operational and functional, which generally occurs after one year. 40 CFR 300.435(f)(2), 300.510(c)(2). After that, the State assumes all O&M costs. 40 CFR 300.510(c)(1).

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average-per-site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, costs for individual sites vary widely, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	$1,300,000
Remedial design	1,500,000
Remedial action	[2] 25,000,000
Not present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars.
[2] Includes State cost-share.
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

The WCC site is privately-owned. Therefore, costs to the State associated with today's final rule could arise from the required State cost-share of 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites. The State will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to the State of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $2.5 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if this site will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites. As with the EPA share of costs, portions of the State share will be borne by responsible parties.

Proposing a hazardous waste site for the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, these effects cannot be precisely estimated. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this final rule are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and the State, the total impact of this rule on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with today's final rule placing the WCC site on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL can accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate before the RI/FS is completed at this site.

Associated with the costs are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government

jurisdictions, and nonprofit organizations.

While this rule revises the NCP, it is not a typical regulatory change since the revision does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected business nor estimate the number of small businesses that might also be affected.

The Agency does expect that CERCLA actions could significantly affect certain industries, and firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of this site to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also its ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 18, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

Appendix B—[Amended]

2. The first table in appendix B of part 300 is amended by adding an entry in Group 22 to the end of the table to read as follows:

NPL rank	EPA reg.	State	Site name	City/county
* * *	*	*	*	*
Group 22 (HRS scores 28.90-28.50, except for health-advisory sites):				
* * *	*	*	*	*
1069	02	NJ	White Chemical Corp.	Newark/Essex

* * * * *

[FR Doc. 91-22965 Filed 9-24-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 87-389; FCC 91-277]

Operation of Radio Frequency Devices Without an Individual License; Linear Petition for Reconsideration

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission is denying the petition filed by Linear Corporation on May 17, 1989, requesting partial reconsideration and clarification of the First Report and Order (R&O), 54 FR 17710, April 25, 1989, as it relates to the number of restricted bands and the required measurements above 2 GHz for control and security alarm devices. The Commission finds that the restricted bands and measurement requirements specified in the new part 15 rules are appropriate and necessary to protect the authorized radio services from interference caused by the operation of non-licensed radio frequency equipment and that the changes requested by Linear are not warranted.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: George Harenberg, Technical Standards Branch, Office of Engineering and Technology (202) 653-7314.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum, Opinion and Order (MO&O) in Gen. Docket No. 87-389, FCC 91-277, adopted on September 9, 1991 and released on September 20, 1991.

The full text of this MO&O is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice

1. In the R&O, the Commission adopted a comprehensive revision of part 15 of the rules. The objective of this revision was to encourage more effective use of the radio frequency spectrum by providing additional technical and operational flexibility in the design, manufacture and use of non-licensed devices. As part of this revision, the Commission increased the number of frequencies available for the operation of part 15 intentional radiators and established a number of frequency bands where emissions from part 15 intentional radiators are restricted. These restricted bands were established to protect against interference to services involving safety-of-life, U.S. Government operations and services that use very low received signal levels. Further, the Commission established strict limits for spurious, including harmonic, emissions from such devices that fall in the restricted bands. In order to ensure that emissions in the restricted bands are attenuated as required and to provide additional protection to authorized services against interference from part 15 devices, the Commission also increased the frequency range over which measurements must be performed for most part 15 transmitters. 47 CFR 15.33(a) of the new rules requires measurements to at least the tenth harmonic of the device's highest operating frequency or 40 GHz, whichever is lower. To allow manufacturers sufficient time to incorporate these changes, the

Commission adopted a three-year transition period for existing equipment.

2. Linear Corporation (Linear), a manufacturer of control and security alarm devices, requested a partial reconsideration of the restricted bands and measurement requirements imposed by the R&O. Linear stated that these elements of the new rules, as adopted, will cause a great economic impact on the future production of part 15 devices. In addition, Linear stated that the Commission had not fully explored the costs of making measurements above 2 GHz. Linear believes the Commission has not adequately justified the need for restricting part 15 operations in each restricted frequency band, and expresses concern about the number of restricted bands established to protect the radio astronomy service. Linear believes that the public interest would be better served by reallocating the spectrum now allocated to radio astronomy to services that could be used to assist people in providing home security, safety against fire, audio assistance, home entertainment and a myriad of other functional uses. Linear further contends that the emissions limits imposed in the restricted bands are unnecessarily severe and that, in calculating the interference potential of signals above 2 GHz, the Commission ignored the effect of propagation losses on such high frequency radio waves.

3. Linear next argues that the Commission provided no rational basis for requiring testing of part 15 devices at frequencies above 2 GHz. Linear concludes that measurements above 2 GHz are unnecessary because, if the emission limits are met at lower harmonics, the higher harmonics above 2 GHz will also be in compliance. Linear further maintains that the Commission has not established an accepted method for making open field measurements above 2 GHz. It argues that the lack of adequate measurement procedures places an unreasonable burden on part 15 device manufacturers who do not know what method of testing will be acceptable to demonstrate compliance with the rules. Linear urges the Commission to delay the requirements of 47 CFR 15.33 until three years from the date that measurement procedures are formally adopted. Finally, Linear requests that the Commission clarify the identity and the method of measurement to be employed when using an average detector to make compliance measurements.

4. On August 15, 1990, the Linear petition and amendment were referred to the United States Department of Commerce, National Telecommunications and Information Administration (NTIA) for comment. NTIA has responsibility for coordinating and authorizing radio frequencies used by the federal government. NTIA responded that it believes the number and composition of restricted bands should be maintained as adopted in the R&O in order to protect authorized government and non-government radio services. In addition, NTIA believes it is important that measurements of non-licensed devices be made on frequencies up through the tenth harmonic.

5. The Commission finds that Linear has not produced any additional information that would warrant the Commission reversing or modifying any of its decisions relevant to this matter. To the contrary, the information in this proceeding has indicated that there are safety-of-life services and other services which operate with low received signal levels for which protection is necessary, that measurements are in fact necessary, and that valid test procedures are available above 2 GHz. Consequently, the public interest would not be served by granting Linear's request.

6. In accordance with the above discussion and pursuant to the authority contained in sections 4(i), 301, 302, 303, 304, 307 and 405 of the Communications Act of 1934, as amended, *It is ordered*, that the Petition for Partial Reconsideration filed by Linear Corporation is denied.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-23140 Filed 9-24-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

In the Matter of Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the amendatory language in a final rule printed at 56 FR 19598 (April 29, 1991).

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, (202) 634-2443.

SUPPLEMENTARY INFORMATION: In FR Doc. 91-9397, published in the April 29, 1991, **Federal Register** on page 19602, column 2, paragraph 27, the following corrections are made:

§ 90.209 [Corrected]

The amendatory language contained in paragraph 27 is revised to read as follows:

47 CFR 90.209 is amended by revising paragraph (b)(8) and by revising the introductory text of paragraph (j) and by adding paragraph (l) to read as follows:

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-22931 Filed 9-24-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 94

Elimination of Grandfathering Provisions Applicable to Licensees on MAS Frequencies; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule printed at 56 FR 30699 (July 5, 1991). The final rule updated and classified the grandfathering provisions affecting licensees of Multiple Address Systems (MAS).

FOR FURTHER INFORMATION CONTACT: Rosalind K. Allen, (202) 643-2443.

EFFECTIVE DATE: September 25, 1991.

SUPPLEMENTARY INFORMATION: In FR Doc. 91-15745, published in the July 5, 1991, **Federal Register** on page 30699, column 1, paragraph 2, the following corrections are made:

§ 94.65 [Corrected]

The amendatory text contained in paragraph 2 is revised to read as follows:

2. 47 CFR 94.65 is amended by revising the introductory paragraph and the introductory text to paragraph (a)(1) to read as follows:

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-22932 Filed 9-24-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 186
Wednesday, September 25, 1991

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 430

Performance Management System

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed regulation designed to enhance effective performance management for General Schedule and Prevailing Rate employees. The proposal reflects OPM's continuing interest in providing flexibility to agencies.

The proposed regulation revises final regulations that were issued in March 1986. The change reflects OPM's continuing support of strong performance management principles, while recognizing the vast diversity in Federal missions, culture, occupational mix, and organizational structures by permitting agencies greater flexibility in the design and management of their own appraisal systems. The move from central control of performance management practice to increased agency flexibility is intended to enhance the relevance and acceptance of performance management systems.

The proposal will benefit agency appraisal systems by permitting agencies to implement personnel policies that are appropriate for their particular performance contexts and consistent with good management practices.

DATES: To be considered, comments must be received by October 25, 1991.

ADDRESSES: Send or deliver written comments to: Allan D. Heuerman, Assistant Director for Labor Relations and Workforce Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., room 7412, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Margaret M. Higgins (202) 606–2720 or FTS 266–2720.

SUPPLEMENTARY INFORMATION: The proposed regulation eliminates the requirement for five summary rating levels for General Schedule and Prevailing Rate employees. Instead, it allows for at least three, and not more than five, summary rating levels. The rating levels must include "Fully Successful" and "Outstanding" levels, or equivalent terms, and an "Unacceptable" level. While five summary rating levels are required by law for the Performance Management and Recognition System (GS 13 through 15 supervisors and management officials) and three summary rating levels are required by law for SES members, there is no statutory requirement with regard to summary ratings for General Schedule and Prevailing Rate employees.

OPM has considered proposing this change for some time, but wanted to await the results of a report commissioned from the National Research Council of the National Academy of Sciences before initiating action. That report analyzes contemporary research on the assessment of job performance and on performance-based pay systems. The report has been published and it indicates that permitting such flexibility would not jeopardize the reliability or validity of performance ratings.

These proposed regulations would not change the rules governing additional service credit for performance in determining an employee's retention standing for reduction-in-force (RIF) purposes. If these regulations are adopted, however, OPM will review the RIF regulations at 5 CFR 351.504 to determine what changes may be needed. OPM may propose regulations amending the rules for granting additional service credit to ensure equitable treatment of employees whose ratings were earned under differing performance appraisal systems.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because the change will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 430

Administrative practice and procedure, Reporting requirements, Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the Office of Personnel Management proposes to amend title 5, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for Part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

2. In § 430.204, paragraph (h) is revised, paragraphs (i) through (k) are redesignated as (j) through (1) respectively, and a new paragraph (i) is added to read as follows:

§ 430.204 Agency performance appraisal systems.

* * * * *

(h) Each appraisal system shall provide for at least three and not more than five summary rating levels. The rating levels must include an "Unacceptable" level, a "Fully Successful" level, and an "Outstanding" level. Agencies may identify terms as equivalent to "Fully Successful" and "Outstanding" in their Performance Management Plan. Agencies also may use a rating level between "Fully Successful" and "Unacceptable," and a rating level between "Fully Successful" and "Outstanding."

(i) To provide for consistency of performance rating designations in data submission to the Central Personnel Data File and in referencing other related regulations, agencies will use the following numeric levels: Level 1 for "Unacceptable," level 3 for "fully Successful" or its equivalent, and level 5 for "Outstanding" or its equivalent. Rating levels between "Unacceptable" and "Fully Successful" will be designated level 2 and rating levels between "Fully Successful" and "Outstanding" will be designated level 4.

* * * * *

[FR Doc. 91–22986 Filed 9–24–91; 8:45 am]

BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

[Docket No. PRM-30-59]

General Electric Co. and Westinghouse Electric Corp.; Filing of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The General Electric Company and the Westinghouse Electric Corporation request that the Nuclear Regulatory Commission (NRC) amend its regulations establishing general requirements for decommissioning licensee facilities. The petitioners request that the NRC issue a rule that would provide a means for self-guarantee of decommissioning funding costs by certain NRC non-electric utility reactor licensees who meet stringent financial assurance and related reporting and oversight requirements.

DATES: Submit comments by November 12, 1991. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Joseph Wang, Chief, Engineering and Decommissioning Section, Radiation Protection & Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, Telephone (301)-492-3746 or Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555, Telephone: (301) 492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has received a joint petition for rulemaking submitted by the General Electric Company (GE) and the Westinghouse Electric Corporation (Westinghouse). The petition was assigned Docket No. PRM-30-59 on July 11, 1991. The petitioners request that the NRC amend its decommissioning regulations contained in 10 CFR parts 30, 40, 50, 70, and 72 to provide a means for self-guarantee of decommissioning funding costs by certain NRC licensees who meet stringent financial assurance and related reporting and oversight requirements. Electric utility reactors licensees under 10 CFR part 50 are excluded from this petition.

On June 27, 1988 (53 FR 24018), the NRC published a final rule that established general requirements for decommissioning nuclear facilities. These requirements provide assurance that licensed facilities will be decommissioned in a safe and timely manner and that adequate funds will be available for decommissioning. Under the current decommissioning requirements, licensees are permitted to provide financial assurance of decommissioning funding through prepayment, insurance, a surety bond, a letter of credit, a line of credit, a parent company guarantee, or the establishment of a sinking fund.

In March 1990, the petitioners each sought a specific exemption from the financial assurance instrument requirements discussed in the previous paragraph. The requested exemptions would have enabled the petitioners to demonstrate financial assurance by submitting a self-guarantee that otherwise met or exceeded the criteria for qualifying parent company guarantees under appendix A to 10 CFR part 30. The Commission denied the requests for exemptions on July 31, 1990. The petitioners each submitted a Petition for Reconsideration on August 20, 1990. The Commission denied these Petitions for Reconsideration on March 7, 1991, but invited GE and Westinghouse to submit a petition for rulemaking to address the issues raised concerning self-guarantee for decommissioning funding.

The Petitioners

The petitioners each hold NRC licenses issued under the regulations in 10 CFR chapter I or comparable licenses issued by an Agreement State. Therefore, the petitioners are subject to the Commission's requirements. The petitioners state that they have sufficient resources to provide the degree of financial assurance necessary to meet the stated requirement that adequate funds be available for decommissioning. The petitioners assert that they are in excellent financial condition, possess vast assets, enjoy premier credit standing, and have long-lived records of prosperity. The petitioners contend that few financial institutions in the business of extending letters of credit or other forms of third-party guarantees can demonstrate the same degree of financial capacity. The petitioners believe that this recognized standing in the financial community supports their contention that self-guarantee by licensees of similar financial substance is more than sufficient to meet the financial assurance requirements of the decommissioning rule.

Need for the Suggested Amendments

The petitioners have submitted this petition for rulemaking because they believe that they have been adversely and unreasonably affected by the limitations in the current decommissioning rule. The petitioners state that, under the current rule, companies like the petitioners are unable to guarantee decommissioning funding costs when they themselves are NRC licensees. However, according to the petitioner, less financially strong institutions, such as insurance companies, banks, and savings and loan institutions, are permitted to guarantee the decommissioning funding costs of NRC licensees without providing any evidence of financial strength.

Furthermore, according to the petitioners, licensees without the financial capabilities of the petitioners may provide qualifying parent company guarantees solely because these parent companies are legal entities distinct from the subsidiary licenses whose decommissioning funding they guarantee.

The petitioners state that the lack of an internal decommissioning funding method imposes unwarranted compliance cost upon them. The current rule compels the petitioners to either restructure their licensed activities into less financially secure licensees subsidiaries for which the petitioners could then provide parent company guarantees or to obtain external financial assurance at a cost that would be significant over the term of their licensed activities.

The Solution

The petitioners suggest that the NRC amend its regulations pertaining to decommissioning funding to permit an additional method for providing the required financial assurance. The petitioners also suggest that the NRC add provisions in which it would establish the criteria to be used in determining the qualifications of a licensee to provide a self-guarantee of

funds. According to the petitioners, the suggested criteria for self-guarantee of funds are more stringent than those currently required for a parent company guarantee.

The suggested amendment would provide for the self-guarantee of fund for decommissioning costs by any licensee, other than an electric utility licensed to operate a reactor under 10 CFR part 50, that—

(1) Has no majority shareholder, that is, a company without a parent company;

(2) Is subject to the reporting requirements of the Securities Exchange Act of 1934; and

(3) Demonstrates a level of present and future financial stability sufficient to meet the required financial test.

Need for the Amendments

The petitioners believe that their suggested amendments are in the public interest. The petitioners state that the proposed amendments would encourage direct licensee responsibility by financially strong companies. The petitioners believe that the current rule may encourage a financially strong, independent company to create less financially secure subsidiaries to hold NRC licenses in order to avoid the additional cost of available decommissioning funding assurance methods. The petitioners assert that the consolidation of financial resources in a single licensed organization would enhance the performance of all licensee responsibilities thereby better achieving the stated purpose of the required financial assurance provisions.

In addition, the suggested amendments would permit licensees without parent companies to conserve valuable resources by executing a self-guarantee rather than expending increasing amounts of money for a line or letter of credit. According to the petitioners, the cumulative cost of a line or letter of credit is estimated to be in excess of several million dollars for each license over the next 40 years. These funds would be unrecoverable and, in the petitioners' view, this represents an unwarranted expenditure of funds.

The Petitioners' Suggested Amendments

The petitioners have suggested specific amendments to the provisions of 10 CFR chapter I to accomplish their suggested amendments. The suggested amendments, with minor editorial adjustments to codification and amendatory language necessary to meet publication requirements, are as follows:

1. In § 30.35, the introductory text of paragraph (f)(2) is revised to read as follows:

Section 30.35 Financial Assurance and Recordkeeping for Decommissioning

* * * * *

(f) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B to this part. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

2. A new appendix B is added to part 30 to read as follows:

Appendix B to Part 30–Criteria Relating To Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes a financial test. This appendix establishes criteria for passing the financial test for the self guarantee.

II. Financial Test

A. To pass the financial test, the company must meet all of the following criteria. The company must have:

(i) A current rating for its most recent bond issuance of AAA, AA, or A, as issued by Standard and Poor's or Aaa, Aa or A, as issued by Moody's; and

(ii) Tangible net worth at least ten times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

(iii) Tangible net worth of at least $1 billion; and

(iv) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the current decommissioning cost estimates (or prescribed amount if certification is used).

B. The company's independent certified public accountant must have compared the data used by the company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

C. The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.

D. 1. After the initial financial test, the company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

2. If a company no longer meets the requirements of paragraph A of this section, the licensee must send notice to the Commission of intent to establish alternate financial assurance as specified in the Commission's regulations. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year end data show that the company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Company Guarantee

The terms of self guarantee which an applicant or licensee furnishes must provide that:

A. The gurarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Commission. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Commission, as evidenced by the return receipt.

B. The licensee will provide alternate financial assurance as specified in the Commission's regulations within 90 days after receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put into effect by the licensee.

D. The licensee will promptly forward to the Commission and the licensee's independent auditor all reports filed by the licensee (in its capacity as a registrant) with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities Exchange Act of 1934.

E. If at any time the licensee's most recent bond issuance ceases to be rated in any category of A or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service.

3. In § 40.36, the introductory text of paragraph (e)(2) is revised to read as follows:

Section 40.36 Financial Assurance and Recordkeeping for Decommissioning

* * * * *

(e) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

4. In § 50.75, the introductory text of paragraphs (e)(1)(iii) and (e)(2)(iii) are revised to read as follows:

Section 50.75 Reporting and Recordkeeping for Decommissioning Planning

* * * * *

(e) * * *

(1) * * *

(iii) A surety method, insurance or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method of insurance used to provide financial insurance for decommissioning must contain the following conditions.

* * * * *

(2) * * *

(iii) A surety method, insurance, or other guarantee method. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

* * * * *

5. In § 70.25, the introductory text of paragraph (f)(2) is revised to read as follows:

Section 70.25 Financial Assurance and Recordkeeping for Decommissioning

* * * * *

(f) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

6. In § 72.30, the introductory text of paragraph (c)(2) is revised to read as follows:

Section 72.30 Decommissioning planning, including financing and recordkeeping

* * * * *

(c) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

(Note: The petitioners' suggested amendment to 10 CFR part 72 was presented as an amendment to § 72.18, which was amended by the final rule published June 27, 1988 (53 FR 24055). When part 72 was revised on August 19, 1988 (53 FR 31658), the section containing the provisions applicable to decommissioning was recodified as § 72.30.)

Supporting Information

The petitioners assert that, coupled with an appropriately demanding financial test and annual recertification,

self-guarantee by a licensee clearly provides reasonable assurance that sufficient decommissioning funds will be available. The petitioners state that whatever incremental assurance of funding availability may be achieved by a separate parent guarantee may also be achieved by a licensee's self-guarantee when the licensee can show that it is substantially less likely to face bankruptcy than a parent guarantor qualifying under appendix A to 10 CFR part 30. The stricter financial test criteria suggested by the petitioners, in their view, more than offset the benefits derived from segregating a parent company's assets in the event of a bankruptcy by the subsidiary licensee.

The petitioners believe that an adequate early warning system can be established to predict a licensee's inability to meet its financial obligations. Therefore, there is no reason not to accept the assets of the licensee itself as the basis for decommissioning funding assurance for its own licenses. According to the petitioners, the Environmental Protection Agency accepts self-guarantee as a method of providing financial assurance of funding of the closure of hazardous waste facilities.

The petitioners believe that the bond rating requirements contained in their suggested amendments provide an effective early warning system concerning changes in a licensee's financial condition which may adversely affect the availability of funds for decommissioning. Bond ratings are assigned by independent entities such as Standard and Poor's or Moody's and are based on their evaluations of relative investment qualities of bonds and the creditworthiness of their issuers. The bond rating given an issuance reflects past, present, and future risks. Bond ratings are not static. They change in time to reflect the changing financial condition of an issuer.

According to the petitioners, statistics indicate that rating systems work as predictive tools. The petitioners state that bonds holding ratings of "A" or better, the petitioners' suggested threshold, have an extremely low default rate over both short and long periods of time. The petitioners indicate that the incidence of any issuer rated "A" or better defaulting within 6 years following the receipt of a rating of "A" or better is less than one percent. The petitioners state that this attests to both the financial quality of the issuers who are rated "A" or better as well as the integrity of the ratings system as a method of assessing the current and future strength of the issuers.

The petitioners note that the average default rates since 1970 for issuers rated "Baa" is more than four times higher than the average one year default rates of issuers rated "A" or better. In addition, 6 years after the ratings were issued the average cumulative default rates for issuers rated "Baa" are approximately two and a half times greater than the default rates for issuers rated "A" or better, 3 to 5 years after the ratings were issued the average default rates for issuers rated "Baa" were approximately three times the rates for issuers rated "A" or better, and in the second year after the ratings were issued the default rates for issuers rated "Baa" were at least five times the rates for issuers rated "A" or better. The petitioners point out that a rating of "Baa" constitutes an acceptable rating for parent company guarantors under the current decommissioning rule.

The petitioners state that these statistical comparisons clearly demonstrate that a guarantee by a licensee holding an "A" bond rating offers substantially greater protection than a company holding a "Baa" bond rating. Therefore, the petitioners believe that their suggested amendments provide more than reasonable assurance of adequate funds for decommissioning.

In addition, the petitioners believe that the suggested requirement that a licensee notify the NRC of a change in its bond rating that removed the licensee using a self-guarantee of "A" or better provides the NRC ample early warning of a licensee's potential economic distress. Coupled with the other reports that the NRC would receive if the suggested amendments were adopted, the petitioners believe that the NRC would be apprised of significant financial developments in time to require a licensee to take any appropriate corrective action.

Request for Comments

In addition to comment on the proposed petition and the petitioners' proposed criteria, the NRC is soliciting public comment on—

(1) What other criteria, if any, might be proposed for self-guarantee and the basis for the criteria; and

(2) Information as to the number or percentage of NRC licensees that might be able to comply with the self-guarantee criteria proposed by the petitioners or any other self-guarantee criteria proposed by the commenter.

Dated at Rockville, Maryland, this 17th day of September 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91-23098 Filed 9-24-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 10, 102, 134 AND 177

Proposed Customs Regulations Amendments Regarding Rules of Origin Applicable to Imported Merchandise

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to set forth a uniform rule governing the determination of the country of origin of imported merchandise which is wholly obtained or produced in a single country. The document also proposes to amend the Customs Regulations to establish rules, applicable for all purposes except for purposes of Government procurement, antidumping actions, countervailing duty actions, and certain duty-preference programs, for determining the country of origin of imported base metals and articles of base metal which are not wholly obtained or produced in a single country and which are classifiable in chapters 72 through 83 of the Harmonized Tariff Schedule of the United States (HTSUS). The proposed rules are intended to replace the present country of origin rules with more objective and transparent standards which will provide greater certainty and predictability for both the trade community and the Customs Service in making country of origin determinations required under existing laws and regulations.

DATES: Comments must be received on or before November 25, 1991.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Valentine, Office of Regulations and Rulings (202-566-8530).

SUPPLEMENTARY INFORMATION:

Background

All goods imported into the United States are subject to a determination as to their country of origin because origin determinations affect the treatment of imported goods. Admissibility, duty assessment, country of origin marking, and quota administration are examples of trade issues which involve origin determinations.

The rules or origin as historically applied in the United States do not have a statutory basis. Rather, they reflect tests and criteria developed through the years in judicial decisions and in Customs interpretations of those judicial decisions. In more recent years, the importance of rules of origin has been demonstrated by the adoption of statutory or regulatory origin rules applicable in specific contexts, including for purposes of government procurement, certain duty-preference programs, and the U.S. textile import program.

An article may be grown or mined or otherwise extracted from the ground in a country and not be further processed prior to exportation. Such an article is "wholly the growth or product" of that country and as such has its origin in that country because it reflects no materials or processing attributable to any other country. Similarly, an article may be processed or manufactured exclusively in a country from materials wholly grown or produced in that same country. In such a case the article is "wholly the product or manufacture" of that country and thus has its origin in that country because, again, it reflects no materials or processing attributable to any other country. The U.S. origin rule in these cases is expressed by the phrase "wholly the growth, product, or manufacture of a country" (or "wholly grown, produced, or manufactured in a country").

The more problematic origin determinations arise when an article is not wholly the growth, product, or manufacture of a country, which means that the product in question incorporates or reflects materials or processing or both that are attributable to two or more countries. In such cases origin is determined based on the effect of processing performed on imported materials or articles which originated in another country. Under the traditional judicially-developed test, the processing must be such that it results in a "new and different article" (or "new and different article of commerce") having a "new name, character, and use" which is different from that which existed prior to the processing; Customs has expressed this test as the "substantial transformation" rule. Under this rule, the country of origin of an imported article is considered to be the last country in which a substantial transformation took place (in other words, the country in which the imported article assumed its final and distinctive identity prior to importation).

Notwithstanding the long history of the substantial transformation rule, its administration has not been without problems. These problems devolve from the fact that application of the substantial transformation rule is on a case-by-case basis and often involves subjective judgments as to what constitutes a new and different article or as to whether processing has resulted in an article with a new name, character, and use. As a result, application of the substantial transformation rule has remained essentially non-systematic in that a judicial or administrative determination in one case more often than not has little or no bearing on another case involving a different factual pattern. Thus, while judicial and administrative decisions involving the substantial transformation rule may have some precedential value as restatements or refinements of the basic rule, they are often of little assistance in resolving individual cases involving the myriad of issues or tests that have arisen under those precedents, such as the distinction between producer's goods and consumer's goods, the significance of further manufacturing or finishing operations, and the issue of dedication to use. The very fact that the substantial transformation rule has been the subject of a large number of judicial and administrative determinations is testament to the basic problem: The case-by-case approach, involving application of the rule based on specific sets of facts, has led to varied case-specific interpretations of the basic rule, resulting in a lack of predictability which in turn has engendered some uncertainty both within Customs and in the trade community as regards the effect which a particular type of processing should have on an origin determination.

On January 2, 1988, the United States and Canada entered into the United States-Canada Free-Trade Agreement (CFTA), the objectives of which include the elimination of Customs duties and other barriers to trade in goods and services between the two countries. Chapter 3 of the CFTA sets forth rules for determining the origin of goods for purposes of duty preference under the CFTA. Those rules, which are set forth in General Note 3(c)(vii), HTSUS, provide that goods will have their origin (1) in the country in which they are wholly obtained or produced, or (2) in the case of goods not wholly obtained or produced in a country, in the country in which they were transformed so as to be subject to a specified change in tariff classification (with minimum value-added requirements applying in addition to a tariff classification change in certain cases). The CFTA change in tariff classification standard was specifically developed as an alternative to the traditional substantial transformation rule in order to obviate the problems described above. Customs believes that the CFTA approach, by virtue of its greater specificity, provides more objectivity, transparency, and predictability in origin determinations and therefore should be used as the basis for a new rule of origin that would apply for all purposes except where different origin standards are specifically prescribed by statute.

Discussion of Proposals

General

Customs proposes to add to the Customs Regulations a new part 102 entitled "Rules of Origin" setting forth standards for determining the country of origin of merchandise imported into the United States, based on the CFTA approach. Proposed § 102.1(c) and (e) define "substantially transformed" and "wholly obtained or produced in a country" respectively, and proposed § 102.11 sets forth the basic origin rules to which these definitions relate.

The proposed "wholly obtained or produced in a country" definition follows the definition used in the CFTA and (except in the case of waste and scrap which present particular problems and thus are treated under the CFTA as if they originated as raw materials) is consistent with the position Customs has always taken regarding the concept of goods "wholly" grown, produced or manufactured in one country, including under the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) statutes and regulations which incorporate "wholly" language as part of their origin rules. Since the proposed rule regarding goods "wholly obtained or produced in a country" is consistent with present law, Customs intends that the rule apply for all purposes (for example, for duty assessment and country of origin marking purposes) under the Customs and related laws and the navigation laws of the United States.

The "substantially transformed" definition and rule follow the CFTA change in tariff classification principle.

The proposed standards would apply to all goods for which the change in tariff classification criteria are specified in part 102 and would apply for all purposes except for: (a) Duty preference eligibility under General Notes 3(a)(iv) and (c), HTSUS (involving U.S. insular possessions, the GSP, the Automatic Products Trade Act, the Agreement on Trade in Civil Aircraft, the CFTA, the CBI, and the United States-Israel Free Trade Area Agreement) for which additional, or different, rules of origin are applied; (b) country of origin determinations involving Government procurement, as to which different rules of origin apply under statute; and (c) antidumping and countervailing duty actions. Therefore, for example, the proposed standards would apply for all country of origin marking purposes whether or not the goods are eligible for GSP, CFTA, CBI, etc., duty treatment (e.g., a good may be marked "made in Canada" but not be eligible for CFTA preferential duty treatment.) On the other hand, if the imported goods are not covered by change in tariff classification criteria in part 102, the old (current) standard would continue to apply. Although Customs at present is proposing to set forth change in tariff classification criteria only for base metal products as discussed below, Customs intends to publish further proposals in the future covering other groups of products so that, as is done under the CFTA, part 102 eventually will incorporate change in tariff classification criteria for all products covered by chapters 1–97 of the HTSUS, at which time the old origin standard will cease to apply except where specifically set forth by statute.

This document also proposes to amend certain provisions in parts 4, 10 and 134 of the Customs Regulations in order to ensure consistency with the new substantial transformation rule set forth in proposed part 102. These proposed amendments mainly concern existing provisions which refer to "new and different article" and/or "substantial transformation" and are intended to ensure that (1) the new rule will be applied where change in tariff classification criteria are specified in new part 102 and (2) the old rule will continue to apply in all other cases. The proposed amendments to part 134 concerning country of origin marking also clarify that the substantial transformation rule used for identifying an ultimate purchaser is the same rule as that used for determining the country of origin of a foreign article imposed into the United States. Finally, because the GSP, CBI and Government procurement regulations refer to goods which are wholly "the growth, product, or manufacture" (rather than wholly "obtained or produced" as provided in proposed part 102), and in consideration of the fact that the terms have essentially the same meaning, this document proposes to amend those regulations by including cross-references to the definition set forth in proposed § 102.1(e).

Steel and Other Base Metal Products

The determination of the country of origin of steel and other base metal products of chapters 72–83, HTSUS, is of particular importance because special legal requirements and restrictions apply to many of these products. For example, certain iron and steel products are subject to quantitative import restrictions under voluntary restraint arrangements between the United States and certain steel-exporting countries. In addition, special country of origin marking requirements apply to certain imported pipe and pipe fittings.

Base metals, after refining and forming into a semifinished condition, may be subjected to numerous processing operations, such as hot-rolling, cold-rolling, heat treatment, surface conditioning, surface coating, and other processes which result in flat-rolled products (plates, sheet, strip), bars, rods, angles, shapes, sections, wire, pipes, tubes, and pipe or tube fittings. These products, and in particular steel products, are often subjected to multiple operations which, for example, could include a mechanical hot or cold working, a heat treatment, and various finishing operations applied to the surface. These processing operations may be performed at a single location or at different locations. It is not uncommon for flat-rolled steel to be produced in one country and shipped to a second country for manufacture into large diameter pipe which is then sent to a third country for heat treatment and surface finishing. Similarly, flat-rolled products processed from ingots into cold-rolled condition in one country are often shipped to a second country for annealing and surface finishing.

Legal determinations by the courts and Customs, involving complex processing operations in multiple countries such as those described above, have not provided a consistent rationale which would permit the base metal industries to predict with acceptable commercial certainty the likely outcome of an origin determination so that import requirements and restrictions could be anticipated prior to importation of a specific product. For example, in attempting to follow the opinion in *Midwood Industries* v. *United States*, 313 F. Supp. 951 (Customs Court 1970), Customs has issued rulings based on a balancing of criteria that varied in importance from one product under consideration to another. Thus, a decision citing *Midwood* as authority may be based on the number of processing operations performed rather than on the nature of the processing. As another example, in *Ferrostaal Metals Corp.* v. *United States*, 664 F. Supp. 535 (CIT 1987), the court held that full-hard cold-rolled steel sheet was substantially transformed into annealing and galvanized cold-rolled steel sheet by a continuous annealing and hot-dip galvanizing process, thereby overturning a Customs country of origin determination which had involved that type of processing. However, under a current Customs ruling, steel sheet, when processed only by hot-dip galvanizing, is not considered to be substantially transformed.

Except for a few instances in which a value-added requirement is included, the CFTA origin rules for base metals and articles of base metal demonstrate the basic premise behind the CFTA change in tariff classification rule: Specific changes in tariff classification reflect changes that are physically and commercially significant for purposes of making origin determinations. Accordingly, proposed § 102.26 set forth in this document is based on the change in tariff classification criteria applicable to base metals and articles of base metal under the CFTA. As a practical matter, the criteria set forth in proposed § 102.26 in most cases will not yield significantly different origin determination results than those reached under the traditional substantial transformation rule. However, Customs believes that application of the proposed new criteria will significantly facilitate the origin determination process as regards these types of products.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure

Law Branch, room 2119, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed regulations amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Customs duties and inspections, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 10

Customs duties and inspections, Imports.

19 CFR Part 102

Customs duties and inspections, Imports, Rules of origin.

19 CFR Part 134

Customs duties and inspections, Imports, Labeling, Packaging and containers.

19 CFR Part 177

Imports, Administrative practice and procedures.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

2. Section 4.80b is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 4.80b Coastwise transportation of merchandise.

(a) * * * For purposes of determining whether merchandise is manufactured or processed into a new and different product under this section, the rules set forth in part 102 of this chapter (regarding the determination of whether goods are substantially transformed in a country) shall apply if the merchandise in question is classifiable in a chapter of the Harmonized Tariff Schedule of the United States for which change in tariff classification criteria are prescribed in that part.

* * * * *

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624.

2. Section 10.12 is amended by revising the last sentence of paragraph (e) to read as follows:

§ 10.12 Definitions.

* * * * *

(e) * * * If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed as provided in § 10.14(b) of this part.

3. Section 10.14 is amended by revising the text in paragraph (b) preceding the examples to read as follows:

§ 10.14 Fabricated components subject to the exemption.

* * * * *

(b) *Substantial transformation of foreign-made articles or materials.* Foreign-made articles or materials will become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. Substantial transformation occurs when a manufacturing process results in any change in tariff classification specified in part 102 of this chapter, or, in the case of an article or material classified in a chapter of the HTSUS for which change in tariff classification criteria are not prescribed in part 102 of this chapter, when, as a result of a manufacturing process, a new and different article or material emerges having a name, character, and use distinct from that of the article or material from which it was so transformed. The mere finishing or modification of a partially or nearly complete foreign product in the United States normally will not result in the substantial transformation of such product and it remains the product of a foreign country.

* * * * *

4. Section 10.171 is amended by adding a new paragraph (c) to read as follows:

§ 10.171 General.

(c) *Wholly the growth, product, or manufacturer defined.* For purposes of §§ 10.171 through 10.178, the expression "wholly the growth, product, or manufacture" refers to articles and materials wholly obtained or produced within the meaning of § 102.1(e) of this chapter.

5. Section 10.191 is amended by revising paragraph (b)(3) to read as follows:

§ 10.191 General.

* * * * *

(b) *Definitions.* * * *

(3) *Wholly the growth, product, or manufacture.* For purposes of § 10.191 through § 10.198, the expression "wholly the growth, product, or manufacture" refers to articles and materials wholly obtained or produced within the meaning of § 102.1(e) of this chapter.

* * * * *

Part 102 is added to read as follows:

PART 102—RULES OF ORIGIN

Sec.
102.0 Scope

Subpart A—General

102.1 Definitions.

Subpart B—Rules of Origin

102.11 Origin of goods.
102.12–102.25 [Reserved].
102.26 Base metals and articles of base metal.
102.27–102.32 [Reserved]

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

§ 102.0 Scope.

This part sets forth rules for determining the country of origin of imported goods for purposes of the Customs and related laws and the navigation laws of the United States. The rules in this part regarding goods wholly obtained or produced in a country are intended to apply for all such purposes. The rules in this part regarding goods substantially transformed in a country also are intended to apply for all purposes

except for duty-free eligibility under trade programs or agreements and except for Government procurement origin determinations, for which other rules are prescribed in parts 7, 10 or 177 of this chapter, and except for antidumping and countervailing duty actions.

Subpart A—General

§ 102.1 Definitions.

The following definitions apply for purposes of this part:

(a) *Heading. Heading* means a heading of the Harmonized Tariff Schedule of the United States (HTSUS).

(b) *Subheading. Subheading* means a subheading of the HTSUS.

(c) *Substantially transformed.* In the case of goods classifiable in a chapter of the HTSUS for which change in tariff classification criteria are prescribed in this part, such goods shall be considered to be *substantially transformed* if they have been subjected to a processing operation in a country which results in any of the prescribed changes in classification. For purposes of applying this definition, a more specific change in tariff classification criterion shall take precedence over a less specific criterion.

(d) *United States. United States* means the Customs territory of the United States including any foreign trade zone physically located within the Customs territory of the United States.

(e) *Wholly obtained or produced in a country.* The expression *wholly obtained or produced in a country* when used with referenced to goods means:

(1) Mineral goods extracted in one country:

(2) Goods harvested in one country;

(3) Live animals born and raised in one country;

(4) Goods (fish, shellfish, and other marine animals) taken from the sea by a vessel registered or recorded in a country and flying the flag of that country;

(5) Goods produced on board a factory ship from goods referred to in paragraph (e)(4) of this section, provided that the factory ship is registered or recorded in, and flying the flag of, the same country as the taking vessel;

(6) Goods taken by one country, or by a citizen or national of one country, from the seabed or beneath the seabed outside the territorial waters of any country, provided that the party taking the goods has the right to exploit such seabed;

(7) Goods taken in, or returned from, space by means of a conveyance owned by, or registered in, one country, provided that the goods are not subsequently subjected to a processing operation in any other country;

(8) Waste and scrap derived from manufacturing operations and used goods, provided that the waste and scrap and used goods were collected in one country and are fit only for the recovery of raw materials; or

(9) Goods produced in one country exclusively from goods obtained or produced in that same country and referred to in paragraphs (e) (1) through (8) of this section.

Subpart B—Rules of Origin

§ 102.11 Origin of goods.

For purposes of this chapter, goods which are wholly obtained or produced in a country shall be treated as having their origin in that country. For all purposes of this chapter, except for purposes of duty preference eligibility under General Notes 3(a) (iv) and (c), HTSUS, as to which special rules of origin apply as set forth in part 7 or part 10 of this chapter, and except for purposes of country of origin determinations involving Government procurement as set forth in subpart B of part 177 of this chapter, goods which are not wholly obtained or produced in a country shall be treated as having their origin in the country in which they were last substantially transformed prior to their importation into the United States.

§§ 102.12–102.25 [Reserved]

§ 102.26 Base metals and articles of base metal.

(a) Goods classifiable in chapters 72 through 83, HTSUS, shall be deemed to have been substantially transformed if they have undergone any of the following changes in tariff classification:

(1) A change from one HTSUS chapter to another;

(2) A change to headings 7206–7207 from any heading outside that group;

(3) A change to headings 7208–7216 from any heading outside that group;

(4) A change to heading 7217 from any heading other than headings 7213–7215;

(5) A change to headings 7218–7222 from any heading outside that group;

(6) A change to heading 7223 from any heading other than heading 7221 or heading 7222;

(7) A change to headings 7224–7228 from any heading outside that group;

(8) A change to heading 7229 from any heading other than heading 7227 or heading 7228;

(9) A change to heading 7307 from any other heading;

(10) A change to heading 7308 from any other heading, except for changes resulting from the following processes performed on angles, shapes, or sections of heading 7216:

(i) Drilling, punching, notching, cutting, cambering, or sweeping, whether performed individually or in combination;

(ii) Adding attachment or weldments for composite construction;

(iii) Adding attachments for handling purposes;

(iv) Adding weldments, connectors, or attachments to H-sections or I-sections, provided that the maximum dimension of the weldments, connectors, or attachments is not greater than the dimension between the inner surfaces of the flanges of the H-sections or I-sections;

(v) Painting, galvanizing, or otherwise coating;

or

(vi) Adding a simple base plate without stiffening elements, individually or in combination with drilling, punching, notching, or cutting, to create an article suitable for use as a column;

(11) A change to headings 7309–7326 from any other heading;

(12) A change to headings 7403–7406 from any heading outside that group other than headings 7407–7409;

(13) A change to headings 7407–7409 from any heading outside that group;

(14) A change to subheading 7408.19 from any subheading outside heading 7408;

(15) A change to headings 7410–7419 from any other heading;

(16) A change to headings 7505–7506 from any heading outside that group;

(17) A change to headings 7507–7508 from any heading outside that group;

(18) A change to subheading 7507.20 from any other subheading;

(19) A change to headings 7604–7606 from any heading outside that group;

(20) A change to heading 7607 from any other heading;

(21) A change to headings 7608–7616 from any other heading;

(22) A change to headings 7803–7804 from any heading outside that group;

(23) A change to headings 7805–7806 from any other heading;

(24) A change to headings 7904–7905 from any heading outside that group;

(25) A change to headings 7906–7907 from any other heading;

(26) A change to headings 8003–8004 from any heading outside that group;

(27) A change to headings 8005–8007 from any other heading;

(28) A change to subheading 8005.10 from any other subheading; or

(29) A change to any of the following subheadings from any other subheading: 8101.92, 8101.99, 8102.92, 8102.99, 8103.90,

8104.90, 8105.90, 8107.90, 8108.90, 8109.90, 8112.19, or 8112.91.

(b) [Reserved]

§§ 102.27–102.32 [Reserved]

PART 134—COUNTRY OF ORIGIN MARKING

1 The authority citation of or Part 134 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. Section 134.1 is amended by revising paragraph (b), redesignating paragraphs (d), (e), and (f) as (e), (f), and (g), adding paragraph (d), and revising newly redesignated paragraphs (e)(1) and (e)(2) to read as follows:

§ 134.1 Definitions.

* * * * *

(b) *Country of origin. Country of origin*, when used with reference to any article of foreign origin imported into the United States, means the country in which the article was wholly obtained or produced within the meaning of § 102.1(e) of this chapter, or, in the case of an article not wholly obtained or produced in one country, the country where the article last underwent a substantial transformation prior to its importation into the United States.

* * * * *

(d) *Substantial transformation. Substantial transformation* occurs when a processing operation results in any change in tariff classification specified in part 102 of this chapter, or, in the case of an article classified in a chapter of the Harmonized Tariff Schedule of the United States for which change in tariff classification criteria are not prescribed in part 102 of this chapter, when, as a result of a processing operation, a new and different article emerges having a new name, character, and use.

(e) *Ultimate purchaser.* * * *

(1) If an imported article will be used in further processing, the processor will be the *ultimate purchaser* if he subjects the imported article to a process which results in a substantial transformation of the article.

(2) If the process does not result in a substantial transformation of the imported article, the consumer or user of the article, who obtains the article after the processing, will be regarded as the *ultimate purchaser.*

* * * * *

3. Section 134.35 is revised to read as follows:

§ 134.35 Articles substantially transformed after importation.

If an imported article will be used in further processing in the United States, the processor will be considered the ultimate purchaser if the process results in a substantial transformation of the imported article. In such a case, the imported article is excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D) and § 134.32(d) of this part, provided the container in which it is imported will reasonably indicate the country of origin of the article to the ultimate purchaser.

PART 177—ADMINISTRATIVE RULINGS

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

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

§ 177.22 [Amended]

2. Section 177.22(a) is amended by adding at the end the following sentence: "The expression "wholly the growth, product, or manufacture" refers to articles wholly obtained or produced within the meaning of § 102.1(e) of this chapter."

Carol Hallett,

Commissioner of Customs.

Approved: September 20, 1991

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91–23080 Filed 9–24–91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 963

[Docket No. R-91-1545; FR-2856-P-01]

RIN 2577-AA86

Public Housing—Contracting With Resident-Owned Businesses

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend title 24 by adding a new part 963. Part 963 would provide a public housing agency (PHA) with the option of utilizing an alternative procurement process when contracting with businesses owned in substantial part by public housing residents (resident-owned businesses) for public housing services, supplies, or construction. The alternative procurement process would be based on the established procurement procedures and requirements set forth in the Department's regulations at 24 CFR 85.36, but solicitation would be limited to resident-owned businesses. The purpose of this rule is to enhance the economic opportunities available to public housing residents by facilitating the award of public housing contracts to resident-owned businesses that are capable of performing successfully under a proposed PHA contract, at a reasonable price.

DATES: Comment Due Date: November 25, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address. As a convenience to commenters, the Rules Docket Clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708–2084 or (202) 708–3259 (TDD). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Paul Fletcher, Special Assistant for Economic Development, room 4112, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–4214. Hearing- or speech-impaired individuals may call the TDD number for the Office of Public and Indian Housing, (202) 708–0850. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this rule have been submitted to the Office of

Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until the requirements have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: HUD Desk Officer.

Background

Generally, contracts for services, supplies, or construction in connection with HUD-assisted housing are awarded in accordance with a competitive procurement process. To ensure fairness and economy in the procurement of these items under a HUD grant, the Department requires prospective grantees, including public housing agencies (PHAs), to follow the Department's procurement policies and procedures set forth in 24 CFR part 85, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 85.6.

The Department has a longstanding policy of encouraging PHAs to promote resident involvement in the development, operation, and management of public housing. (See generally 24 CFR part 964.) The objectives of this Department policy are: (1) To improve the quality of life for public housing residents; (2) to empower residents with job creation and asset development opportunities; and (3) to facilitate upward mobility. The Department's regulations currently provide for resident participation in the management duties and responsibilities of public housing developments. (See 24 CFR part 964.) The Department is committed to expanding resident involvement in public housing activities by encouraging PHAs to contract with businesses, owned in substantial part by public housing residents (resident-owned businesses), for public housing services, supplies, or construction.

PHAs have been responsive to the Department's policy on public housing resident involvement, and have awarded public housing contracts to eligible and qualified resident-owned businesses. To facilitate this contract award process, the Department is proposing to provide PHAs with an alternative to the Department's otherwise-required competitive procurement procedures. The alternative procurement process would be based on the established procurement procedures and requirements set forth in the Department's regulations at 24 CFR 85.36. However, solicitation under these procedures would be limited to resident-owned businesses.

The proposed alternative procurement process is consistent with the purposes of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3). Section 3 provides that, "to the greatest extent feasible," the Department shall require that opportunities for training and employment, including the award of work contracts, arising in connection with projects covered by Section 3, be given to persons residing within a section 3 project are, to business owned in substantial part by persons residing in a section 3 project area. HUD-assisted public housing is covered by Section 3. The Department's regulations governing public housing program requirements include compliance with section 3 and with the Department's regulations implementing section 3 at 24 CFR part 135. (See § 941.208(a), § 968.110(a).) The alternative procurement process, with its objective of increasing employment opportunities for public housing residents, will promote, at least in part, the hiring preferences authorized by section 3.

The Department may not impose additional administrative requirements (e.g., procurement requirements), except in codified regulations published in the **Federal Register**. The proposed rule provides for an alternative procurement process, using the established procurement procedures and requirements set forth in 24 CFR 85.36, with the additional administrative requirement that solicitation shall be limited to resident-owned businesses (§ 963.12). Otherwise, the requirements of 24 CFR 85.36 continue to apply unless excepted by statute or by other HUD program requirements (e.g., 24 CFR 968.240).

Proposed Rule

The proposed rule would add a new part 963, with two subparts. Subpart A sets forth the purpose and applicability of the rule, and defines the major terms used in part 963. Subpart A provides that the alternative procurement process of part 963 is an option, not a requirement, available to PHAs, subject to the conditions set forth in part 963, and subject to permissibility under State and local laws. Subpart A also provides that the alternative procurement process only is applicable to public housing contracts of $500,000 or less.

Subpart A defines a resident-owned business as a business concern which is owned and controlled by public housing residents. (This definition also includes sole proprietorships.) "Owned and controlled" means that the business is at least 51 percent owned by one or more public housing residents, and that the management and daily operations of the business are controlled by one or more of these individuals. The definition further provides that all securities which constitute ownership or control of a corporation for purposes of establishing the business as a resident-owned business shall be held directly by the public housing residents, and that no securities held in trust, or by any guardian for a minor, shall be considered as held by the public housing resident in determining the ownership or control of a corporation.

Subpart B establishes the requirements that a resident-owned business must meet to be eligible to participate in the alternative procurement process, and the procedures that the PHA must follow when using this process. The eligibility requirements provide that the resident owner or owners of the business must reside in public housing over which the PHA, that is procuring the services, supplies or construction, has authority. The eligibility requirements also provide that the resident-owned business must disclose the names of all owners and management officials of the business. The resident-owned business must identify those owners and management officials who are *not* public-housing residents, and must disclose whether these individuals have a relationship with any business (resident or non-resident owned) engaged in a business activity similar to that with which the resident-owned business is engaged. (For the purposes of this rule, relationship means employment by, or

having an ownership interest in, the business.)

In structuring the eligibility requirements for resident-owned business, the Department's concern is that public housing residents are the individuals that actually benefit from the proposed alternative procurement process—both financially and through experience. Accordingly, through the definition of resident-owned business and the ownership disclosure requirements imposed, the Department seeks to ensure that the ownership and control of resident-owned business is real, substantial, and continuing and goes beyond the *pro forma* ownership of the business, as reflected in its ownership documents. The Department specifically seeks comment on this issue.

Subpart B also limits the availability with which any one resident-owned business may participate in the alternative procurement process. The rule limits a resident-owned business to a maximum number of three contracts or a maximum total contract dollar value of $500,000, whichever occurs first. For example, a resident-owned business that received a single $500,000 contract under the alternative procurement process would not be eligible for any additional alternative procurement contracts, because the contract award equals the maximum contract dollar value that a resident-owned business may receive under this process. Similarly, a resident-owned business that receives three $20,000 alternative procurement contracts would not be eligible for any additional contracts (even though its total contract award amount of $60,000 is well under $500,000), because the business already received the maximum number of contracts—three—that may be awarded under this process. However in each case, the resident-owned business would be eligible for public housing contract awards under the Department's standard procurement policies and procedures, as set forth in 24 CFR Part 85, or in accordance with such other Department procedures as may be applicable to the particular procurement. This limitation on public housing contracts awardable under the alternative procurement process is included to avoid the possibility that a resident-owned business will become dependent on income provided by public housing contracts. The Department specifically solicits comment on this issue.

The Department believes that the alternative procurement process, proposed by this rule, will facilitate the employment of resident-owned businesses (and of public housing residents, generally), provide valuable training and experience to newly formed resident-owned businesses, promote self-sufficiency among public housing residents, and engender increased cooperation between PHAs and public housing residents in creating a positive public housing living environment.[1]

Other Matters

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would permit public housing agencies, when contracting with resident-owned businesses for public housing services and supplies, to bypass the Department's standard procurement procedures, and award contracts to resident-owned businesses under the alternative procurement process proposed by this rule. The alternative procurement process is an option, not a requirement, available to public housing agencies, subject to the conditions set forth in the rule, and subject to permissibility under State and local law. The scope of the rule is limited to public housing agencies, and to public housing contracts of $500,000 or less. The proposed rule also limits the frequency with which any one resident-owned business may participate in the alternative procurement process. Because of the limitations imposed on this process, the Department believes that the rule will not alter significantly the PHA contract award process, as currently exists. The Department believes that the majority of PHA contracts will continue to be awarded to non-resident-owned businesses. While the rule may result in some positive economic impact on resident-owned businesses, which in all likelihood will be small businesses, the modest nature of the rule's goals would not result in a significant economic impact on small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism*, has determined that this rule would not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The proposed rule would provide PHAs with an alternative procurement process when contracting with resident-owned businesses for public housing services, supplies or construction. Accordingly, the proposed rule provides PHAs with increased flexibility in the administration of HUD grants for public housing developments. Additionally, the proposed rule also provides that the availability of this alternative procurement process to PHAs is subject to State and local procurement laws.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those

[1] This proposed rule would not be applicable to Indian Housing Authorities. The Department's regulations at part 905, that govern the operations and management of programs administered by the Indian Housing Authorities (IHAs), provide for preference in the award of contracts or subcontracts to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 2452). (See § 905.165, 55 FR 24722, 24752, June 18, 1990).

policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as sequence number 1380 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17404), under Executive Order 12291 and the Regulatory Flexibility Act.

Public Reporting Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The following provisions of the rule have been determined by the Department to contain collection of information requirements:

Reference in rule	No. of respondents	No. of responses per respondents	Total annual respondent	Hours per response	Total hours
§ 963.10	500	1	500	16	8,000
§ 963.12	500	2	1000	2	2,000
Total Annual Burden					10,000

List of Subjects in 24 CFR Part 963

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, a new part 963 would be added to Title 24 of the Code of Federal Regulations to read as follows:

PART 963—PUBLIC HOUSING—CONTRACTING WITH RESIDENT-OWNED BUSINESSES

Subpart A—General

Sec.
963.1 Purpose.
963.3 Applicability.
963.5 Definitions.

Subpart B—Contracting with Resident-Owned Businesses

963.10 Eligible resident-owned businesses.
963.12 Alternative procurement process.

Authority: Sec. 2, United States Housing Act of 1937 (42 U.S.C. 1437); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 963.1 Purpose.

The purpose of this part is to enhance the economic opportunities of public housing residents by providing public housing agencies with a method of soliciting and contracting with eligible and qualified resident-owned businesses (as defined in this part) for public housing services, supplies, or construction. The contract award method provided by this part is based on the established procurement procedures set forth in 24 CFR 85.36, with solicitation as provided by these procedures limited to resident-owned businesses. The contract award method provided by this rule is not a requirement. It is an alternative procurement method available to public housing agencies, subject to the conditions set forth in this part, and subject to permissibility under State and local laws.

§ 963.3 Applicability.

The policies and procedures contained in this part apply to public housing developments that are owned by public housing agencies (PHAs) and that are covered by Annual Contributions Contracts (ACC) with the Department. Public housing contracts eligible to be awarded under the alternative procurement process provided by this part are limited to individual contracts that do not exceed $500,000. Resident-owned businesses eligible to participate in the alternative procurement process are limited to those that meet the eligibility requirements of § 963.10. The policies and procedures contained in this part are consistent with the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and similar Federal requirements imposed on public housing programs. (*See* 24 CFR 941.208(a) and 24 CFR 968.110(a).)

§ 963.5 Definitions.

Act. the U.S. Housing Act of 1937 (42 U.S.C. 1437).

Alternative procurement process. The alternative method of public housing contract award available to public housing agencies and eligible resident-owned businesses under the conditions set forth in this part.

Annual Contributions Contract (ACC). See definition in 24 CFR 968.105.

Certification. A written assertion based on supporting evidence, which shall be kept available for inspection by the Secretary, the Inspector General, and the public, which assertion shall be deemed to be accurate for purposes of this part, unless the Secretary determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Contract or *public housing contract.* Any contract awarded by a PHA for services, supplies, or construction necessary for the development, operation, modernization, or maintenance of public housing.

HUD. The Department of Housing and Urban Development, including the Regional and Field Offices that have been delegated authority to perform functions pertaining to this part for the area in which the PHA is located.

Management officials. The individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations of the resident-owned business.

Principal. An owner, partner, director, or management official of the resident-owned business with the power and authority to represent the business and to execute contracts, leases, agreements, and other documents on behalf of the business.

Project area. The geographical area in which the PHA is authorized to engage in, or assist in the development or operation of housing for low-income families.

Public housing or public housing development. Any public housing development which is owned by a Public Housing Agency (PHA) and is receiving funds under an Annual Contributions Contract (ACC).

Public Housing Agency (PHA). Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of public housing. For the purposes of this part, the term Public Housing Agency does not include Indian Housing Authorities.

Public housing resident. Any individual who resides in public housing as the signatory on a public housing lease, or as a member of the family of the individual(s) who is the signatory on the public housing lease.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(a) Which is at least 51 percent owned by one or more public housing residents; and

(b) Whose management and daily business operations are controlled by one or more such individuals.

All securities which constitute ownership or control of a corporation for purposes of establishing the business as a resident-owned business shall be held directly by the public housing residents. No securities held in trust, or by any guardian for a minor, shall be considered as held by the public housing resident in determining the ownership or control of a corporation.

Subpart B—Contracting With Resident-Owned Businesses

§ 963.10 Eligible resident-owned businesses.

To be eligible for the alternative procurement process provided by this part, a business must meet the following requirements, and must submit evidence to the PHA, in the form described below, or as the PHA may require, that shows how each requirement has been met.

(a) *Legally formed business.* The business shall submit certified copies of any State, county, or municipal licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable (as for example, in the case of corporations), the business also shall submit a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with State law.

(b) *Resident-owned business.* The business shall certify that it is a resident-owned business as defined by this part. The business shall disclose to the PHA all owners of the business, and all individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations (management officials). The business shall identify all owners and management officials who are not public housing residents, and shall disclose any relationship that these owners and officials may have to a business (resident- or non-resident-owned) engaged in the type of business activity with which the resident-owned business is engaged. For purposes of this part, "relationship" means employment by, or having an ownership interest in, a business. The business also shall submit such evidence as the PHA may require to verify that the owner or owners identified as public housing residents reside within public housing of the PHA.

(c) *Location.* The business shall certify that its principal place of business is located within the project area of the PHA that is proposing to procure public housing services, supplies, or construction.

(d) *Responsibility to complete contract.* The business shall submit evidence sufficient to demonstrate to the satisfaction of the PHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract. Consideration will be given to various factors, including but not limited to those identified in 24 CFR 85.36(b)(8) and also to such matters as proof of completion of courses in administration or financial management, and proof of job training or apprenticeship in the particular trade, business, profession, or occupation.

(e) *Limitation on alternative procurement contract awards.* The business shall certify as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process provided by this part. A resident-owned business is not eligible to participate in the alternative procurement process provided by this part if the resident-owned business has received under this process three contract awards or a total contract dollar value of $500,000, whichever occurs first.

§ 963.12 Alternative procurement process.

(a) *Method of procurement.* In contracting with resident-owned businesses, the PHA shall follow the applicable method of procurement as set forth in 24 CFR 85.36(d), with solicitation limited to resident-owned businesses. Additionally, the PHA shall ensure that the method of procurement conforms to the procurement standards set forth in 24 CFR 85.36(b).

(b) *Contract awards.* Contracts awarded under this part shall be made only to resident-owned businesses that meet the requirements of § 963.10, and that comply with such other requirements as may be required of a contractor under the particular procurement and the Department's regulations. An award shall not be made to the resident-owned business if the contract award exceeds the independent cost estimate required by 24 CFR 85.36(f), *and* the price normally paid for comparable supplies, services, or construction in the project area.

(c) *Contract requirements.* Any contract entered into between a PHA and a resident-owned business under this part shall comply with: the contract provisions of 24 CFR 85.36(i); the provisions of 24 CFR 85.36(h), governing bonding requirements, where applicable; and such other contract terms that may be applicable to the particular procurement, under the Department's regulations. In addition to the recordkeeping requirements imposed by 24 CFR 85.36(i), the PHA also shall maintain records sufficient to detail the significant history of the procurement made under this part. These records will include, but are not necessarily limited to the following: the independent cost estimate and comparable price analysis as required by paragraph (b) of this section; the basis for contractor selection, including documentation concerning the eligibility of the selected resident-owned business under § 963.10; and the basis for the contract price.

Dated: August 22, 1991.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-23087 Filed 9-24-91; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-965-86]

RIN 1545-AM12

Calculation of Currency Gain or Loss on Transfers From Qualified Business Unit Branches Using the Profit and Loss Method of Accounting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the calculation of income (including currency gain or loss on remittances) attributable to a qualified business unit of a taxpayer that uses the profit and loss method of accounting. Changes to the applicable tax law were made by the Tax Reform Act of 1986.

DATES: Written comments must be received by November 25, 1991. Requests to appear and outlines of oral comments to be presented at the hearing scheduled for December 9, 1991, must be received by November 25, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station Attention: CC:CORP:T:R (INTL–965–86), room 5228, Washington DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Murphy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL–965–86) (202–566–6795, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under section 987 of the Internal Revenue Code of 1986 relating to the calculation of income (including currency gain or loss on remittances and terminations) attributable to a QBU branch of a taxpayer that uses the profit and loss method of accounting.

Explanation of Provisions

These regulations provide guidance to taxpayers (foreign or domestic) with a qualified business unit branch (QBU branch) that has a functional currency different from that of the taxpayer. Generally the regulations require a taxpayer with a QBU branch to compute the branch's taxable income using the profit and loss method of accounting. Rules are provided for determining the currency gain or loss (section 987 gain or loss) of the taxpayer attributable to a QBU branch's earnings and capital. Section 987 gain or loss is recognized by the taxpayer when a QBU branch makes a remittance to the taxpayer or when the QBU branch terminates. Rules are also provided for characterizing section 987 gain or loss for purposes of applying the foreign tax credit limitations. The discussion that follows describes the significant portions of the proposed regulations.

Under the profit and loss method of accounting, the QBU branch's income is computed in its functional currency, adjustments are made to conform it to U.S. income tax principles, and the result is translated into the taxpayer's functional currency generally using the average exchange rate for the tax year.

Special rules are provided to account for actual and deemed dividends (such as sale or exchange of stock treated as a dividend under section 1248), collectively referred to as dividend amounts. Under § 1.987–1(b)(1)(iv), dividend amounts are translated into the taxpayer's functional currency at the exchange rate on the date when they are included in income. This is consistent with the translation of these amounts under section 989(b) (1) and (2). Income described in section 951(a) and income from a qualified electing fund are not included in the QBU branch's income. That income is translated (if necessary) directly into the taxpayer's functional currency. This is intended to allow the rules of section 986(c), relating to foreign currency gain or loss on previously taxed earnings and profits, to apply at the "taxpayer" rather than the "branch" level. Any other rule could convert section 986 gain or loss into section 987 gain or loss.

Section 1.987–1(b)(2) incorporates the rules stated in Notice 89–74, 1989–1 C.B. 739. These rules generally provide that a domestic taxpayer with a QBU branch must include in income, after taking into account adjustments under section 905(c), the dollar amount of foreign income taxes attributable to the branch (the tax equivalent amount) that the taxpayer credits under section 901. Under § 1.987–1(b)(2)(iii), the tax equivalent amount does not produce section 987 gain or loss.

Section 1.987–1(b)(4) provides that section 987 does not prevent a taxpayer from taking into account annual losses incurred by a QBU branch. However, losses in excess of the taxpayer's positive basis in the QBU branch (generally the amount of the basis pool) are subject to recapture upon a remittance or when the branch terminates.

Section 1.987–2 provides rules for determining when a taxpayer must recognize gain or loss under section 987 when property is transferred from a QBU branch to the taxpayer. Generally, section 987 gain or loss is triggered when there is a remittance of property. A remittance occurs under § 1.987–2(b)(4) when a QBU branch having a positive balance in its equity pool (defined below) transfers property to the taxpayer. Under § 1.987–2(b)(2), property includes functional currency and liabilities.

Whether there has been a transfer to or from a QBU branch is determined daily. If on any day contributions (or distributions) exceed distributions (or contributions) the excess is treated as a transfer to (or from) the branch. A transfer is translated into the taxpayer's functional currency using the spot rate. For this and certain other purposes a taxpayer may use a spot rate convention as described in § 1.988–IT(d)(3).

The daily netting of contributions and distributions and use a spot rate convention to calculate the section 987 gain or loss on a distribution from a QBU branch deviate from the rule for distributions from corporations. Thus, the total amount of foreign source income of a business will vary slightly depending on whether the business is conducted in branch or corporate form. These rules are proposed to simplify compliance with section 987. The Service is interested in receiving comments on how these rules could be simplified further while generally maintaining parity between the taxation of branches and subsidiaries.

Section 1.987–2(c) provides rules for computing the equity pool (maintained in the functional currency of the QBU branch) and the basis pool (maintained in the taxpayer's functional currency). These pools are used to determine the amount of section 987 gain or loss a taxpayer recognizes when a QBU branch makes a remittance or terminates. The equity pool is described in § 1.987–2(c)(1). It generally represents the amount of branch equity (adjusted basis of assets less liabilities). Thus, for example, a branch borrowing does not increase or decrease the equity pool. On the other hand, branch income and transfers from the taxpayer to the QBU branch increase the equity pool, while branch losses and transfers from the branch reduce the equity pool. The basis pool, described in § 1.987–2(c)(2), generally represents the taxpayer's basis in the equity pool, which is essentially the taxpayer's basis in the branch. The basis pool is increased (decreased) by branch earnings (losses) generally translated at the average rate for the year. Spot rate translation rules are provided for dividend amounts and previously taxed amounts (such as previously taxed subpart F income).

Section 1.987–2(d) provides rules for calculating section 987 gain or loss. Generally, section 987 gain or loss equals the difference between (1) the value of a remittance (generally computed by reference to the QBU branch's functional currency basis in the property remitted) translated into the taxpayer's functional currency at the spot rate on the date of the remittance and (2) the portion of the taxpayer's basis pool (which can be negative) attributable to the property. A formula for determining the attributable portion of the basis pool is provided in § 1.987–2(d).

Under § 1.987–2(f), a taxpayer ordinarily must use the same method it uses to allocate and apportion interest expense under section 861 to determine the source and character of section 987 gain or loss. While the Code provides rules for characterizing other types of "currency gain or loss" for purposes of sections 904(d) and 954, there is no specific rule provided for section 987

gain or loss except that it be sourced "by reference to the source of the income giving rise to post-1986 accumulated earnings". However, section 987 gain or loss is attributable not only to post-1986 earnings but also contributions by the taxpayer to the branch and unremitted earnings from pre-1987 years. Therefore reliance upon post-1986 accumulated earnings would be inadequate. The "interest expense" method was chosen to avoid substantial complications in trying to determine the portion of the section 987 gain or loss attributable to transfers to the branch and pre-1987 earnings and how to allocate and apportion these amounts for purposes of sections 904(d) and 954. Using an interest expense method promotes the goal of regulation simplification by eliminating the need to maintain separate section 904(d) or subpart F "baskets" (and associated basis amounts) which are not otherwise needed or maintained for each branch. A special rule in § 1.987–2(f)(2) is intended to provide relief where the "interest expense method" results in a substantial distortion. This could result where in a particular year, the assets of a QBU branch of a domestic taxpayer are not representative of the historical composition of the QBU branch's assets.

Under § 1.989(a)–1(b)(2), a partnership is a QBU branch of each of its partners. Thus, for example, a remittance from a partnership with one functional currency to a partner with a different functional currency will result in section 987 gain or loss. It is anticipated that section 987 will operate independently from the general rules in subchapter K. Thus, for example, a remittance from a partnership to a partner may result in section 987 gain or loss to the partner even though the remittance is not otherwise taxable under section 731. The Service is particularly interested in suggestions on how section 987 can best be coordinated with the partnership provisions.

Section 1.987–3 deals with the termination of a QBU branch. Generally, when a branch terminates all of the QBU branch's unrealized section 987 gain or loss is triggered. The amount of section 987 gain or loss that the taxpayer must recognize is determined under rules essentially the same as those in § 1.987–2, except for two points: (1) The QBU branch's profit and loss is computed through the termination date; and (2) a final accounting is done to reflect the branch's deemed distribution of its assets to the taxpayer. A special adjustment must be made if the equity pool is negative upon termination: The taxpayer is deemed to make a transfer to the equity pool in an amount necessary to bring the pool up to zero, and the taxpayer must recognize section 987 gain (or loss) equal to any negative (or positive) balance in the basis pool.

Generally, a QBU branch terminates when either (1) the branch transfers substantially all of its assets to the taxpayer or (2) the taxpayer disposes of substantially all of the branch's assets. Thus, for example, a deemed asset sale under section 338 terminates a QBU branch. In general, the transfer of a QBU branch's assets in a section 332 liquidation or a tax-free reorganization does not terminate the QBU branch, subject to certain exceptions. For consistency and compliance reasons, many of the exceptions coordinate with exceptions to the nonrecognition rules found in the regulations under sections 367(a), 367(b), and 367(e). A QBU branch is also considered terminated if the transferee (or distributee) of the QBU branch's assets and the QBU branch have the same functional currency. Generally, a sale or exchange described in section 1248 of 10% or more of the stock in a foreign corporation over a twelve-month period also will result in a termination. Consideration was given to requiring only the selling (or redeeming) shareholder in a section 1248 transaction to realize his pro rata share of the unrealized section 987 gain or loss of a QBU branch of a CFC, rather than treating a section 1248 transaction as a termination event, which affects all shareholders. The pro-rata approach was rejected in the interest of simplicity. The Service welcomes comments on how a pro-rata approach might be implemented in a manner that would not be unduly burdensome to most taxpayers.

The treatment under section 987 of United States QBU branches and foreign taxpayers is reserved. However, it is anticipated that these rules will be substantially similar to the rules for foreign QBU branches.

The Service is studying recharacterizing a portion of the QBU's interest expense (but not its interest income) as principal under the authority of section 989(b). This would serve as an alternative to requiring QBUs operating in a hyperinflationary environment to use the dollar approximate separate transactions method of accounting.

The Service is interested in receiving comments concerning the application of 987 to various "special industries," including life insurance companies and regulated investment companies.

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 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, an initial 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 businesses.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held on December 9, 1991. See notice of public hearing published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal author of these regulations is Carol Murphy of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.985–0 Through 1.989(c)–IT

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 TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *.

Par. 2. The text of §§ 1.987–1 through 1.987–3 is added, and the heading of § 1.987–3 is revised to read as follows:

§ 1.987-1 Profit and loss method of accounting for a qualified business unit of a taxpayer having a different functional currency from the taxpayer.

(a) *General rule*—(1) *Application.* Section 987 applies to a qualified business unit of a taxpayer that—

(i) Has a functional currency that is different from that of the taxpayer; and

(ii) Does not use the dollar approximate separate transactions method of accounting (as defined in § 1.985–3).

(2) QBU branch. For purposes of section 987 and the regulations thereunder, the term "QBU branch" means a qualified business unit of a taxpayer described in paragraph (a)(1) of this section.

(b) *Profit and loss method of accounting*—(1) *In general.* A QBU branch must use the profit and loss method of accounting. Under the profit and loss method of accounting, the taxable income or loss and earning and profits (or deficit in earnings and profits) attributable to a QBU branch, including any exchange gain or loss on intra-taxpayer transactions under § 1.988–1T(a)(7)(ii), is generally computed as of the close of the taxable year by—

(i) Preparing a profit and loss statement from the QBU branch's books and records (within the meaning of § 1.989 (a)–1(d)) as recorded in the QBU branch's functional currency (determined under section 985 and § 1.985–1);

(ii) Except as provided in paragraph (b)(2) of this section, making the adjustments necessary to conform the statement to United States tax principles (the adjusted statement);

(iii) Except as provided in paragraph (b)(1)(iv) and paragraph (b)(3) of this section, translating the amount shown on the adjusted statement into the taxpayer's functional currency at the weighted average exchange rate for the taxable year (as defined in § 1.989(b)–1); and

(iv) Translating the amount shown on the adjusted statement attributable to dividend amounts into the taxpayer's functional currency at the spot rate when the amount is included in the taxpayer's income. A dividend amount includes any amount described in section 989(b)(1), relating to dividends, or section 989(b)(2), relating to the translation of deemed dividends under section 1248.

(2) *Special rule for certain income.* Income described in section 951(a) or section 1293(a)(1) is not included in a QBU branch's adjusted profit and loss statement.

(3) *Appropriate exchange rate for creditable taxes for certain QBU branches of a United States taxpayer*—(i) *Purpose.* The separate computations in this paragraph (b)(3) ensure that a taxpayer's income reflects the dollar value of its creditable taxes where the taxpayer elects to credit the taxes under section 901.

(ii) *Computation of taxable income or loss attributable to a QBU branch.* If a domestic taxpayer elects to credit (rather than deduct) any creditable tax under section 901, the taxable income or loss attributable to a QBU branch must be computed in the same manner as provided in paragraph (b)(1) of this section, except that the functional currency amount of creditable foreign taxes paid or accrued with respect to the QBU branch's income (the "tax equivalent amount") is translated into U.S. dollars (dollars) at the spot rate on the date the taxes were paid or accrued to the foreign country or possession of the United States. The domestic taxpayer's dollar income or loss includes the dollar tax equivalent amount.

(iii) *Impact on pools.* The functional currency and dollar tax equivalent amounts are excluded from both the equity pool and the basis pool described in § 1.987–1(c) (1) and (2), respectively. See § 1.987–1(b)(6), *Example 5.*

(4) *No loss limitation.* A taxpayer may recognize a loss notwithstanding that the balance of either (or both) of the equity pool or basis pool is negative.

(5) *QBU branch termination.* If a QBU branch terminates during a taxable year, the calculations in this paragraph (b) are made through the date of termination. (See § 1.987–3 for definition of termination.) Thus, for example, the weighted average exchange rate would relate only to the period of the taxable year ending on that date.

(6) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1. Q is a foreign QBU branch of a calendar year domestic corporation W. Q's functional currency is the QC. Q began operations on January 1, 1992, at which time it was funded with a transfer (as defined in § 1.987–2(b)(1)) of 100QC when 1QC=$1. During 1992, no other distribution or contribution transfers were made. For 1992, Q had a loss of 100QC that was translated into $150. W is not prevented from taking into account the entire amount of the $150 loss solely by reason of section 987.

Example 2. P is a foreign QBU branch of a calendar year domestic corporation, X, that for 1990 credits its foreign taxes paid. P operates in foreign country R. R's currency is the u and P's functional currency is the u. All of X's income consists of income generated by P that is foreign source general limitation income (income described in section 904(d)(1)(I)). In 1990, P has 100u of taxable income. P pays 20u of tax on that income to country R on December 31, 1990. For 1990, the weighted average exchange rate is 1u/$1. On December 31, 1990, the exchange rate is 1u/$1.2. The 20u of foreign tax is a creditable tax under section 901. In 1990, X's 100u of income attributable to P consists of 80u of earnings of 20u of a tax equivalent amount. The 80u of earnings is translated at the weighted average exchange rate for 1990 (1u/$1) to $80 and 20u is translated at the spot rate when the taxes are paid (1u/$1.2) to $24. For 1990, X, therefore, has taxable income of $104 ($80+$24) attributable to its QBU branch P and has paid $24 of foreign taxes with respect to that income.

Example 3. The facts are the same as in *Example 2,* except that P has 10u of taxable income and country R imposes 30u of tax on that income. X, therefore, has 10u of taxable income that consists of 30u of a tax equivalent amount and a deficit of 20u (taxable income minus foreign taxes). X translates 30u at the spot rate as of the date of the payment of the taxes (1u/$1.2) to $36 and translates the 20u deficit at the weighted average rate (1u/$1) to <$20>. X has $16 ($36+<$20>) of taxable income attributable to QBU branch P and has paid $36 of foreign taxes with respect to that income.

Example 4. M is a foreign QBU branch of a calendar year domestic corporation, X, that for 1990 credits its foreign taxes paid. M operates in foreign country R. R's currency is the u and M's functional currency is the u. In 1988, M has 100u of taxable income. M pays 20u of tax on that income to country R on December 31, 1990. For 1990, the weighted average exchange rate is 1u/$1. On December 31, 1988, the spot rate is 1u/$1.2. The 20u of foreign tax is a creditable tax under section 901. In 1991 there is a foreign tax redetermination within the meaning of § 1.905–3T (c) that results from an additional tax payment of 5u in foreign tax when the exchange rate is 1u/$1.4. The foreign tax redetermination results in a change in the dollar amount of X's taxable income attributable to M. After the redetermination, M has 75u of earnings and 25u of tax equivalent amount. The 75u of earnings is translated at the 1u/$1 rate to $75, 20us is translated at the 1u/$1.2 rate to $24, and 5u is translated at the 1u/$1.4 rate to $7. *See* section 986(a)(1)(B)(i). X, therefore, has taxable income of $106 ($75+$24+$7) attributable to M in 1990 and has paid $31 ($24+$7) of foreign taxes with respect to that income.

Example 5. B is a QBU branch of X, a domestic corporation. The functional currency of B is the FC. The exchange rate for 1992 is 1FC:$1 throughout the year. X elects to credit (rather than deduct) any creditable tax under section 901. In 1992, B has 100FC of income and pays 40FC of creditable tax on that income. B adds 60FC to its equity pool and $60 to its basis pool. Under § 1.987–1(b)(3)(iii), the 40FC is excluded from B's pools: $40 is included in X's income under § 1.987–1(b)(3)(ii).

Example 6. C is a QBU branch of X, a calendar year domestic corporation. The functional currency of C is the FC. The assets of C include 100 percent of the stock of F, a

controlled foreign corporation. In 1992, F pays a dividend of 100FC. For purposes of computing C's profit or loss, under paragraph (b)(1)(iv) of this section the 100FC dividend must be translated into dollars at the spot rate on the date the dividend is distributed, not the weighted average exchange rate for 1992.

(c) *Effective date.* Section 1.987–1 (other than § 1.987–1(b)(3)) is effective for taxable years beginning after [Date That is 30 Days After This Regulation is Published as a Final Regulation]. Section 1.987–1(b)(3) is effective for taxable years beginning after December 31, 1986. For taxable years beginning after December 31, 1986, but before [Date That is 31 Days After This Regulation is Published as a Final Regulation], a taxpayer must use any reasonable profit and loss method of accounting that is consistent with the principles set forth in this § 1.987–1.

§ 1.987–2 Accounting for gain or loss on certain transfers of property.

(a) *General rule*—(1) *In general.* A taxpayer using the profit and loss method of accounting for its QBU branch recognizes gain or loss under section 987 (section 987 gain or loss) upon a remittance (as defined in paragraph (b)(4) of this section) from the QBU branch or when the QBU branch terminates. Section 987 gain or loss generally represents currency gain or loss attributable to the QBU branch's undistributed earnings and capital. To calculate section 987 gain or loss, a taxpayer must establish and maintain two pools for each of its QBU branches. One pool, the equity pool, is maintained in the functional currency of the QBU branch. The second pool, the basis pool, is maintained in the functional currency of the taxpayer. See paragraph (c) of this section to determine the amounts in these pools, and paragraph (d) of this section for how section 987 gain or loss is calculated when there is a remittance.

(2) *Anti-abuse rule.* If a contribution to or a distribution from (or series of contributions to or distributions from) a QBU branch or a termination of a QBU branch does not have a significant business purpose, the District Director or the Assistant Commissioner (International) may, in his or her discretion, make appropriate adjustments to clearly reflect the income of the taxpayer.

(b) *Definitions.* The following definitions apply for purposes of section 987.

(1) *Property.* The term *property* includes property whether tangible or intangible. Property includes liabilities and functional currency.

(2) *Transfer*—(i) *General rule.* Except as provided in paragraph (b)(2)(ii) of this section, the term *transfer* means the net amount of property that, on any day, either is distributed from a QBU branch to the taxpayer (or to any other QBU branch of the taxpayer) or is contributed by the taxpayer (or by any other QBU branch of the taxpayer) to the QBU branch. The amount of property is determined by reference to its basis (or in the case of a liability the amount of the liability) immediately prior to the transfer, adjusted to reflect any gain or loss recognized under section 988. For example, assume that on August 14 a dollar taxpayer with a Swiss franc functional currency QBU branch contributes 5,000 Swiss francs to that QBU branch. That day the QBU branch also distributes 2,400 Swiss francs to the taxpayer. The amount of the transfer by the taxpayer to the QBU branch on August 14 is 2,600 Swiss francs (5,000–2,400).

(ii) *Special rules for receipt of certain previously taxed amounts.* A transfer does not include any previously taxed amount (PTA) received by a QBU branch. PTA includes amounts attributable to income described in section 951 (a) or section 1293 (a)(1).

(iii) *Transferee's basis.* A transferee's basis in property that it receives as the result of a contribution or distribution equals the transferor's basis (adjusted to reflect gain or loss recognized under section 988) translated (if necessary) into the transferee's functional currency at the spot rate (as defined in paragraph (b)(3) of this section) for the day on which the property is contributed or distributed. Translation is not necessary when a transfer is made between two QBU branches with the same functional currency.

(iv) *Transfer of liabilities.* A contribution of a liability by the taxpayer (or any other QBU branch of the taxpayer) to a QBU branch is treated as a distribution by the QBU branch, and a distribution of a liability from a QBU branch to the taxpayer (or any other QBU branch of the taxpayer) is treated as a contribution to the QBU branch.

(3) *Spot rate.* The term spot rate has the meaning given to that term in § 1.988–1T (d) (1) and (2). For purposes of computing a transferee's basis (under paragraph (b)(2)(ii) of this section), the balance in a QBU branch's basis pool (under paragraph (c)(2) of this section) and section 987 gain or loss (under paragraph (d) of this section) a taxpayer may use a spot rate convention as defined in § 1.988–1T(d)(3).

(4) *Remittance.* The term *remittance* means the amount of any transfer from a QBU branch to the extent that the aggregate amount of such transfers during the taxable year does not exceed the positive year-end balance of the equity pool determined without regard to the decreases described in paragraph (c)(1)(iii)(B) of this section. If a QBU branch makes more than one transfer during a taxable year, remittances must be determined using a reasonable method, consistently applied from year to year. The same method must be applied to all of the taxpayer's QBU branches.

(c) *Computation of QBU branch equity and basis pools.* This paragraph (c) describes how the balances in the equity pool and the basis pool are determined. The equity pool is maintained in the functional currency of the QBU branch, and the basis pool is maintained in the taxpayer's functional currency.

(1) *Equity pool*—(i) *Opening balance.* The opening balance of the equity pool for certain QBU branches that operated before 1987 is determined under paragraph (c)(1)(A) of this section. Generally, these branches were subject to the transition rules of § 1.987–5 or § 1.989 (c)–1. The opening balance of the equity pool for any other QBU branch is determined under paragraph (c)(1)(B) of this section.

(A) *Certain QBU branches that operated before 1987.* A taxpayer with a QBU branch must determine the opening balance of the QBU branch's equity pool using the rules of § 1.985–5, if the QBU branch used a profit and loss method of accounting for the last taxable year beginning before 1987. If the QBU branch used a net worth method for the last taxable year beginning before 1987, the taxpayer must use the rules of § 1.989 (c)–1 to determine the opening balance of the QBU branch's equity pool.

(B) *All other QBU branches.* The opening balance of the equity pool of a QBU branch not described in paragraph (c)(1)(i)(A) of this section is determined under this paragraph (c)(1)(i)(B). The opening balance of the QBU branch equals the adjusted basis of the QBU branch's assets, less the amount of the QBU branch's liabilities on the date the QBU branch first uses the profit and loss method of accounting. An example is a qualified business unit of a domestic corporation with a dollar functional currency that changes its functional currency. See § 1.985–5T, relating to changes in functional currency.

(ii) *Increases to the pool.* The equity pool is increased by—

(A) The positive amount (after excluding the tax equivalent amount, it

any) determined under § 1.987–1(b)(1) (i) and (ii);

(B) The amount of any transfer to the QBU branch during the taxable year; and

(C) The amount of PTA received during the taxable year.

(iii) *Decreases to the pool.* The equity pool is decreased by—

(A) The loss (after excluding the tax equivalent amount, if any) determined under § 1.987–1(1) (i) and (ii); and

(B) The amount of each transfer from the QBU branch during the taxable year.

(2) *Basis pool*—(i) *Opening balance.* The opening balance of the basis pool for certain QBU branches that operated before 1987 is determined under paragraph (c)(2)(i)(A) of this section. Generally, these branches were either subject to the transition rules of § 1.987–5 or § 1.989(c)–1. The opening balance of the basis pool for any other QBU branch is determined under paragraph (c)(2)(i)(B) of this section.

(A) *Certain existing QBU branches.* To compute the basis pool of a QBU branch described in paragraph (c)(1)(i)(A) of this section, see § 1.987–5 and § 1.989(c)–1.

(B) *All other QBU branches.* The opening balance of the basis pool of a QBU branch described in paragraph (c)(1)(i)(B) of this section equals the opening balance of the QBU branch's equity pool translated into the taxpayer's functional currency at the spot rate on the date the QBU branch first uses a profit and loss method of accounting.

(ii) *Increases to the pool.* The following amounts increase the basis pool—

(A) The positive amount (after excluding the tax equivalent amount, if any) determined under § 1.987–1(b);

(B) The amount of each transfer to the QBU branch during the taxable year translated into the taxpayer's functional currency at the spot rate on the date of the transfer;

(C) Each amount of PTA received during the taxable year translated into the taxpayer's functional currency at the spot rate on the date the PTA is received; and

(D) The portion of the negative basis pool attributable to any remittance made during the taxable year determined under paragraph (d) of this section.

(iii) *Decreases to the pool.* The following amounts decrease the basis pool—

(A) The loss (after excluding the tax equivalent amount, if any) determined under § 1.987–1(b);

(B) The portion of the positive basis pool attributable to any remittance made during the taxable year, determined under paragraph (d) of this section; and

(C) The amount of each transfer from the QBU branch (other than a remittance) during the taxable year translated into the taxpayer's functional currency at the spot rate on the date of the transfer.

(d) *Calculation of section 987 gain or loss*—(1) *General rule.* Section 987 gain or loss equals the difference between—

(i) The amount of a remittance from a QBU branch translated into the taxpayer's functional currency at the spot rate on the date the remittance is made, and

(ii) The portion of the basis pool attributable to the remittance.

(2) *Formula for determining the basis of a remittance.* The following is the formula for determining the portion of the basis pool attributable to a remittance:

$$\frac{\text{Amount of remittance (in the QBU branch's functional currency)}}{\text{equity pool balance reduced by prior remittances}} \times \text{basis pool reduced by prior remittances}$$

(3) Examples. This section is illustrated by the following examples.

Example 1. B is a QBU branch of X, a domestic corporation. The functional currency of B is the FC. On January 23, 1992, B distributes to X a machine with a fair market value of 100FC and an adjusted basis of 25FC in "exchange" for 100FC. Under § 1.987–2(b)(2)(i), the amount of the transfer to B is 75FC (100FC−25FC). The spot rate on the date of the transfer is 1FC=$1.2. Under § 1.987–2(b)(2)(iii) of this section, X's basis in the machine is $30, 25FC translated into dollars at the spot rate.

Example 2. B is a QBU branch of A, a calendar year domestic corporation. The assets of B include 100 percent of the stock of S, a calendar year controlled foreign corporation. The functional currency of B and S is the u. For 1992, A includes in gross income $100 of S's subpart F income. Under § 1.987–1(b)(2), no amount of the subpart F inclusion is included in B's profit and loss statement. Thus, the subpart F inclusion is not reflected either in B's equity pool or B's basis pool.

Example 3. A foreign partnership, P, has the FC as its functional currency. P has two equal partners, A and B. Partner A is a U.S. person whose functional currency is the U.S. dollar, and partner B is a nonresident individual. P borrows 1,000FC on January 1, 1992 and repays the 1,000FC on December 31, 1992. The 1,000FC borrowing and repayment results in no change to P's equity pool or P's basis pool.

Example 4. (i) *Facts.* X is a calendar year domestic corporation. B, a QBU branch of X, was established on January 1, 1992 and operates in Country Z. B's functional currency is the FC. B had profits of 1,000FC in 1992 translated using the weighted average exchange rate into $2,000. In 1992, X transferred 1,000FC to B when 1FC=$1, and $1,000 to B when 1FC=$2. Also in 1992, B transferred 1,000FC to X when 1FC=$2. In 1993, B had a loss of 1,000FC translated using the weighted average exchange rate of 1FC=$2 into $2,000. X made one transfer to B in 1993 of 2,000 FC when the exchange rate was 1FC=$3. During 1993, B transferred 4000FC to C (another QBU branch of X with the FC as its functional currency) when 1FC=$3, in a transaction denominated as a "loan".

(ii) *1992 equity and basis pool calculations, calculation of section 987 gain on the transfer from B, and calculation of X's basis in transferred property*—(A) *Pool calculations.* B's equity pool and basis pool at the end of 1992 equal:

	Equity(FC)	Basis($)
Opening balance	0	0
Increased by:		
Profits	1,000	2,000
Transfers to B:		
1,000FC	1,000	1,000
$1,000 (500FC value)	500	1,000
Balance prior to transfers from B	2,500	4,000
Decreased by:		
Remittance	−1,000	−1,600
Ending balance	1,500	2,400

(B) *Calculation of remittance and portion of basis pool attributable to such remittance.* B's 1,000FC transfer is a remittance since B's equity pool is at least 1,000FC at the end of 1992, prior to adjusting for the 1,000FC transfer from B. The portion of the basis pool attributable to the remittance equals $1,600, calculated as follows:

$$\frac{1{,}000\text{FC}}{2{,}500\text{FC}} \times \$4{,}000$$

(C) *Calculation of section 987 gain on the remittance.* The amount of section 987 gain resulting from the remittance equals $400, calculated as follows:

$2,000 (1000FC at the spot rate of 1FC=$2)−$1,600=$400

The remittance results in the recognition by X of $400 of section 987 gain.

(D) *X's basis in transferred property.* X has a $2,000 basis in the 1,000FC transferred (1,000FC translated at 1FC=$2).

(iii) *1993 equity and basis pool calculation, calculation of section 987 gain on remittance, and X's basis in transferred property*—(A) *Pool calculation.* B's equity pool and basis pool at the end of 1993 equal:

	Equity (FC)	Basis ($)
Opening	1,500	2,400
Increased by:		
Transfer to B of 2,000FC	2,000	6,000
Decreased by:		
Loss	<1,000>	<2,000>
Balance prior to transfers by B	2,500	6,400
Decreased by "loan":		
Remittance portion	<2,500>	<6,400>
Property transfer in excess of remittance	<1,500>	<4,500>
Ending balance	<1,500>	<4,500>

(B) *Calculation of remittance and portion of basis pool attributable to such remittance.* B transferred 4,000FC of property to C. However, only 2,500FC is treated as a remittance because that is the amount of the equity pool prior to adjusting for the 4,000FC transfer. The portion of basis pool attributable to the remittance equals $6,400, calculated as follows:

$$\frac{2{,}500\text{FC}}{2{,}500\text{FC}} \times \$6{,}400$$

(C) *Calculation of section 987 gain on the remittance.* The amount of section 987 gain resulting from the remittance and recognized by X equals $1,000, calculated as follows:

$7,500 (2,500FCs at the spot rate of 1FC=$3−$6,400=$1,100

(D) *X's basis in transferred property.* X has a $12,000 basis in the 4,000FC property transferred (4,000FC translated at the spot rate of 1FC=$3).

(E) *C's pool adjustments.* C will increase its equity pool by 4000FC and its basis pool by $12,000.

Example 5. B is a QBU branch of a domestic corporation, X. X is a calendar year taxpayer. B's functional currency is the FC. At the end of 1993, the balance in B's equity pool was 120 FC and the balance in B's basis pool was negative $60. At that time, B transferred 40FC to X when the spot rate was 1FC=$1. Because B's equity pool exceeds 40FC, the entire transfer is a remittance. The value of the remittance is $40 and the basis of the remittance is negative $20 (40/120×<$60>) The amount of the section 987 gain is $60, the difference between $40 and negative $20 (40−<20>). After the remittance, the equity pool equals 80FC (120FC−40FC) and, under paragraph (c)(2)(ii)(D) of this section, the basis pool is increased to negative $40 (−$60−<$20>).

(e) *Ordinary character of section 987 gain or loss.* Section 987 gain or loss is treated as ordinary income or loss.

(f) *Source and character of section 987 gain or loss is allocated like interest*—(1) *General rule.* Except as otherwise provided in paragraph (f)(2) of this section, a taxpayer must determined the source and character of section 987 gain or loss for all purposes of the Code, including sections 904(d), 907 and 954, by using the same method the taxpayer uses to allocate and apportion its interest expense under 861, modified as follows.

(i) *Asset based allocation.* If the taxpayer uses the asset method described in § 1.861–9T(g), it must take into account only the assets of the QBU branch. The allocation and apportionment must be made without regard to the exceptions to fungibility set forth in § 1.861–10T.

(ii) *Income based allocation.* If the taxpayer uses the modified gross income method described in section 1.861–9T(j) to allocate and apportion its interest expense, it must take into account only the QBU branch's gross income.

(2) *Exception to prevent significant distortion.* If the method for sourcing and characterizing section 987 gain or loss described in paragraph (f)(1) of this section would result in a significant distortion, the district director can require (or allow) a taxpayer to use a method that clearly reflects income. For example, if in tax year 1992 the asset composition of a QBU branch of a domestic corporation differs significantly from the historical composition of the QBU's assets, the district director may require (or allow) the taxpayer to source and characterize section 987 gain or loss for 1992 in a manner that more clearly reflects the historical composition of the branch's assets.

(3) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples.

Example 1. Q is a foreign QBU branch of calendar year domestic corporation X. Q begins operations in 1992. Q's functional currency is the LC. During 1992, X recognized a section 987 gain of $100 attributable to a remittance by Q. During 1992, X's interest expense is apportioned under § 1.861–9T(f) using the asset method. Under § 1.861–9T(f)(2), Q has $20,000 of assets, $4,000 of assets that generate domestic source income, $4,000 that generate general limitation income under section 904(d)(1)(I), and $12,000 of assets that generate foreign source passive limitation income under section 904(d)(1)(A). Accordingly, $20 of the section 987 gain will be domestic source income ($100 × (4,000/20,000)), $20 of the section 987 gain will be foreign source general limitation income ($100 × (4,000/20,000)), and $60 of the section 987 gain will be foreign source passive limitation income ($100 × (12,000/20,000)).

Example 2. M is a calendar year controlled foreign corporation that conducts part of its operation through N, a QBU branch located in Country B. N began operations on January 1, 1992. The functional currency of M and N is the MC and the NC, respectively. During 1992, M recognized a section 987 gain of 100MC attributable to a remittance by N. M's interest expense is apportioned under § 1.861–9T(f)(3) using the modified gross income method. N has 10,000NC of gross income in 1992, 6,000NC of which was foreign source general limitation income and 4,000NC of which was foreign source passive limitation income. Accordingly, 60MC of the section 987 gain will be foreign source general limitation (100MC × (6,000/10,000)) and 40MC of the section 987 gain will be foreign source passive limitation income (100MC × (4,000/10,000)).

(g) *Coordination with partnership rules.* [Reserved]

(h) *Effective date.* Section 1.987–2 (other than § 1.987–2(a)(2) and § 1.987–2(e) is effective for taxable years beginning after [Date That is 30 Days After This Regulation is Published as a Final Regulation]. Section 1.987–2(a)(2) and § 1.987–2(e) are effective for taxable years beginning after December 31, 1986. For taxable years beginning after December 31, 1986, but before [date that is 31 days after this regulation is published as a final regulation], a taxpayer must use any reasonable method to calculate and characterize for foreign tax credit purposes section 987 gain or loss that is consistent with the principles set forth in this § 1.987–2.

§ 1.987–3 Termination of a QBU branch

(a) *Termination.* Generally, a QBU branch terminates when its activities cease. Thus, a QBU branch terminates upon a transfer to the taxpayer of substantially all of the QBU branch's assets. Except as provided in paragraph (b) of this section, a termination also occurs when a taxpayer sells or otherwise disposes of substantially all of the assets of a QBU branch, including the deemed sale that occurs pursuant to an election under section 338.

(b) *Transactions described in section 381(a)*—(1) *Liquidations.* Generally a termination does not occur when substantially all of the assets of a QBU branch are distributed in a liquidation described in section 332, except in the following cases—

(i) The distributor is a domestic corporation and the distributee is a foreign corporation;

(ii) The distributor is a foreign corporation and the distributee is a domestic corporation;

(iii) The distributor and the distributee are both foreign corporations and the functional currency of the distributee is the same as the functional currency of the distributor's QBU branch.

(2) *Reorganizations.* Generally a termination does not occur when substantially all of the assets of a QBU

branch are transferred in a reorganization described in section 381(a)(2), except in the following cases—

(i) A reorganization described in section 367(a);

(ii) A reorganization described in section 367(b) in which the functional currency of the transferee is the same as the functional currency of the transferor's QBU branch;

(iii) A reorganization described in section 367(b) in which at least one of the U.S. shareholders of the transferor is required to include in income either a section 1248 amount or an all earnings and profits amount.

(c) *Section 351 transactions*—(1) *Section 351 transactions described in section 367(a).* A termination occurs when the assets of a QBU branch are transferred in a section 351 transaction described in section 367(a).

(2) *Other section 351 transactions.* [Reserved].

(d) *Section 1248 transactions.* A termination of a QBU branch of foreign corporation occurs when a U.S. person sells or exchanges (or is treated as exchanging) 10% or more of the stock (measured by vote or value) in the foreign corporation (or in a related corporation) during a twelve-month period in a transaction described in section 1248. The basis pool must be adjusted by the amount of section 987 gain or loss recognized as the result of the termination.

(e) *Partnerships.* [Reserved].

(f) *Adjustment of basis pool in the case of nonrecognition events.* If a transaction described in section 381(a) does not result in the termination of a QBU branch then the basis pool of the QBU branch must be translated, if necessary, into the functional currency of the distributee or the transferee at the spot rate on the date of the transaction.

(g) *Effect of termination.* The termination of a QBU branch results in recognition of section 987 gain or loss.

(h) *Procedure.* This paragraph (h) provides a 3-step procedure for determining the amount of section 987 gain or loss recognized upon the termination of a QBU branch. These steps apply regardless of the reason for the termination.

(1) *Step 1—Calculation of profit and loss.* The taxpayer calculates the amount (in the QBU's functional currency) of profit or loss attributable to the QBU branch for the portion of the taxable year through the date of termination. For purposes of the preceding sentence, that amount includes any exchange or loss (determined without regard to the limitations set forth in section 998(b)) recognized under the provisions of § 1.988–1T(a)(7).

(2) *Step 2—Pool adjustments.* The taxpayer must make adjustments to the equity pool and the basis pool for the profit or loss determined under Step 1 and any transfers to or from the QBU branch attributable to the portion of the taxable year through the date of termination. The taxpayer must also recognize any section 987 gain or loss on remittances made during that portion of the year.

(3) *Step 3—Additional adjustments necessary upon termination.* After making the pool adjustments under Step 2, a taxpayer must make the additional adjustments set forth in this paragraph (h)(3).

(i) *Equity pool is greater than zero.* If the QBU branch's equity pool is greater than zero, the taxpayer must recognize section 987 gain or loss equal to the difference between the amount of the equity pool translated into the taxpayer's functional currency at the spot rate on the date of the termination and the amount of the QBU branch's basis pool (whether the basis pool is positive or negative).

(ii) *Equity pool is less than zero.* If the QBU branch's equity pool is less than zero, the taxpayer is deemed to make a transfer to the QBU branch equal to the negative amount of the equity pool. This results in an increase to the basis pool. The amount of the increase equals the amount of the deemed transfer translated into the taxpayer's functional currency at the spot rate on the date of the termination. The taxpayer must recognize—

(A) Section 987 gain equal to the negative amount of the basis pool (as adjusted), or

(B) Section 987 loss equal to the positive amount of the basis pool (as adjusted).

(iii) *Equity pool equals zero.* If the QBU branch's equity pool equals zero, the taxpayer must recognize section 987 gain or loss under the principles of paragraph (h)(3)(ii) of this section.

(i) *Effective date.* Section 1.987–3 (other than § 1.987–3(g) and § 1.987–3(h)) is effective for taxable years beginning after [Date That is 30 Days After This Regulation is Published as a Final Regulation]. Section 1.987–3(g) and § 1.987–3(h) are effective for taxable years beginning after December 31, 1986. For taxable years beginning after December 31, 1986, but before [Date That is 31 Days After This Regulation is Published as a Final Regulation], a taxpayer must determine what constitutes a termination using the principles of § 1.987–3(a).

(j) *Examples.* This section is illustrated by the following examples.

Example 1. (i) A is a QBU branch of X, a domestic corporation. A's functional currency is the LC. As of January 1, 1992, A's equity and basis pools were 20LC and $20 respectively. A's profit for 1992 was 12LC, which included all unrealized section 988 exchange gain or loss. A terminates on December 31, 1992. The weighted average exchange rate for 1992 is 2LC=$1 and the exchange rate on the date of termination is 4LC=$1.

(ii) Under Step 2, A's equity pool is increased by 12LC and its basis pool is increased by $6. As of the date of termination, A's equity pool is 32LC (20LC + 12LC of profit) and its basis pool is $26 ($20 + $6 of profit).

(iii) Under Step 3, X recognizes section 987 loss of $18 ($8 spot value of 32LC less the $26 amount of the basis pool).

Example 2. (i) Assume the same facts in *Example 1*, except that on January 1, 1992, A's equity and basis pools were <16LC> and <$5>, respectively.

(ii) Under Step 2, A's equity pool is increased by 12LC and its basis pool is increased by $6. As of the date of termination, A's equity pool is <4LC> (<16LC> + 12LC of profit) and its basis pool is $1 (<$5> + $6 of profit).

(iii) Under Step 3, X is deemed to transfer 4LC to A. This results in an equity pool of O, and an equity basis pool of $2 ($1 + $1 (4LC at 4LC:$1)). Therefore, X recognizes section 987 loss of $2, which is the positive amount of the equity basis pool.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–22854 Filed 9–24–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[INTL–965–86]

RIN 1545–AM12

Calculation of Currency Gain or Loss on Transfers From Qualified Business Unit Branches Using the Profit and Loss Method of Accounting; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to the calculation of income (including currency gain or loss on remittances) attributable to a qualified business unit of a taxpayer that uses the profit and loss method of accounting.

DATES: The public hearing will be held on Monday, December 9, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be

received by Monday, November 25, 1991.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (INTL-965-86), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 987 of the Internal Revenue Code of 1986 relating to the calculation of income (including gain or loss on remittances and terminations) attributable to a QBU branch of a taxpayer that uses the profit and loss method of accounting. These regulations appear in the proposed rules section of 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, November 25, 1991, 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 the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue 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. 91-22855 Filed 9-24-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[EE-46-91]

RIN 1545-AP74

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments relating to whether certain benefits qualify as working condition fringes and, therefore, are excludable from the recipient's gross income under section 132(a)(3) of the Internal Revenue Code. These proposed regulations (1) provide additional rules for transportation provided to government employees because of bona fide business-oriented security concerns and (2) clarify the treatment of bona fide volunteers who perform services for exempt organizations or for a Federal, State, or local government unit. The proposed regulations affect employees receiving these fringe benefits and provide guidance to employers and employees to help determine their federal tax liability.

DATES: Written comments and requests for a public hearing must be received by December 13, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE-46-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations relating to transportation provided to government employees, Marianna Dyson, at 202-377-9372 (not a toll-free number). Concerning the proposed regulations relating to the treatment of bona fide volunteers, Jerry Walsh Skelly, at 202-566-3505 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 132 of the Internal Revenue Code of 1986 (Code). The amendments pertain to bona fide volunteers who perform services for exempt organizations or for a Federal, state, or local governmental unit and to government employees who are provided transportation because of bona fide business-oriented security concerns.

1. Volunteers

Background

Public comments have been received by the Service expressing concern about the application of section 132 to volunteers who perform services for organizations exempt under section 501(a) of the Code and who receive directors and officers liability insurance protection (D & O insurance) from those organizations.

Section 132(a) of the Code excludes certain fringe benefits from gross income. Generally, these fringe benefits are excludable under section 132(a) by an "employee," whether paid or working as a volunteer. For certain purposes, the term "employee," which is defined in § 1.132-1(b) of the regulations, includes independent contractors, even though independent contractors are not in employee-type relationships. However, for purposes of section 132(a) (1) and (2) (relating to no-additional-cost services and qualified employee discounts), independent contractors are not treated as "employees." Thus, under section 132(a), bona fide volunteers, like their paid counterparts, may not exclude no-additional-cost services and qualified employee discounts from gross income unless they are under the direction and control of the exempt organization or government employer (i.e., in an employee-type relationship with the employer).

Although bona fide volunteers who are in employee-type relationships may exclude from gross income the fringe benefits listed above and all bona fide volunteers (including independent contractors) may exclude de minimis fringe benefits, bona fide volunteers may not exclude working condition fringe benefits as described in section 132(d) and the regulations thereunder because volunteers do not have a profit motive under section 162. The proposed regulation corrects this technical problem and ensures that, like their paid counterparts, bona fide volunteers may exclude working condition fringe benefits, including D & O insurance, from gross income.

Explanation

Section 132(a)(3) of the Code provides that working condition fringes are excludable from gross income. Section 132(d) of the Code and § 1.132-5(a)(1) of the income tax regulations generally provide that a "working condition fringe" is any property or service provided to an employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowable as a deduction

under section 162 or 167. For purposes of the working condition fringe exclusion, the term *employee* is defined broadly in § 1.132–1(b)(2) to include employees, partners, directors and independent contractors.

Section 162 of the Code provides a deduction for all the ordinary and necessary expenses paid or incurred in carrying on a trade or business. In order for expenses in connection with a trade or business to be deductible under section 162, the trade or business must have been entered into with a profit motive. An individual who performs services as a bona fide volunteer does not have a profit motive and thus cannot claim a deduction under section 162 for expenses incurred in connection with such volunteer work. For example, the value of directors' and officers' liability insurance provided to the volunteer would not be excludable as a working condition fringe benefit, even though the same insurance coverage would be excludable from the income of a paid employee or director.

The proposed amendment to the regulations is issued pursuant to the authority granted in section 132(k) of the Code and provides that, solely for purposes of section 132(d), a bona fide volunteer, including a director or officer, who performs services for an organization that is exempt from tax under section 501(a), or for a Federal, state, or local governmental unit, is deemed to have a profit motive for purposes of section 162. This provision applies solely for purposes of the working condition fringe benefit regulations and cannot be used to support a deduction under section 162 or any other section of the Code. In addition, nothing in this provision should be interpreted as determining the employment status of a bona fide volunteer for purposes of any other section of the Internal Revenue Code.

Under the proposed amendment, an individual who provides services (including services as a director) is, for purposes of section 132(d), a "bona fide volunteer" for an exempt organization or governmental unit only if the total value of the fringe benefits provided with respect to the volunteer services is substantially less than the total value of the volunteer services the individual provides to the organization. The value of liability insurance coverage is deemed to be substantially less than the value of the individual's volunteer services to the organization, provided that the insurance coverage is limited to acts performed in the discharge of official duties or the performance of services on behalf of the exempt organization or the government employer.

2. Employer-Provided Transportation for Security Concerns

Background

Under section 132(d) of the Code and the regulations thereunder, the amount of the value of transportation that may be excluded from an employee's gross income as a working condition fringe is the amount that would be allowable as a deduction to the employee under section 162 or 167 if the employee paid for the transportation. If the transportation is primarily for personal reasons (e.g., commuting), the employee cannot exclude the value of employer-provided transportation as a working condition fringe because the amount would not be deductible under section 162. Under § 1.132–5(m)(1) of the regulations, if the employer provides transportation to an employee because of a "bona fide business-oriented security concern," the value of the items added to the vehicle as part of an overall security program (i.e., special security designs on the vehicle) may be excluded from gross income as a working condition fringe. In addition, § 1.132–5(m)(5) of the regulations provides that the entire value of employer-provided bodyguard/chauffeur services is excludable from gross income as a working condition fringe if an employer, for a bona fide business-oriented security concern, provides an employee with transportation and a bodyguard/chauffeur (trained in evasive driving techniques) and, but for that concern, the employee would not have had a bodyguard or a chauffeur.

In order for § 1.132–5(m) of the regulations to apply to transportation provided to a particular employee for security reasons, § 1.132–5(m)(2)(i) requires that the existence of a bona fide business-oriented security concern must be determined based on the facts and circumstances. Factors indicating such a concern include a recent history of terrorist activity in the geographic area as well as death threats, kidnapping threats, and threats of bodily harm against the employee because of the employee's performance of duties as an employee of the employer.

Section 1.132–5(m)(2)(ii) of the regulations also provides that the employer must demonstrate that an "overall security program" has been established for the affected employee in response to the bona fide business-oriented security concern. Generally, an overall security program requires an employer to protect the employee on a 24-hour basis. Section 1.132–5(m)(2)(iv), however, provides that an overall security program will be deemed to exist with respect to an employee who is not receiving 24-hour protection if the separate requirements for an "independent security study" are met. Section 1.132–5(m)(2)(iv) provides that an independent security study exists if four separate conditions are met: (A) A security study is performed with respect to the employer and the employee (or a similarly situated employee) by an independent security consultant; (B) the security study is based on an objective assessment of all facts and circumstances; (C) the security study recommends that an overall security program is not necessary and the study's recommendation is reasonable under the circumstances; and (D) the employer applies the specific security recommendations contained in the security study to the employee on a consistent basis.

The Service has received comments from government agencies concerning the problem of providing protective services to government employees, particularly those involved in law enforcement activities, who have received threats of kidnapping, death, or bodily injury. As a consequence of such threats, some government agencies have a recurring need to provide protection to their employees (e.g., state and local prosecutors, U.S. Attorneys, and their respective staffs). Generally, these offices have established policies relating to security provided to their employees. The amount of protection and the length of time security is provided to an affected employee may depend on budgetary limitations and availability of security personnel.

Explanation

The proposed amendments to the regulations provide a special rule for government employers seeking to establish an overall security program for a threatened government employee under § 1.132–5(m). Specifically, the requirement of paragraph (m)(2)(iv)(A) of § 1.132–5 that the security study must be performed by an "independent security consultant" may be satisfied without the services of an outside consultant if the government employer (including an agency or instrumentality thereof) conducts a security study that complies with certain conditions.

The security study must be conducted by a person expressly designated by the government employer as having the responsibility and independent authority to determine both the need for employer-provided security and the

appropriate protective services in response to that determination. The security study must be conducted in accordance with written internal procedures that require an independent and objective assessment of the facts and circumstances, such as the nature of the threat to the employee and the appropriate security response to that threat. In addition, the security study must evaluate the extent to which personal use of employer-provided transportation by the employee and the employee's spouse and dependents may be necessary during the period of protection and make a recommendation as to what will be considered reasonable and necessary personal use during that period of time. Finally, the employer must apply the specific security recommendations contained in the study to the employee on a consistent basis.

Section 1.61–21(c) of the regulations provides special valuation rules that may be used under certain circumstances for certain commonly provided fringe benefits. If an employer elects to use a special valuation rule, § 1.61–21(c)(3)(ii)(A) provides that the employee must be notified in writing by the later of January 31 of the calendar year for which the election is to apply (October 31 for calendar year 1989) or 30 days after the employer first provides the benefit to the employees. Alternatively, § 1.61–21(c)(3)(ii)(D) provides that if the employer does not provide notice as prescribed by § 1.61–21(c)(3)(ii)(A), the employer may use a particular special valuation rule as long as the employee gives the employer a written notification prior to January 31 of the following year in which the notice was not provided. The employee's notification must indicate the employee's knowledge of the employer's use of the particular special valuation rule, the relevant substantiation requirements, and the effect of a failure to comply with such requirements.

The threats directed to government employees, particularly those involved in law enforcement activities, may require an immediate response from the government employer in the form of protective services for the threatened employee and the employee's family. The government employer's determination of the need for an employee to receive employer-provided transportation for security reasons may be concurrent with the actual rendering of the benefit. Accordingly, if transportation is provided to a government employee for commuting during the period that a bona fide business-oriented security concern under § 1.132–5(m) exists, the employer may value the commuting use by reference to the values set forth in paragraphs (e)(1)(i)(B) or (f)(3) of § 1.61–21 (vehicle cents-per-mile or commuting valuation of $1.50 per one-way commute, respectively). The employer may use the values set forth in paragraphs (e)(1)(i)(B) or (f)(3) of § 1.61–21 without regard to the additional requirements contained in § 1.61–21 (e) or (f). For example, transportation provided to a government employee may be valued at $1.50 per one-way commute, even though the employee's annual compensation is in excess of the limitation set forth in paragraph (f)(6) of § 1.61–21 (relating to control employees). In addition, the proposed amendments provide that the government employer is deemed to have notified the government employee that transportation provided for commuting purposes is valued by reference to the value set forth in either the vehicle cents-per-mile rule or commuting valuation rule.

By providing that government employers are deemed to have elected to use the value set forth in either the vehicle cents-per-mile or the commuting valuation rule and to have so notified their employees, the proposed amendments ease the existing notice requirements with respect to government employers. This relief is considered necessary due to the myriad law enforcement responsibilities of government employers and the recurrent and often urgent need for protective services for threatened employees. In addition, public oversight limits abuse with respect to government employees. However, comments are invited concerning the notice requirements generally under § 1.61–21(c).

Also in deference to the recurrent need for protection of government employees, particularly those in law enforcement, the proposed amendments provide a special rule for personal use, other than commuting, of transportation provided to a government employee or the employee's spouse and dependents during the period of time a bona fide business-oriented security concern exists with respect to the government employee. Specifically, the amendments provide that the value of transportation for personal purposes (other than commuting) will be excluded from the affected employee's income as long as the personal transportation is consistent with the recommendation of the government employer's security study as to what will be considered reasonable and necessary personal use during the period of time a bona fide business-oriented security concern exists.

For purposes of these proposed amendments, a "government employer" includes any Federal, state, or local government unit, and any agency or instrumentality thereof. A "government employee" is any individual who is employed by the government employer.

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, an initial 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 Requests To Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are 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 will be held upon written request to the Commissioner by any person who has submitted written comments. Written comments and requests for a hearing must be received by December 13, 1991. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Marianna Dyson and Jerry Walsh Skelly, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.101–1 Through 1.133–1T

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: Section 7805, 68A Stat. 917 (26 U.S.C. 7805) * * *

Par. 2. Section 1.132–5 is amended as follows:

1. A new sentence is added between the tenth and eleventh sentences of paragraph (m)(1).
2. Paragraphs (m)(2)(v) and (m)(3)(iv) are added.
3. Paragraph (m)(6) is redesignated as paragraph (m)(8) and is amended by adding *Examples (6)* and *(7)*.
4. Paragraphs (m)(6) and (m)(7) are added.
5. Paragraph (r) is added.
6. The additions and revisions read as follows:

§ 1.132–5 Working condition fringes.

* * * * *

(m) *Employer-provided transportation for security concerns*—(1) *In general* * * * However, if an independent security study meeting the requirements of paragraph (m)(2)(v) of this section has been performed with respect to a government employee, the government employee may exclude the value of the personal use (other than commuting) of the employer-provided vehicle that the security study determines to be reasonable and necessary. * * *

(2) * * *

(v) *Independent security study with respect to government employees.* For purposes of establishing the existence of an overall security program under paragraph (m)(2)(ii) of this section with respect to a government employee, a security study conducted by the government employer (including an agency or instrumentality thereof) will be treated as a security study pursuant to paragraph (m)(2)(iv) of this section if, in lieu of the conditions of paragraphs (m)(2)(iv) (A) through (D) of this section, the following conditions are satisfied—

(A) The security study is conducted by a person expressly designated by the government employer as having the responsibility and independent authority to determine both the need for employer-provided security and the appropriate protective services in response to that determination;

(B) The security study is conducted in accordance with written internal procedures that require an independent and objective assessment of the facts and circumstances, such as the nature of the threat to the employee and the appropriate security response to that threat;

(C) The security study evaluates the extent to which personal use of employer-provided transportation by the employee and the employee's spouse and dependents may be necessary during the period of protection and makes a recommendation as to what would be considered reasonable personal use during that period; and

(D) The employer applies the specific security recommendations contained in the study to the employee on a consistent basis.

(3) * * *

(iv) *Spouses and dependents of government employees.* The security rules of this paragraph (m)(3) apply to the spouse and dependents of a government employee. However, the value of transportation provided to the government employee's spouse and dependents for personal purposes, other than commuting, during the period that a bona fide business-oriented security concern exists with respect to the government employee will not be included in the government employee's gross income if the personal use is determined to be reasonable and necessary by the security study described in paragraph (m)(2)(v) of this section.

* * * * *

(6) *Special valuation rule for government employees*—(i) *In general.* If transportation is provided to a government employee for commuting during the period that a bona fide business-oriented security concern under § 1.132–5(m) exists, the employer may value the commuting use by reference to the values set forth in paragraphs (e)(1)(i)(B) or (f)(3) of § 1.61–21 (vehicle cents-per-mile or commuting valuation of $1.50 per one-way commute, respectively). For purposes of this paragraph, the employer may use the values set forth in paragraphs (e)(1)(i)(B) or (f)(3) of § 1.61–21 without regard to the additional requirements contained in § 1.61–21 (e) or (f).

(ii) *Notification to government employees.* If a bona fide business-oriented security concern exists with respect to a government employee, the government employer is deemed to have notified the employee that transportation provided for commuting purposes is valued by reference to the value set forth in either paragraph (e)(1)(i)(B) or (f)(3) of § 1.61–21.

(7) *Government employer and employee defined.* For purposes of this paragraph (m), "government employer" includes any Federal, state, or local governmental unit, and any agency or instrumentality thereof. A "government employee" is any individual who is employed by the government employer.

(8) * * *

Example (6). J is a United States District Judge. At the beginning of a 3-month criminal trial in J's court, a member of J's family received death threats. M, the division within W responsible for evaluating threats and providing protective services to the Federal judiciary, directs its threat analysis unit to conduct a security study with respect to J and J's family. The study is conducted pursuant to internal written procedures that require an independent and objective assessment of any threats to members of the federal judiciary and their families, a statement of the requisite security response, if any, to a particular threat (including the form of transportation to be furnished to the employee as part of the security program), and a description of the circumstances under which transportation for the employee and the employee's spouse and dependents may be necessary for personal reasons during the time protective services are provided. M's study concludes that a bona fide business-oriented security concern exists with respect to J and J's family and determines that 24-hour protection of J and J's family is not necessary, but that protection is necessary during the course of the criminal trial whenever J or J's family is away from home. Consistent with that recommendation, J is transported every day in a government vehicle for both personal and business reasons and is accompanied by two bodyguard/chauffeurs who have been trained in evasive driving techniques. In addition, J's spouse is transported to and from work and J's children are transported to and from school and occasional school activities. Shortly after the trial is concluded, M's threat analysis unit determines that J and J's family no longer need special protection and, accordingly, transportation is no longer provided. Because the security study conducted by M complies with the conditions of § 1.132–5(m)(2)(v), M has satisfied the requirement for an independent security study and an overall security program with respect to J is deemed to exist. Thus, with respect to the transportation provided for security concerns, J may exclude as a working condition fringe the value of any special security features of the government vehicle and the value attributable to the two bodyguard/chauffeurs. *See Example (1)*, above. The value of transportation provided to J and J's family for personal reasons, other than commuting, may also be excluded during the period of protection, because its provision was consistent with the recommendation of the security study.

Example (7). Assume the same facts as in Example (6) and that J's one-way commute between home and work is 10 miles. Under paragraph (m)(6)(ii) of this section, the Federal government is deemed to have notified J that transportation for commuting purposes is valued pursuant to the value set forth in either the vehicle cents-per-mile rule of § 1.61–21(e) or the commuting valuation rule of § 1.61–21(f). Because the commuting valuation rule yields the least amount of taxable income to J under the circumstances, the value of transportation used by J for commuting is $1.50 per one-way commute.

even though J is a control employee within the meaning of paragraphs (f)(6) of § 1.61–21.

* * * * *

(r) *Volunteers*—(1) *In general.* Solely for purposes of section 132(d) of the Code and paragraph (a)(1) of this section, a bona fide volunteer (including a director or officer) who performs services for an organization exempt from tax under section 501(a) of the Code, or for a government employer (as defined in paragraph (m)(7) of this section), is deemed to have a profit motive for purposes of section 162 of the Code.

(2) *Limit on application of this paragraph.* This paragraph (r) shall not be used to support treatment of the bona fide volunteer as having a profit motive for purposes of any provision of the Code other than section 132(d). Nothing in this paragraph (r) shall be interpreted as determining the employment status of a bona fide volunteer for purposes of any section of the Code other than section 132(d).

(3) *Definition.* For purposes of this paragraph (r), an individual is considered a "bona fide volunteer" only if the total value of the fringe benefits provided with respect to the volunteer services is substantially less than the total value of the volunteer services the individual provides to an exempt organization or government employer. For this purpose, the value of liability insurance coverage is deemed to be substantially less than the value of the individual's volunteer services to the exempt organization or government employer, provided that the insurance coverage is limited to acts performed in the discharge of official duties or the performance of services on behalf of the exempt organization or government employer.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–22857 Filed 9–24–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 53–91]

Exemption of Records System Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c) (3) and (4), (d), (e) (1), (2), (3), (5), and (8), and (g) of the Privacy Act, 5 U.S.C. 552a. This system of records is the "Office of the Inspector General Record Index (JUSTICE/OIG–001)." Information in this system relates to official Federal investigations and matters of law enforcement of the Office of the Inspector General (OIG) pursuant to the Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act amendments of 1988. The exemptions are necessary to avoid interference with the law enforcement functions of the OIG. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process; preclude the disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure the OIG's ability to obtain information from information sources; protect the privacy of third parties; and safeguard classified information as required by Executive Order 12356.

DATES: Submit any comments by October 25, 1991.

ADDRESSES: Address all comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1103, Chester Arthur Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, (202) 514–6329.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "Office of the Inspector General Record Index, JUSTICE/OIG–001."

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Courts, Freedom of Information Act, Privacy Act, and Government in the Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 by adding a new section, § 16.75, as set forth below.

Dated: September 6, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR part 16 by adding § 16.75 to read as follows:

§ 16.75 Exemption of the Office of the Inspector General Record Index

(a) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e)(1), (2), (3), (5) and (8), and (g) of 5 U.S.C. 552a. In addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1) of 5 U.S.C. 552a:

(1) Office of the Inspector General Record Index (JUSTICE/OIG–001).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by the Office of the Inspector General (OIG).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigations, and reveal investigative interest by not only the OIG, but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in the destruction of documentary evidence, improper influencing of witnesses, endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel, the fabrication of testimony, flight of the subject from the area, and other activities that could impede or compromise the investigation. In addition, accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsections (d) pursuant to subsection (j) and (k) of the Privacy Act.

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel, and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records cold result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIG for the following reasons:

(i) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(ii) During the course of any investigation, the OIG may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information, as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(iii) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(i) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(ii) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(iii) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, and thereby impede effective law enforcement.

(8) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2) and (k)(1) and (k)(2) of the Privacy Act.

[FR Doc. 91 22936 Filed 9-24-91; 8 45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules and the Ohio Revised Code

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on Revised Program Amendment Number 46 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise four Ohio administrative rules and one section of the Ohio Revised Code to be consistent with the corresponding Federal regulations regarding the extraction of coal incidental to the extraction of other minerals.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 25, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on October 21, 1991. Requests to present oral testimony at

the hearing must be received on or before 4 p.m. on October 10, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J . Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated February 7, 1990 (Administrative Record No. OH–1383), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) that OSM had recently promulgated new Federal regulations concerning exemptions for coal extraction incidental to the extraction of other minerals. The Director required Ohio to modify its regulatory program to remain consistent with the new Federal requirements.

By letter dated April 5, 1990 (Administrative Record No. OH–1384), Ohio responded with questions concerning the Director's February 7, 1990, letter. OSM provided responses to Ohio's questions by letter dated May 1, 1990 (Administrative Record No. OH–1385).

By letter dated May 31, 1990 (Administrative Record No. OH–1386), Ohio requested an extension until August 1, 1990, to submit an amendment to the Ohio program concerning incidental coal extraction. By letter dated August 2, 1990 (Administrative Record No. OH–1387), Ohio submitted additional questions concerning OSM's new regulations on incidental coal extraction. OSM responded to Ohio's second set of questions by letter dated September 6, 1990 (Administrative Record No. OH–1390).

By letter dated October 12, 1990 (Admistrative Record No. OH–1393), Ohio submitted formal Program Amendment Number 46. The amendment proposed changes to three Ohio administrative rules and one section of the Ohio Revised Code regarding the extraction of coal incidental to the extraction of other minerals.

On October 31, 1990, OSM published a notice in the **Federal Register** (55 FR 45809) announcing receipt of Ohio's Program Amendment Number 46 and inviting public comment on its adequacy. The public comment period ended on November 30, 1990. The public hearing scheduled for November 26, 1990, was not held because no one requested an opportunity to testify.

By letter dated March 13, 1991 (Adminstrative Record No. OH–1478), OSM provided Ohio with its questions and comments about the proposed amendment. On April 4, 1991, representatives of Ohio and OSM discussed this letter in a telephone conversation (Administration Record No. OH–1500).

By letter dated April 15, 1991 (Administrative Record No. OH–1507), Ohio provided its responses to OSM's March 13, 1991, letter and submitted Revised Program Amendment Number 46. On May 22, 1991, OSM published a notice in the **Federal Register** (56 FR 23531) announcing receipt of Ohio's Revised Program Amendment Number 46 and inviting public comment on its adequacy. The public comment period ended on June 21, 1991. The public hearing scheduled for June 17, 1990, was not held because no one requested an opportunity to testify.

By letter dated July 29, 1991 (Administrative Record No. OH–1551), OSM provided Ohio with is questions and comments about the revised proposed amendment. By letter dated August 30, 1991 (Administrative Record No. OH–1572), Ohio provided its responses to OSM's July 29, 1991, letter and submitted further revisions to Program Amendment Number 46.

In the August 30, 1991, submission of Revised Program Amendment Number 46, Ohio reiterated the revisions proposed in the initial version of Program Amendment Number 46 and in Revised Program Amendment Number 46. OSM's **Federal Register** notices of October 31, 1990, and May 22, 1991, discussed those earlier proposed revisions. New substantive changes proposed by Ohio in the August 30, 1991, revision of the amendment are discussed briefly below.

1. Definition of "Coal Mining Operation"

Ohio is further revising the definition of "coal mining operation" at Ohio Administrative Code (OAC) section 1501:13–1–02 paragraph (S)(1)(a) and Ohio Revised Code (ORC) section 1513.01 paragraph (G)(1)(a). In the April 15, 1991, submission of Revised Program Amendment Number 46, Ohio deleted the second of two uses of the phrase "during the year" in each of these two paragraphs but inadvertently failed to delete the first use of the phrase in each paragraph. In the August 30, 1991, submission, Ohio is deleting both of the two uses of the phrase "during the year" in these two paragraphs.

2. Requirements for Exemptions for Incidental Coal Extraction

In the April 15, 1991, submission of Revised Program Amendment Number 46, Ohio added paragraph (G)(2)(a)(i) to new rule OAC 1513:13–4–16. This paragraph states that "The request for [an incidental coal] exemption may be approved by the Chief conditioned upon receipt, prior to the commencement of mining, of a legally binding agreement for the future sale of other minerals." In the August 30, 1991, revision of the amendment, Ohio is adding the word "initial" before the word "request" in this paragraph. Ohio is making this change to clarify that the requirement to submit a legally binding agreement applies specifically to the initial application for the incidental coal exemption.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on October 10, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-23042 Filed 9-24-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OK-71-5205; FRL-4012-3]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Sulfur Dioxide Emissions Trade for the Conoco, Incorporated, Ponca City Refinery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes approval of a source-specific revision to the Oklahoma State Implementation Plan (SIP) for the Conoco, Incorporated, Ponca City Refinery. The revision consists of a sulfur dioxide (SO_2) emissions trade for the construction and operation of a sulfur recovery unit (SRU) and a cogeneration unit. The intended effect of this action is to propose approval of a SO_2 emissions trade consistent with the requirements of the Environmental Protection Agency's (EPA) Emissions Trading Policy Statement (ETPS), published December 4, 1986 (51 FR 43814).

DATES: Comments must be received on or before October 25, 1991.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, Air Programs Branch, Air, Pesticides and Toxics Division, Region 6, U.S. EPA, at the address below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Dallas, Texas 75202

Oklahoma State Department of Health, Air Quality Service (0201), 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73117-1299.

FOR FURTHER INFORMATION CONTACT: Robin M. Sullivan, Air Programs Branch, EPA Region 6, telephone (214) 655-7214 or (FTS) 255-7214.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 1989, the Governor of Oklahoma submitted a request to revise the Oklahoma SIP. This request would make federally-enforceable a sulfur dioxide emissions trade for Conoco's Ponca City Refinery (Conoco) involving a construction permit and an operating permit approved by the Oklahoma State Department of Health. On July 3, 1990, the Oklahoma Air Quality Service submitted an operating permit, number 88-117-0, for a sulfur recovery unit (SRU) and a construction permit, number 88-116-C, for a cogeneration. The operating permit for the SRU was approved by the State under Oklahoma Air Pollution Control Regulation 1.6, "Alternate Emissions Reduction Permits". Regulation 1.6 is not part of Oklahoma's approved SIP, therefore, EPA approval of this permit is necessary to make it federally-enforceable.

The construction is to take place in two phases. The first phase involves the construction and operation of a SRU that will remove up to 20 long tons of sulfur per day from refinery fuel gas streams. The SRU was constructed in 1989 and began operation in June 1990. The increase in SO_2 emissions from operation of the SRU will occur contemporaneously with an SO_2 emissions reduction from seven refinery furnaces, which will switch from operating on sour fuel gas to sweetened gas from the SRU.

In the second phase of the project, two cogeneration units will be constructed. The cogeneration units will result in increased SO_2 emissions, however, additional SO_2 reductions will occur from the shut down of four boilers currently fueled by sour refinery gas, and the curtailment of two boilers which will then be fired with partially sweetened refinery fuel gas. The actual SO_2 emissions increases and reductions are further discussed in the next section.

II. Sulfur Dioxide Emissions Trade

In the Oklahoma SIP, Regulation 3.4(c)(1)C)(ii) limits the emissions of SO_2 from sulfur recovery plants to 20 pounds per ton of sulfur processed. This is equivalent to a minimum sulfur recovery efficiency of 99.5%. The proposed emissions trade would allow the new SRU to deviate from this Oklahoma SIP requirement and instead meet the requirements of Regulation 3.4(c)(1)(C)(i) which pertains to natural gas processing. This results in the SRU meeting a 94.5% SO_2 emissions reduction efficiency as allowed by OAPCR 3.4(c)(1)(C)(i) rather than a 99.5% reduction as allowed by OAPCR 3.4(c)(1)(C)(ii). Conoco contended that the 99.5% reduction efficiency requirement posed a substantial economic hardship for the SRU. The 94.5% reduction efficiency will allow the SRU to emit an additional 865 tons per year (TPY) more than it would at 99.5% efficiency.[1] Thus, an offset of at least

[1] It should be noted that the SRU was designed to operate at 20 tons per day of elemental sulfur

Continued

865 TPY was required for the emissions trade.

The State of Oklahoma does not allow the banking of emissions reduction credits (ERCs). Therefore, excess ERCs associated with the trade go to the benefit of the environment and may not be used by Conoco for future purposes.

Table 1 outlines the SO_2 emissions associated with the SRU/cogeneration project. The first phase, or interim phase (post-SRU/pre-cogen), SO_2 reductions occur when seven existing furnaces within the refinery begin to operate on sweetened fuel gas for the new SRU. The increase in emissions from the SRU are compensated by a 2,320 tons per year (TPY) reduction in SO_2 from furnaces, H–5001, H–48A, H–48B, H–48C, H–48D, H–48E, and H–28. The sweetened fuel gas for the furances will result in a net refinery-wide SO_2 emissions reduction of 1,368 TPY. Of the total SO_2 emissions reductions, 325 TPY must be allocated to fulfill the requirements of a 1987 consent decree. Therefore, a net SO_2 emissions reduction of 1,043 TPY will be realized from the interim phase.

TABLE 1.—SO_2 EMISSIONS (TPY) FOR CONOCO'S SULFUR RECOVERY UNIT AND COGENERATION PROJECTS

Affected unit	Pre emissions (pre-SRU/pre-cogen)	Interim emissions (post-SRU/pre-cogen)	Post emissions (post-SRU/post-cogen)
SRU	0	952 (865) [1]	952
Cogeneration.	0	0	109
Boilers:			
B–1	555	555	0
B–2	681	681	0
B–4	629	629	0
B–5	624	624	0
B–6	1009	1009	594
B–7	1352	1352	1014
Heaters:			
H–28	831	30	30
H–48A	438	20	20
H–48B	283	15	15
H–48C	206	11	11
H–48D	167	13	13
H–48E	193	8	8
H–5001	321	22	22
Total	7289	5921	2788
		1368 – 325 consent decree.	
Net emissions reduction.		1043	3133

[1] The required offset is 865 TPY; however the net emissions reduction is calculated in terms of total SO_2 increases and is thus more conservative.

processed. This size SRU is exempt from EPA new Source Performance Standards (NSPS) for SRUs. (See 40 CFR Part 60 Subpart J).

Upon startup of the cogeneration units, the post phase (post-SRU/post-cogen), four existing boilers, B–1, B–2, B–4, and B–5, will be permanently retired from service, while the use of two other boilers, B–6 and B–7, will be curtailed. The startup of the cogeneration units will increase SO_2 emissions by 109 TPY and the reductions from boilers B–1, B–2, B–4, B–5, B–6, and B–7 will result in a reduction of 3,242 TPY of SO_2 emissions. Thus the net reduction from the post phase will be 3,133 TPY of SO_2 emissions.

Further discussion of the proposed emissions trade and ambient equivalence modeling is found in the accompanying technical support document, entitled, "Technical Support Document for EPA's Review of the Sulfur Dioxide Emissions Trade for the Conoco, Incorporated, Ponca City Refinery, Oklahoma." Copies of this document are available upon request from the EPA Regional Office listed in the ADDRESSES section of this notice.

III. Ambient Equivalence Modeling

Conoco performed both Level II and Level III modeling consistent with the requirements of the ETPS to ensure that the emissions associated with the SRU and cogeneration project would not cause or contribute to a violation of the NAAQS for SO_2. The Level II and Level III modeling are discussed below, and are further detailed in the accompanying technical support document.

A. Level II Modeling

Conoco first conducted a Level II analysis to locate any and all areas (i.e., receptor points) showing predicted increases (attributable to the project) in ambient SO_2 concentrations greater than the prescribed significance levels. These significance levels were defined for each of the SO_2 NAAQS as follows: 3 micrograms per cubic meter (ug/m^3) for the annual standard; 5 ug/m^3 for the 24-hour standard; and 46 ug/m^3 for the 3-hour standard.

Modeling techniques used to support ambient equivalence followed the procedures in the ETPS, the EPA document, "Guideline on Air Quality Models (Revised)," July 1986, and "Supplement A to the Guideline on Air Quality Models (Revised)," July 1987. The Industrial Source Complex Short-Term (ISCST) dispersion model (Version 88348) was used to predict 3-hour and 24-hour maximum SO_2 concentrations. One year (1978) of meteorological data was used. The Conoco Refinery was modeled for both interim (post-SRU/pre-cogen) and post (post-SRU/post-cogen) phases of the project.

For both interim and post phases, the Level II modeling identified a limited number of receptors located east and west of the refinery where predicted SO_2 impacts were greater than the 3-hour and 24-hour significance levels. There were no significant impacts predicted for the annual averaging period.

Since the analysis revealed concentrations above the 3-hour and 24-hour significance levels, a geographically limited Level III analysis was required to determine whether the NAAQS would be protected.[2]

B. Level III

All point sources within a 50 kilometers (km) radius of the area of significant impact were explicitly modeled with receptors placed within the Level II significance area. Sources outside the area of impact were screened using EPA's "20D Rule". That is, facilities were excluded from the modeling analysis if the total plant-wide maximum allowable emissions rates (TPY) were less than twenty times the distance in kilometers from the facility to the Conoco Refinery. For facilities outside the area of impact with total plant-wide emissions greater than 20D, EPA requested that all individual sources be included from the analysis.

A total of 54 sources were modeled, including 20 non-Conoco sources. For non-project Conoco sources, maximum permitted emissions rates were used for permitted sources. Emissions used for non-permitted sources were the historical actual emissions rates, reflecting high-level refinery operating rates. Emissions inputs used for non-Conoco sources were the highest of their actual, permitted or estimated emissions rate.

The Level III analysis also used the ISCST model (Version 90346). The most recent 5 years (1974–1978) of Ponca City meteorological data was used. These data were the most recent available for the refinery site and were considered to be the most representative data available.

The Level III modeling analysis was limited to those areas identified in the Level II analysis as having a significant impact. Those receptors identified as having a significant impact in the Level II modeling were included in the Level III analysis. EPA also requested Conoco to include the receptors adjacent to

[2] The ETPS allows geographically limited Level III analyses in some cases through case-by-case evaluation. While the analysis is limited in geographical coverage, it meets all requirements for a full Level III analysis.

those identified as having a significant impact. A total of 133 receptors were modeled for the 3-hour averaging period and 217 receptors were modeled for the 24-hour averaging period.

The Level III dispersion modeling analysis demonstrated that the emissions trade associated with the SRU/cogeneration project would not cause or contribute to a violation of the SO_2 NAAQS.

IV. Sulfur Dioxide Ambient Air Quality in Kay County

Two important factors must be emphasized. First, an Oklahoma Air Quality Service (OAQS) SO_2 monitor located in Ponca City, approximately one-half mile north of the Conoco Refinery (Site 600), registered a violation of the 24-hour SO_2 NAAQS in 1988. In Conoco's Level II modeling, a receptor grid surrounded this monitor and showed a negative impact (i.e., an improvement in SO_2 air quality over the term of the SRU/cogeneration project) due to Conoco's proposed reductions, both for the interim (post-SRU/pre-cogen.) phase and the post (post-SRU/post-cogen.) phase of the project.[3] EPA has thus concluded that the emissions trade would not contribute to a monitored violation of the SO_2 NAAQS in the vicinity of the OAQS monitor Site 600.

A special purpose monitor (Site 601) was in operation approximately ¼ mile east of the Conoco Refinery from late 1988 to early 1991. No violations or exceedances of the primary or secondary NAAQS for SO_2 were recorded.

The second factor is that, during the time Conoco was finalizing its Level III modeling, EPA Region 6 performed supplementary modeling with a receptor grid more extensive than that of Conoco's geographically limited Level III analysis. The purposes of EPA's modeling were to confirm Conoco's Level III results and to ensure that no violations of a SO_2 NAAQS would be predicted anywhere in the vicinity as a result of the SRU/cogeneration project.

EPA's modeling showed potential violations of both the 24-hour and annual SO_2 NAAQS directly north and adjacent to the Conoco facility. However, no violations were modeled anywhere in Conoco's geographically limited Level III modeling receptor grid. EPA used this modeling, in addition to monitored data, as a basis to notify the Governor on January 23, 1991, that Kay County appeared to be violating the SO_2 NAAQS. This position is stated in an April 22, 1991, **Federal Register** notice (56 FR 16274). On May 9, 1991, the Governor sent a letter to the Regional Administrator requesting that the designation for Kay County be retained as attainment, due to significant reductions in SO_2 emissions in the area. Since that time, the Oklahoma Air Quality Service has submitted additional information in support of retaining the attainment designation. This information is being evaluated by EPA and a designation decision will be addressed in a forthcoming **Federal Register** notice.

Taking these factors into account, EPA believes that the emissions associated with Conoco's SRU/cogeneration project will not cause or contribute to a violation of the NAAQS. Therefore, EPA proposes to approve the Conoco SO_2 emissions trade.

V. Proposed Action

Today, EPA is proposing to approve the SIP revision submitted by the Governor of Oklahoma on November 7, 1989, which includes permits number 88-117-O and 88-116-C. These permits allow the Conoco refinery to operate a sulfur recovery unit and to construct a cogeneration facility. By this action, EPA proposes to approve the SO_2 emissions trade resulting from the SRU and cogeneration project. EPA has determined that the emissions trade is consistent with the ETPS and that the emissions associated with the trade will neither cause nor contribute to a violation of the NAAQS for SO_2.

Regulatory Process

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

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

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

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the adoption of the revision by the State preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Dated: September 17, 1991.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 91-23107 Filed 9-24-91; 8:45 am]

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[3] It should be noted that the Level II modeling includes only the Conoco sources and illustrates SO_2 air quality changes due to the proposed actions; it is not a complete air quality analysis for Conoco and surrounding sources.

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40 CFR Part 372

[OPTS-400060; FRL-3945-2]

Source Reduction and Recycling Reporting Under EPCRA Section 313; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meetings.

SUMMARY: Two meetings will be held to obtain public comments on the proposed rule amending Toxic Chemical Release Inventory reporting requirements to include information on source reduction and recycling activities as required by the Pollution Prevention Act of 1990. These meetings will be open to the public.

DATES: The first meeting will be held in Washington, DC, on Monday, October 7, 1991, beginning at 1 p.m. and ending at 4 p.m. The second meeting will be held in Dallas, TX, on Wednesday, October 9, 1991, also beginning at 1 p.m. and ending at 4 p.m.

ADDRESSES: The meeting in Washington, DC, will be held in the EPA Auditorium at: EPA Headquarters, 401 M St., SW., Washington, DC 20460. The meeting in Dallas, TX, will be held in the EPA Auditorium at: EPA Region VI Headquarters, 1445 Ross Ave., Dallas, TX 75202.

FOR FURTHER INFORMATION CONTACT: Anning H. Smith, Jr., Office of Toxic Substances (TS-779), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-1576.

SUPPLEMENTARY INFORMATION: The Pollution Prevention Act of 1990 requires facilities subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 to provide information on source reduction and recycling activities, beginning with the 1991 calendar year. This information must be included on EPA Form Rs submitted by July 1, 1992. EPA has published a proposed rule, printed elsewhere in this issue of the **Federal Register**, that includes the amendments to the regulations, the draft revised sections of EPA Form R that are affected by the requirements of the PPA, and the instructions for those revised sections. EPA is soliciting comments on those elements as well as on a draft technical assistance document for providing source reduction and recycling information on Form R. Comments and questions can be presented orally at the public meetings. Persons interested in presenting oral comments at one of the public meetings should call 703-934-3195 to be placed on the agenda. Reservations on the agenda will be on a first-come first-serve basis and will be limited by the duration of the meeting. EPA is requesting that persons providing oral comments limit their discussion to 15 minutes.

Dated: September 9, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91-22873 Filed 9-24-91; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 372

[OPTS-400054; FRL-3879-2]

Toxic Chemical Release Reporting; Pollution Prevention Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the requirements of section 6607 of the Pollution Prevention Act of 1990 (PPA) (Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508), EPA is proposing to add several data elements to the current Toxic Chemical Release Inventory (TRI) reporting requirements as promulgated under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub. L. 99-499). Section 313 requires owners or operators of certain facilities that manufacture, import, process, or otherwise use listed toxic chemicals to report annually on their releases of these chemicals to each environmental medium. This proposed rule would incorporate into existing regulations the source reduction and recycling information specified in the PPA that all facilities subject to reporting under section 313 must provide beginning in the 1991 reporting (calendar) year: the quantity of the chemical (prior to recycling, treatment, or disposal) entering any wastestream or released to the environment; the quantities of the chemical recycled at the facility and elsewhere; the quantities of the chemical treated at the facility and elsewhere; information on source reduction activities and the methods used to identify those activities; the quantities of the chemical released in one-time events not associated with production processes; the quantities of the chemical expected to enter any wastestream or be recycled in future years; and a production ratio or activity index for the reported chemical. This proposed rule also includes limited cross-referencing and other information to aid in understanding the results of source reduction and recycling activities and to coordinate Federal data collection activities. EPA is requesting comments on the revised sections of Form R, which would be the mechanism for collecting those data elements, and the instructions for completing those sections of Form R.

DATES: Comments must be submitted on or before November 12, 1991.

ADDRESSES: Written comments should be submitted in triplicate to: OTS Docket Clerk, TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, room NE-G004, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPTS-400054.

FOR FURTHER INFORMATION CONTACT: Anning H. Smith, Jr., Office of Toxic Substances (TS-779), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-3576 or, The Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free: 800/535-0202.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

EPA is proposing this rule under section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 11071 to 11079) and sections 313 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001 et seq.), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 6607 of the PPA specifically requires facilities that must comply with section 313 of EPCRA to provide source reduction and recycling data and authorizes EPA to amend the form for reporting under section 313 of EPCRA to include this additional information. Facilities must provide information on: the quantity of the chemical (prior to recycling, treatment, or disposal) entering any wastestream or released to the environment; the quantities of the chemical recycled at the facility or elsewhere; the quantities of the chemical treated at the facility or elsewhere; information on source reduction activities and the methods used to identify those activities; the quantities of the chemical released in one-time events not associated with production processes; the quantities of the chemical expected to enter any wastestream or be recycled in future years; and a production ratio or activity index for the reported chemical. Section 313 of EPCRA requires owners or operators of covered facilities to report annually on their releases of listed toxic chemicals. Section 313 also specifies that EPA must publish a uniform toxic chemical release inventory reporting form, which is called "Form R." In addition, section 328 of EPCRA provides EPA with the authority to promulgate such regulations as may be necessary to carry out the purposes of EPCRA.

B. Legislative Background of this Proposed Rule

1. *Section 313 of EPCRA.* EPCRA was enacted to ensure that communities throughout the country are prepared to respond to chemical accidents and to provide the public with information on hazardous and toxic chemicals used and released in their communities. The information is also intended to assist government agencies, researchers, and others in the conduct of research and data gathering, and to aid in the development of regulations, guidelines, and studies.

Under section 313 of EPCRA, certain facilities are required to submit reports each year on the amounts of listed toxic chemicals they release into the environment. The section 313 list of toxic chemicals includes more than 300 chemicals and 20 chemical categories. Currently, facilities must file annual reports if they manufacture, import, or process at least 25,000 pounds of the chemical during the calendar year or otherwise use at least 10,000 pounds of the chemical during the calendar year. The reports must be filed by July 1 of each year and cover releases and transfers that occurred during the previous calendar year. Submission of

reports under EPCRA began on July 1, 1988, for activities that met the reporting thresholds during calendar year 1987. EPA is required to make the data available to the public through an on-line computer data base as well as other means. The data base, known as the Toxic Release Inventory (TRI), is available through the National Library of Medicine's TOXNET computer system.

Since the initiation of section 313 reporting, Form R has contained an optional section (Section 8) for reporting information on the facility's waste minimization activities for the reported chemical. The provisions of section 6607 of the PPA expand and make mandatory reporting of this type of information on EPA Form R. The additional data received will be made available to the public as an expansion of the TRI data base.

2. *Section 6607 of the PPA.* The PPA was enacted to implement a national objective of preventing pollution at the source. To achieve this goal, EPA is to establish a source reduction program and assist States in providing technical assistance to industry to implement source reduction programs. Section 6607 of the PPA is intended to ensure that sufficient information is available to carry out those purposes and to evaluate the progress made by EPA, States, and industry. Section 6607 is specifically intended to augment the information collection requirements of section 313 of EPCRA and requires that the public be provided with information on efforts by industry to prevent the generation of waste at the source as well as to reduce direct releases to the environment through other methods. Section 6607(b) of the PPA sets out the following data elements:

(1) The quantity of the chemical entering any wastestream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless EPA finds other categories to be more appropriate.

(A) Equipment, technology, process, or procedure modifications.

(B) Reformulation or redesign of products.

(C) Substitution of raw materials.

(D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraphs (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amount shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the production (reporting) year to production in the previous year, or, where appropriate, an activity index based on some variable other than production, if that variable is the primary influence on waste characteristics or volume. The ratio should be calculated to most closely reflect all activities involving the toxic chemical.

(6) The techniques which were used to identify source reduction opportunities, including but not limited to employee recommendations, external and internal audits, participative team management, and material balance audits.

(7) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one-time event, and is not associated with production processes during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year.

For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

Section 6607(c) of the PPA provides that the provisions of EPCRA section 322 (relating to trade secrets) apply to the reporting requirements of section 6607 of the PPA in the same manner as to the reports required under EPCRA section 313. Section 322 allows a submitter to claim chemical identity as trade secret and requires up-front substantiation of that claim. The implementing regulations for section 322 are set out in 40 CFR part 350 subpart A. EPA interprets section 6607(c) to mean that the provisions of section 322 and the section 322 regulations apply to all information submitted under sections 6607(b) and 6607(d).

Section 6607(c) also provides that the provisions of EPCRA sections 325(c) (civil and administrative penalties for reporting requirements) and 326 (civil actions) apply to the reporting requirements of section 6607.

Section 6607(d) of the PPA provides that reports for any year may include additional information regarding source reduction, recycling, and pollution control measures implemented in prior years. Section 6607(e) provides that, subject to EPCRA section 322, EPA must make data collected under section 6607 publicly available in the same manner as data collected under EPCRA section 313.

C. Summary of the Proposed Rule

EPA has recently promulgated a rule amending 40 CFR 372.85 by removing Form R and its instructions from the rule and replacing the form with a list of required reporting elements. EPA will issue a notice of availability of the most recent version of the form and instructions (56 FR 29183, June 26, 1991). This proposal would add to and revise the elements in § 372.85 effective for the 1991 reporting (calendar) year. EPA is also proposing additional revisions that would be effective for the 1992 reporting year.

To implement section 6607 of the PPA, EPA is proposing to incorporate the new data elements into § 372.85. Reporting of the data elements will be mandatory beginning with the 1991 reporting year. The proposal also includes limited cross-referencing and other information that EPA considers necessary to understand the results of source reduction and recycling activities and to coordinate federal data collection. Section 372.85(b)(18), which currently lists optional waste minimization information, would be revised to include the majority of the new mandatory reporting elements. Section 372.85(b)(16), which currently requires reporting on off-site locations and transfer amounts for treatment and disposal, would be modified to include off-site locations and transfer amounts for recycling. Section 372.85(b)(17) would be modified to phase in more detailed reporting for on-site recycling activities beginning with the 1992 reporting year, and would also contain revisions to current requirements for reporting on-site treatment.

It is important to note that the statute itself dictates that the data requirements in the PPA go into effect for the 1991 reporting year; the data requirements need not be added to the regulations to become effective. Thus, the regulatory provisions that include the new mandatory requirements are interpretive in nature (i.e., they incorporate and interpret the statutory provisions). Additional interpretations, including

definitions of a number of terms used in the PPA, are included in the instructions for Form R set out in unit III of this preamble.

In addition, pursuant to authority under EPCRA sections 313 and 328, the proposal would require facilities to provide the National Pollution Discharge Elimination System (NPDES) number for each Publicly Owned Treatment Works (POTW) to which reported chemicals are transferred. A number of recordkeeping requirements would be added to § 372.10. These provisions would require facilities to document the estimates of the quantities provided. Such documentation would be kept on file at the facility for a period of 3 years, which is consistent with current recordkeeping requirements.

D. Revisions to EPA Form R

To implement the new data collection, EPA is modifying sections 6, 7, and 8 of the current Form R. Section 8 of the form, currently titled "Pollution Prevention: Optional Information on Waste Minimization," would be revised to include the majority of the new reporting elements. It would also be changed from an optional to a mandatory section of the form as required by the PPA. Section 6 of the form, "Transfers of the Chemical in Waste to Off-site Locations," would be modified so that off-site location and transfer amounts would be reported together, including amounts sent off-site for recycling. Section 7 of the form, "Waste Treatment Methods and Efficiency," would be modified to include detailed information about on-site recycling activities as well as changes to the information provided on treatment activities.

EPA is proposing to phase-in the implementation of the reporting requirements across both the 1991 and 1992 reporting years. The mandate of the PPA will be satisfied for the 1991 reporting year through modification of sections 6 and 8 of the form, but a greater level of detail would be implemented for the 1992 reporting year in section 7 of the form. Additional organizational changes are being made to Form R to consolidate related data elements and clarify reporting requirements. Complete copies of draft revised Form Rs for both the 1991 and 1992 reporting years are available for review in the public record for this rulemaking.

1. *Revisions to Form R for the 1991 reporting year — A. Revisions to section 8.* As provided in section 6607 of the PPA, EPA is replacing the current optional section 8 of Form R with a mandatory and expanded set of questions. The following is the draft revised section 8 of Form R. Some of the data provided in the revised section 6 would be aggregated to provide responses to the questions in the revised section 8.

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(Important: Type or print; read instructions before completing form.)

EPA FORM R

PART II. CHEMICAL-SPECIFIC INFORMATION (continued)

Chemical, Category, or Generic Name

TRI Facility ID Number

Section 8 SOURCE REDUCTION AND RECYCLING ACTIVITIES

		A. Reporting Year (pounds/year)	B. Prior Year (pounds/year)	C. Following Year (pounds/year)	D. Second Year (pounds/year)	E. Process (enter code)
8.1	Quantity prior to recycling, treatment, or disposal entering wastes or released to the environment					
8.2	Quantity recycled onsite					
8.3	Quantity sent offsite for recycling					
8.4	Quantity entering treatment onsite					
8.5	Quantity sent offsite for treatment					

8.6 Quantity released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes (pounds/year) _____

8.7 Changes in accounting practices, estimation methods, or other factors Yes [ ] No [ ]

8.8 Did you add on-site recycling equipment or capacity in the reporting year? Yes [ ] No [ ]

8.9 Production Ratio or Activity Index _____

8.10 Did your facility implement any new source reduction activity for this chemical in the reporting year? [ ] Yes, answer questions 8.11-8.15 [ ] No, skip questions 8.11-8.15

8.11 Enter codes that represent the source reduction activities you implemented during the reporting year. Enter one or more codes to indicate as many methods used to identify activities as apply

	Source Reduction Activities (enter codes)	Methods to Identify Activity (enter codes)					
8.11.1		a.	b.	c.	d.	e.	f.
8.11.2		a.	b.	c.	d.	e.	f.
8.11.3		a.	b.	c.	d.	e.	f.
8.11.4		a.	b.	c.	d.	e.	f.
8.11.5		a.	b.	c.	d.	e.	f.
8.11.6		a.	b.	c.	d.	e.	f.
8.11.7		a.	b.	c.	d.	e.	f.

8.12 Total quantity that would have entered wastes without source reduction activity (pounds/year) 8.12.1 _____ Calculation Method (enter code) 8.12.2 [ ]

8.13 Quantity prevented due to source reduction (pounds/year) _____

8.14	RCRA hazardous wastes affected (enter RCRA Waste code)	a.	b.	c.	d.	e.
8.15	Other TRI chemicals affected (enter CAS Number or category code)	a.	b.	c.	d.	e.

8.16 Is additional information on source reduction, recycling, or pollution control activities included with this report? Yes [ ] No [ ]

DRAFT

B. *Revisions to Section 6.* This section, "Transfers of the Chemical in Waste to Off-Site Locations," of the current Form R would be modified so that both the off-site location information and the amounts transferred to that location would be reported in the same section of the form. Currently, amounts sent off-site for the purposes of treatment or disposal are reported along with the location of the off-site facility(ies), but in different sections of the Form.

In addition to the currently reported information on off-site transfers for the purposes of treatment or disposal, section 6 would also be altered to incorporate the new information required by the PPA on off-site transfers for the purposes of recycling. Respondents may still take advantage of the range reporting option for off-site transfers of less than 1,000 pounds. However, a code instead of check-off boxes will be used to indicate the range. When reporting transfers to Publicly Owned Treatment Works (POTWs), respondents would now be required to provide the National Pollution Discharge Elimination System (NPDES) number for each POTW. The following is the draft revised Section 6 of Form R.

BILLING CODE 6560-50-F

(Important: Type or print; read instructions before completing form.)

EPA FORM R
PART II. CHEMICAL-SPECIFIC INFORMATION (continued)

Chemical, Category, or Generic Name

TRI Facility ID Number

Section 6 TRANSFERS OF THE CHEMICAL IN WASTE TO OFF-SITE LOCATIONS

6.1 DISCHARGES TO PUBLICLY OWNED TREATMENT WORKS (POTWs)	A. Total Transfers (pounds/year) (enter code or estimate)	B. Basis of Estimate (enter code)
6.1.1 POTW name		6.1.1
NPDES Permit Number	Street Address	
City / County	State	Zip Code

6.2 TRANSFERS TO OTHER OFF-SITE LOCATIONS	A. Total Transfers (pounds/year) (enter code or estimate)	B. Basis of Estimate (enter code)	C. Type of Treatment/ Disposal/Recycling (enter code)
6.2.1 Off-site location name		6.2.1a	6.2.1a
EPA Identification Number (RCRA ID. No.)		6.2.1b	6.2.1b
Street Address		6.2.1c	6.2.1c
City / County	State		Zip Code
Is location under control of reporting facility or parent company? [ ] Yes [ ] No			
6.2.2 Off-site location name		6.2.2a	6.2.2a
EPA Identification Number (RCRA ID. No.)		6.2.2b	6.2.2b
Street Address		6.2.2c	6.2.2c
City / County	State		Zip Code
Is location under control of reporting facility or parent company? [ ] Yes [ ] No			
6.2.3 Off-site location name		6.2.3a	6.2.3a
EPA Identification Number (RCRA ID. No.)		6.2.3b	6.2.3b
Street Address		6.2.3c	6.2.3c
City / County	State		Zip Code
Is location under control of reporting facility or parent company? [ ] Yes [ ] No			
6.2.4 Off-site location name		6.2.4a	6.2.4a
EPA Identification Number (RCRA ID. No.)		6.2.4b	6.2.4b
Street Address		6.2.4c	6.2.4c
City / County	State		Zip Code
Is location under control of reporting facility or parent company? [ ] Yes [ ] No			

[ ] (Check if additional information is provided on Part IV-Supplemental Information.)

DRAFT

EPA Form 9350-1 (Rev.8-014-91) - Previous editions obsolete.

S18014 D3

2. *Revisions to Form R for the 1992 reporting year.* To report certain data elements required by the PPA, the Form R for the 1992 reporting year (due July 1, 1993), would phase-in requirements that facilities report quantity information on recycling by general wastestream types. As a result, part II, section 7, "Waste Treatment Methods and Efficiency," which currently requires that on-site treatment activities be reported by general types of wastestreams, would be revised to require that on-site recycling activities be reported by general types of wastestreams as well.

Up through the 1991 reporting year, section 7 would include information only for on-site waste treatment practices and efficiencies, reported by general type of wastestream. The creation of a section for reporting on-site recycling activities in section 7 makes the reporting of a predominant process of recycling on-site in section 8 (8.2.E) unnecessary. Therefore, that element would be removed from section 8 for the 1992 reporting year and thereafter. Additional revisions to the reporting on treatment activities also would be included for 1992. The following is the draft revised section 7 of Form R to be effective beginning with the 1992 reporting year.

BILLING CODE 6560-50-F

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(Important: Type or print; read instructions before completing form.)

EPA FORM R
PART II. CHEMICAL-SPECIFIC INFORMATION (continued)

Chemical, Category, or Generic Name

TRI Facility ID Number

Section 7A ON-SITE WASTE TREATMENT METHODS AND EFFICIENCY

☐ Not Applicable (NA) – Check if no on-site treatment is applied to any wastestream containing the chemical or chemical category

A. General Wastestream (enter code)	B. Amount Entering Treatment (pounds/year)	C. Treatment Method(s) Sequence (enter codes)	D. Treatment Efficiency Estimate
7A.1a ☐	7A.1b	7A.1c-1 ☐☐☐ 1c-2 ☐☐☐ 1c-3 ☐☐☐ 1c-4 ☐☐☐ 1c-5 ☐☐☐ 1c-6 ☐☐☐ 1c-7 ☐☐☐ 1c-8 ☐☐☐	7A.1d %
7A.2a ☐	7A.2b	7A.2c-1 ☐☐☐ 2c-2 ☐☐☐ 2c-3 ☐☐☐ 2c-4 ☐☐☐ 2c-5 ☐☐☐ 2c-6 ☐☐☐ 2c-7 ☐☐☐ 2c-8 ☐☐☐	7A.2d %
7A.3a ☐	7A.3b	7A.3c-1 ☐☐☐ 3c-2 ☐☐☐ 3c-3 ☐☐☐ 3c-4 ☐☐☐ 3c-5 ☐☐☐ 3c-6 ☐☐☐ 3c-7 ☐☐☐ 3c-8 ☐☐☐	7A.3d %
7A.4a ☐	7A.4b	7A.4c-1 ☐☐☐ 4c-2 ☐☐☐ 4c-3 ☐☐☐ 4c-4 ☐☐☐ 4c-5 ☐☐☐ 4c-6 ☐☐☐ 4c-7 ☐☐☐ 4c-8 ☐☐☐	7A.4d %
7A.5a ☐	7A.5b	7A.5c-1 ☐☐☐ 5c-2 ☐☐☐ 5c-3 ☐☐☐ 5c-4 ☐☐☐ 5c-5 ☐☐☐ 5c-6 ☐☐☐ 5c-7 ☐☐☐ 5c-8 ☐☐☐	7A.5d %
7A.6a ☐	7A.6b	7A.6c-1 ☐☐☐ 6c-2 ☐☐☐ 6c-3 ☐☐☐ 6c-4 ☐☐☐ 6c-5 ☐☐☐ 6c-6 ☐☐☐ 6c-7 ☐☐☐ 6c-8 ☐☐☐	7A.6d %
7A.7a ☐	7A.7b	7A.7c-1 ☐☐☐ 7c-2 ☐☐☐ 7c-3 ☐☐☐ 7c-4 ☐☐☐ 7c-5 ☐☐☐ 7c-6 ☐☐☐ 7c-7 ☐☐☐ 7c-8 ☐☐☐	7A.7d %

Section 7B ON-SITE RECYCLING METHODS

☐ Not Applicable (NA) – Check if no on-site recycling is applied to any wastestream containing the chemical or chemical category

A. General Wastestream (enter code)	B. Recycling Method (enter code)	C. Amount Recycled (pounds/year)
7B.1a ☐	7B.1b ☐☐☐	7B.1c
7B.2a ☐	7B.2b ☐☐☐	7B.2c
7B.3a ☐	7B.3b ☐☐☐	7B.3c
7B.4a ☐	7B.4b ☐☐☐	7B.4c

[ ] (Check if additional pages of Part II, Section 7 are attached. How many? _____

DRAFT

The following unit presents a question-by-question explanation of the reporting elements and the relation of those questions to the information requirements in section 6607 of the PPA and outlined in unit I.B.2. of this preamble.

II. Explanation of Proposed Reporting Elements

EPA believes that it has developed an approach to reporting the required source reduction and recycling data that considers the need for and use of this information, the burden on industry to provide it, and the costs to the Agency to collect and manage it. The following is an explanation for each question relating to pollution prevention and recycling included in sections 8 and 6 of the Form, an explanation for requiring the NPDES number for POTWs (in section 6 of the Form), and an explanation for revising section 7 of the Form for the 1992 reporting year. Included in the explanation for the elements is a description of how they relate to the statutory authority of the PPA and/or EPCRA.

A. Reporting Elements Effective for the 1991 Reporting Year

1. *Section 372.85(b)(18)(i) (Question 8.1).* The quantity of the chemical entering any wastestream or otherwise released to the environment prior to recycling, treatment, or disposal in the reporting year and the prior year, and the quantity expected to enter any wastestream or estimated to be released in the two calendar years following the reporting year. This question is based on sections 6607(b)(1) and 6607(b)(4) of the PPA with one modification. The modification, also made for Questions 8.2, 8.3, 8.4, and 8.5, is to require that quantities rather than percentage changes be reported. EPA believes, based on past Form R processing experience, that reporting quantities will reduce the incidence of form completion errors and data entry errors. Reporting errors have been encountered in the past, including respondents either incorrectly or not indicating whether the percent change was an increase or decrease. EPA also believes that reporting quantities will be less burdensome for reporters in that facilities would have to determine quantities prior to calculating percentage changes. The statutory provision for percentage change would be met through EPA calculation of the percentage and provision of the result in the public data base in addition to the amounts reported.

2. *Section 372.85(b)(18)(ii) (Question 8.2).* The quantity of the chemical recycled (exiting a recycling process) on-site in the reporting year and the prior year, the quantity expected to be recycled in the two calendar years following the reporting year, and the process of recycling used on-site. This question is based on sections 6607(b)(2) and 6607(b)(4) of the PPA, with the modification to report quantity rather than percentage as noted above. The process of recycling used on-site will be reported in section 8 for the 1991 reporting year only. If more than one recycling process is used for the reported chemical the facility will have to indicate the predominant process used. However, beginning with the 1992 reporting year, EPA is proposing to modify this data element so that all processes of recycling used on-site would be reported. These would be reported in section 7 of the Form, which is discussed in more detail in subunit B.1 of this unit.

The PPA does not specify whether quantities reported under section 6607(b)(2) should be the amount of the chemical entering the recycling process or the amount of the chemical resulting from the recycling process. Because the statute does not give specific direction, EPA has chosen an approach that it believes is reasonable and consistent with the statutory goals. EPA believes that the most useful information to collect and analyze for trends in recycling is the amount of chemical resulting from or recovered from recycling processes.

EPA recognizes that the statute could be reasonably interpreted to require facilities to report the amount entering recycling processes. While EPA considered this approach, EPA believes that reporting amounts resulting from recycling processes is the most appropriate approach based on practical considerations for respondent facilities and the utility of the data for various analyses of trends and progress. These issues, as well as additional issues concerning recycling, are discussed in subunit C of this unit. EPA requests comment on these issues and on the utility of each approach to reporting amounts recycled (resulting or exiting from recycling processes compared to amounts entering recycling processes).

3. *Section 372.85(b)(18)(iii) (Question 8.3).* The quantity of the chemical sent off-site for the purpose of recycling in the reporting year and the prior year, and the quantity expected to be sent off-site for the purposes of recycling in the two calendar years following the reporting year. This question is based on sections 6607(b)(2) and 6607(b)(4) of the PPA, with the modification to report quantity rather than percentage as noted above.

Although the amount of chemical that results from recycling is the best indicator of recycling trends, EPA believes that for the purposes of this reporting requirement it is not reasonable to expect a facility to know the quantity of the chemical being recovered from off-site recycling activities. Therefore, the Agency is only requiring facilities to report the quantity sent off-site for the purposes of recycling, not the amount resulting from an off-site recycling operation. This is consistent with reporting in the current off-site transfer section of Form R (Section 6), where facilities are required to estimate amounts of the chemical sent off-site in waste for the purposes of further treatment or disposal.

A facility would report a quantity as sent off-site for the purposes of recycling only if that facility knows that recycle operations will be applied specifically to that chemical. In situations where the chemical is part of a mixture subject to a recycle operation but the specific chemical is not itself recovered (i.e., it is released to the environment or subsequently treated and/or disposed by the off-site facility), then the reporting facility should not report that amount as recycled but would include it in amounts transferred off-site for treatment.

4. *Section 372.85(b)(18)(iv) (Question 8.4).* The quantity of the chemical entering treatment on-site in the reporting year and the prior year. This question is based on section 6607(b)(8) of the PPA, with the modification to report quantity rather than percentage as noted above.

5. *Section 372.85(b)(18)(v) (Question 8.5).* The quantity of the chemical sent off-site for treatment in the reporting year and the prior year. This question is also based on section 6607(b)(8) of the PPA, with the modification to report quantity rather than percentage as noted above. Facilities can easily identify those quantities sent off-site for treatment by the activity codes that they have to provide in section 6 of the form. EPA recognizes that this information is similar to that requested under section 6 of the current Form R (§ 372.85(b)(16)). Therefore, EPA requests comment on the option of eliminating the requirement to report quantities for the reporting year in § 372.85(b)(18)(v) (element 8.5.A of the form), calculating this number, and providing it for the public in the data base.

6. *Section 372.85(b)(18)(vi) (Question 8.6).* The quantity of the chemical released to the environment in the

reporting year as a result of remedial actions, catastrophic events, or other one-time events not associated with production processes. This question is based on section 6607(b)(7) of the PPA. EPA requests comment on the scope of such releases and how they should be characterized in the instructions and the ability of facilities to define and estimate such releases. EPA believes that any release resulting from an activity that is amenable to source reduction should not be reported in Question 8.6.

7. *Section 372.85(b)(18)(vii) (Question 8.7).* Indication of whether the respondent facility changed accounting practices, estimation or calculation methods, or any other factors that affected the way in which the quantity of the chemical entering any wastestream was estimated as compared to the prior year. This question is based on section 6607(b)(1) of the PPA. Facilities may make changes or adjustments in their estimation methodology to increase the accuracy of their reported information. If that occurs, this element provides important information for determining whether changes in reported quantities from the prior year are actually due to physical changes in the quantity of the chemical. A "Yes" response indicates that if reporting year and prior year quantities as reported on the form differ, the discrepancy may be due to the use of a different estimation technique rather than an actual change in quantity resulting from a source reduction activity.

This will eliminate the need for verification contacts with many respondents who report large reductions in quantity, but have not implemented source reduction. In an instance where a respondent has implemented a source reduction activity and has changed the estimation technique, this element will provide an indicator that the change may not be due solely to the source reduction effort. This can help to more accurately present and analyze data submitted by facilities which have quantity changes that are due to both changes in estimation technique and implementation of a source reduction activity.

8. *Section 372.85(b)(18)(viii) (Question 8.8).* Indication of addition of recycling equipment or recycling capacity for the reported chemical in the reporting year. This question is based on section 6607(b)(2) of the PPA and, as part of the information regarding the process of recycling, is needed to interpret the changes in the quantities recycled from reporting year to reporting year as well as to analyze and understand trends in recycling. A "Yes" response to this question would indicate that the facility has expanded existing recycling capacity, added new equipment, or instituted a new method of recycling during the reporting year.

This question does not include the addition of equipment or capacity for in-process recycling activities. The addition of equipment or capacity for in-process recycling should be reported as a source reduction activity in Question 8.11.

9. *Section 372.85(b)(18)(ix) (Question 8.9).* A ratio of production in the reporting year to production in the prior year or, where appropriate, an activity index based on another variable involved in the production process that is the primary influence on waste characteristics or volumes. This question is based on section 6607(b)(5) of the PPA. This ratio or index must be based solely on this chemical or factors that directly influence the production or use of the chemical. It should be the best indicator for how the activity at the facility will impact the amount of the reported chemical entering any wastestream. If more than one section 313 chemical is reported, the ratio or index may vary for different chemicals. EPA is requesting comment on the types of activity indices that may currently be in use, how they are calculated, and how they are used by facilities in planning and measuring progress.

10. *Section 372.85(b)(18)(x) (Question 8.10).* A Yes or No indication of whether any source reduction activities have been implemented in the reporting year with respect to the reported chemical. This question is based on section 6607(b)(3) of the PPA and is used to clarify and simplify the form for the respondent, thus reducing burden. If the answer is No, the facility is not required to answer any further questions in this section of Form R.

11. *Section 372.85(b)(18)(x)(A) (Question 8.11).* An indication of what source reduction activities have occurred in the reporting year and the techniques used to identify those source reduction activities. This question is based on sections 6607(b)(3) and 6607(b)(6) of the PPA. In section 8.11, EPA has expanded the list of source reduction activities provided in section 6607(b)(2) using the descriptions developed for the RCRA biennial report. This expanded list better represents the wide range of source reduction activities that can be employed and provides for more detailed reporting that will aid in the analysis and understanding of trends in source reduction.

12. *Section 372.85(b)(18)(x)(B) (Question 8.12).* The total quantity of the chemical that would have entered any wastestream or been released to the environment if source reduction had not been implemented and the method used to estimate that quantity. This allows for a quantification of the impact that the activity(ies) reported in Question 8.11 will have on the amount of the reported chemical entering any wastestream. EPA believes that this element is critical in determining the success and progress of source reduction activities and is integral in fulfilling the intent of the Act. This also is an opportunity for respondent facilities to claim credit for their investment(s) in pollution prevention.

The most direct way to asses source reduction progress is to allow the facility to estimate the amount of the chemical that would have entered any wastestream in the reporting year if source reduction had not been implemented and then to compare that amount to the quantity that actually entered any wastestream. This element will provide an estimate that is consistent with the facility's estimation methodology and would therefore be more accurate than calculations that may be made otherwise. Even if the facility did change estimation techniques from the prior year to the reporting year, this calculation will be consistent with the reporting year estimate because it will be calculated using the same methodology.

A less direct way, and one that is more sensitive to year-to-year changes in estimation techniques, production levels, and other factors that affect quantities entering any wastestream, is to compare the reporting year and prior year estimates for quantities entering any wastestream and attempt to adjust for those factors. An example of such a calculation would be to multiply the prior year quantity entering any wastestream (8.1.B) by the production ratio or activity index to get an estimate for the quantity that would have entered waste streams. The current year quantity entering waste streams (8.1.A) could then be subtracted from that product to obtain an indicator of progress.

This assumes that production change can be directly correlated with the quantity entering any wastestream or released directly to the environment and that there are no factors other than production that affect quantity entering waste streams or released. In certain cases, the level of production does not correlate directly to the quantity of the toxic chemical entering any

wastestream or being released. For example, fugitive releases from open-topped tanks are related to the surface area of the tank rather than the quantity in the tank or throughput of the tank. In addition, many other factors can affect the quantity entering waste streams or released directly to the environment.

EPA believes that it is preferable to provide the most accurate and consistent estimates possible and to provide respondent facilities with the opportunity to present their indicators consistently and accurately.

13. *Section 372.85(b)(18)(x)(C) (Question 8.13).* The quantity prevented from entering wastestreams due to source reduction. This is the difference between the quantity that would have entered any wastestream or been released (8.12) and the quantity entering any wastestream or released to the environment in the reporting year (8.1.A). This is the quantification of the impact of the activity(ies) reported in Question 8.11 and is an estimate of the progress due to source reduction in the reporting year. It is a simple arithmetic computation for the respondent and is considered necessary in the evaluation of the ultimate success and progress of pollution prevention programs. A facility may be aware of the general quantity of waste avoided through source reduction programs, so this element is also included to provide a method of checking the accuracy of information reported in Question 8.12.

14. *Section 372.85(b)(18)(x)(D) (Question 8.14).* A list of RCRA hazardous wastes affected by the source reduction activities as indicated in Question 8.11. The list is limited to five RCRA wastes to minimize the burden on respondent facilities and is included to allow cross-referencing hazardous waste Biennial Reports and Form R submissions. This will result in better coordination of EPA reporting requirements, which is consistent with the directives of section 6604(B) of the PPA, and will provide a first step in gaining a more complete understanding of source reduction progress. The capability to cross reference the reported chemical with relevant RCRA hazardous wastes will begin to allow the evaluation of effects that source reduction and recycling and other activities involving individual chemicals have on other chemicals or wastes. A cross reference with hazardous wastes also makes it possible to use Biennial Report and Form R data to perform analyses on the effects of pollution prevention on RCRA hazardous wastes.

15. *Section 372.85(b)(18)(x)(E) (Question 8.15).* Other chemicals reported under section 313 that are affected by the same source reduction activities as indicated in Question 8.11. This list of other TRI chemicals is limited to five in order to minimize the burden on respondent facilities. EPA considers this question essential in making the data collected more useful and meaningful by providing a link with other reported data. This will provide a first step in making a more complete assessment of pollution prevention activities and their effects on chemical releases, and an indication of waste generation and the completeness of a source reduction program at respondent facilities.

Using other Form R and Biennial Report data, users of the data will be able to begin to determine, for example, whether source reduction activities also result in decreased use of other reportable section 313 chemicals. Users will also be able to begin to gather information essential to assess if the source reduction activities result in increased use of other toxic chemicals through substitution or process changes. This element also makes it possible to use Form Rs and Biennial Reports to begin to understand the effects of substitution and process changes on other chemicals. For example, it may highlight a situation in which the reduction of use of one chemical causes an increase or decrease in use of other chemicals. This data will also allow EPA to begin to gather information essential to assessing the effects of source reduction and recycling on relative toxicities of chemical substitutes, especially in the cases where TRI chemicals are substituted in processes for other TRI chemicals.

16. *Section 372.85(b)(18)(x)(F) (Question 8.16).* An indication if optional additional information on source reduction, recycling, or pollution control activities implemented for the reported chemical is included with the Form R submission. This indicator is based on section 6607(d) of the PPA and will be included in the data base so that interested users of the data can refer to the information. EPA is requesting that facilities submitting additional information limit the materials to no more than five pages. Submitters are also asked to limit the descriptions to activities that occurred within 5 years prior to the reporting year. This request is made due to the physical constraints EPA has for handling and storing the amount of paperwork associated with Form R submissions.

EPA requests comments on these proposed data elements and on alternative data elements that might provide useful information, as well as options for linking TRI data with data collected under RCRA Biennial Reports. The Agency also requests comments on how variations in reporting and recordkeeping practices among various industrial sectors would affect their ability to provide the proposed data elements.

17. *NPDES number for POTWs.* Pursuant to its authority under sections 313 and 328 of EPCRA, EPA is proposing to add a new § 372.85(b)(16)(i)(C) to require facilities to report the NPDES permit number for each POTW to which the facility transfers a listed chemical. A definition of POTW would be added to § 372.3. Coordination of Federal data collection activities is also a goal of the PPA, and the NPDES number will provide EPA with a vital link with which to cross-reference TRI data with other data on discharges to POTWs. This unique identifier will help Federal and State regulators to assess the potential impact of releases on specific POTWs and the extent to which pollution prevention activities may minimize those impacts. This additional element is not considered burdensome because the NPDES number can be readily obtained from the POTW.

Under current reporting requirements, only information on names and addresses are included for POTWs. Names and addresses of POTWs are often reported differently, especially in those cases, such as large cities, where the reporting facility may list either the name of the municipal sanitation district, which may operate several POTWs, or a specific treatment works. The NPDES number would provide TRI data users with a unique identifier that would eliminate that confusion.

18. *Reporting recycling data for off-site transfers.* The PPA requires reporting of information on amounts of toxic chemicals recycled off-site. As previously noted in § 372.85(b)(18)(iii), EPA is proposing that facilities report amounts sent off-site for the purposes of recycling. EPA believes it is appropriate to report this information in a manner that is consistent with current reporting of off-site transfers for treatment or disposal as provided in § 372.85(b)(16)(ii)(B) (currently reported in Section 6 of the form). Providing the same level of detail for information on off-site transfers for recycling would maintain consistency for information reported on all off-site transfers.

EPA is therefore proposing to add recycling to § 372.85(b)(16)(ii)(B). Facilities would provide the location of the off-site recycling operation, the amount of the chemical in wastes sent there, and the process of recycling used there. Other information on treatment

and disposal currently required to be reported under paragraph (b)(16)(ii)(B) would not be affected, and EPA is not requesting comment on this currently requested information.

B. Reporting Elements Effective for the 1992 Reporting Year

EPA is proposing to amend § 372.85(b)(17) to require a greater level of detail for information submitted for on-site recycling activities for the 1992 reporting year. EPA is also proposing to modify the on-site waste treatment data elements to make the level of detail of information collected for on-site recycling commensurate with that collected for on-site waste treatment. This will also provide EPA data that will allow better assessment of trends in both recycling and waste treatment.

1. On-site recycling activities. For the 1991 reporting year, respondents would be reporting only the predominant method of on-site recycling used (in Section 8.2.E). For the 1992 reporting year, EPA is proposing in § 372.85(b)(17)(ii)(B) that respondents provide information about on-site recycling by the general type wastestream (aqueous, nonaqueous, gaseous, or solid) containing the chemical. The information to be reported would include the type of wastestream containing the chemical being recycled, the method of recycling used on each wastestream, and the amount of the chemical recycled from each wastestream. Section 6607 of the PPA requires that the amounts recycled and the processes of recycling used be reported. This level of detail fully implements the PPA and makes reporting of recycling activities commensurate with reporting of treatment activities.

While these modifications represent an additional level of detail, it should be noted that much of this can be generated from data currently reported or data used to provide other quantities. Indeed, the aggregate quantities provided in the revised section 8 of the form would be based on the summation of the quantities of chemical contained in individual wastestreams. This additional data for the 1992 reporting year will provide for respondent facilities to report all of the recycling processes used on-site and the quantities of the reported chemical(s) resulting from those processes. It also provides EPA, as well as all TRI data users, with more complete, useful, and accurate data with which trends in recycling processes used and their associated volumes can be assessed. Similarly, the modifications to the data elements for on-site waste treatment will provide EPA and other TRI data users with pertinent data with which to assess trends in waste treatment methods and their associated volumes.

2. On-site waste treatment. Up to and including the 1990 reporting year, respondent facilities reported information on on-site treatment activities that included the type of wastestream containing the chemical, the treatment method, the range of influent concentration, an indication if the treatment method was part of a sequential treatment operation, an estimate of the efficiency of the treatment method, and an indication if the efficiency estimate is based on operating data. The modifications EPA is proposing in § 372.85(b)(17)(ii)(A) for the 1992 reporting year would eliminate the need to report the range of influent concentration, the indication of sequential treatment, and the indication if the estimate is based on operating data. Providing influent concentrations would no longer be necessary because quantities would be reported instead, which would provide more meaningful information. Reporting of the treatment methods would be reorganized so that sequential treatment activities could be reported in a more organized format, with an indication of the overall treatment efficiency. To fully implement the requirements of the PPA for reporting treatment information and to make recycling and treatment reporting commensurate, respondents would also report the amount of the chemical entering the reported treatment method or sequential activity.

To allow industry time to adjust to the new reporting requirements and to reduce the initial burden for reporting, EPA is proposing to phase-in the additional data beginning with the 1992 reporting year.

C. Issues in Reporting Quantities Recycled

1. *Reporting amounts resulting from (exiting) on-site recycling processes.* Section 6607(b)(2) of the PPA requires respondent facilities to report the amount of the chemical from the facility which is recycled (at the facility or elsewhere). EPA recognizes that this language could reasonably be interpreted to require either the amount entering a recycling process or the amount exiting (recovered from) a recycling process. However, EPA believes that the most appropriate option for reporting amounts recycled on-site is the amount exiting a recycling process.

EPA believes that the amount physically recovered by recycling is the most useful and accurate piece of information for analyzing trends in recycling. For example, it represents the quantity that is returned for use or reuse, thereby eliminating the need for new raw material or feedstock. EPA believes that respondent facilities equate "amounts recycled" with the amounts recovered from a recycling operation: discussions with industry representatives and experience gained in the pilot study of an early draft of the revised Form R (discussed in unit IV.B of this preamble) support this belief. In the pilot study, facilities were asked to provide the quantities entering recycling processes. Despite that direction, facilities provided the quantities actually recovered (exiting) from recycling processes. While the study is not representative of the total TRI respondent community, EPA believes it is indicative that the most readily available information for industry is the amount of the chemical recovered from (exiting) recycling processes.

EPA could require facilities to report amounts entering recycling processes. Reporting the amount entering recycling would accurately credit the amount of the reported chemical that a respondent facility is attempting to recover through recycling. To avoid misinterpretations of the data, and to obtain useful information on trends and progress in recycling, EPA would also want to obtain an estimate of the efficiency of the recycling processes reported. The efficiency estimate would provide EPA and other data users with the capability to calculate the amounts of chemical actually recovered from recycling processes and would make reporting of on-site recycling comparable to reporting of on-site treatment. This would also require an additional data element which increases the burden on respondent facilities for providing the data and on EPA for managing the data.

Requiring the amount entering on-site recycling would also be consistent with the approach of requiring the submitter to provide the amount sent off-site for the purposes of recycling. However, as explained in unit II.A of this preamble, quantities sent off-site for the purposes of recycling, not the quantities recovered (exiting) from recycling off-site, are required due to practical constraints in reporting. EPA does not believe it is reasonable for respondent facilities to know the quantity of a chemical that is being recovered through an off-site recycling operation.

Reporting the amount entering recycling on-site would include quantities that will be released from or destroyed in the recycle process and not returned to further use. Reporting the

amount actually returned to use (exiting recycle) avoids misinterpretations that may occur, such as crediting the released or destroyed amount as "recycled." This method may also create an apparent double counting of the quantity of the chemical in waste. For example, some recycle processes may be components of waste treatment operations. In such cases, the facility will be estimating the amount entering those operations as well as the amount entering the recycling processes. This would give an erroneous impression that there is more of the chemical in wastestreams than there would be in actuality.

EPA requests comment on whether the amount recycled on-site should be represented as the amount entering or exiting (recovered) recycling processes. Comments should address this issue both from the standpoint of what is most practical for submitters of the data and what provides the greatest utility to users of the data.

2. *Reporting amounts combusted for heat or energy recovery.* Up to and including the 1990 reporting year, facilities were not required to report amounts of a toxic chemical transferred off-site for purposes of further use, reuse, or recycle. Facilities were also not required to report on amounts of toxic chemical reused or recycled on-site and were not required to identify the process of reuse or recycling.

Facilities have been required to report on Form R amounts of toxic chemicals in wastestreams transferred off-site for purposes of further treatment or disposal and the locations of those off-site facilities. Reporting also was required on waste treatment methods and efficiency for on-site treatment, and on the general method used by off-site facilities to treat or dispose the chemical.

The PPA and reporting provisions outlined in this proposal change those past requirements beginning with the 1991 reporting year and subsequent years. Facilities must report separately on amounts of the chemical in wastestreams that are recycled (either on-site or off-site) and amounts that are treated (either on-site or off-site).

Up through the 1990 reporting year, quantities of toxic chemical sent off-site to be combusted for the purposes of heat or energy recovery (used as fuel) were considered sent off-site for purposes of further use. Such transfers were thus not reportable as off-site transfers for the purposes of treatment or disposal and were thus not reportable at all. The draft Form R would require that combustion for energy or heat recovery be reported as treatment rather than recycling for the reasons outlined below.

The option of reporting combustion for energy and heat recovery as treatment was selected because it will maximize the amount of relevant information obtained for such activities. Data on the effectiveness of combustion would be provided because the reporting requirements for on-site treatment include an indication of treatment efficiency. In addition to the quantity information proposed for collection beginning with the 1992 reporting year, this measure provides a more relevant basis to evaluate and assess trends in energy and heat recovery. This option imposes a lesser burden on respondent facilities than if the quantities were reported as recycled as facilities will not have to report quantities anticipated to be combusted for heat or energy recovery in the 2 years following the reporting year.

EPA realizes that reporting quantities combusted for energy or heat recovery as amounts treated (either on-site or off-site) could make comparisons with prior year totals more difficult. EPA recognizes that this change in reporting policy may result in an apparent increase in the amounts reported as either treated on-site or sent off-site for treatment for certain respondents. Users of TRI data must be aware of this when preparing analyses and comparisons.

The instructions for Form R will contain treatment codes that distinguish combustion for heat or energy recovery from incineration for destruction. Using these codes, which will continue to be supplied in the data base, analyses can be conducted to differentiate the quantities combusted for heat or energy recovery and the quantities incinerated for destruction. EPA-performed analyses will note these differences as appropriate.

EPA believes that it is important to coordinate EPA-administered reporting requirements to the extent possible in order to reduce duplication of effort and minimize confusion. In particular, EPA is developing reporting requirements for the 1991 RCRA Biennial Report, including requirements relating to heat and energy recovery. Three other options for reporting quantities combusted for heat or energy recovery under the PPA are under consideration by EPA and will receive further evaluation when EPA determines its reporting requirements for the RCRA Biennial Report. One is to require that quantities combusted be reported as either recycled or treated, depending on whether the chemical is contributing to the fuel value of the combusted waste(s). A second is to report those quantities as recycled, and a third is to develop a separate reporting category for such quantities.

i. *Report quantities as either recycled or treated, depending on fuel value.* EPA could require that quantities combusted be reported as either recycled or treated, depending on whether the chemical is contributing to the fuel value of the combusted waste(s). EPA could develop a British Thermal Unit (BTU) threshold value to determine if a chemical is contributing to the fuel value of the waste(s). If the chemical is combusted in some form of waste-to-energy device, such as a boiler, and the chemical has a BTU value equal to or above the threshold, the quantity would be reported as recycled. If the chemical is not combusted in some form of waste-to-energy device, or if the chemical has a BTU value below the threshold, then the quantity would be reported as treated. The threshold could be the same as that used under RCRA to distinguish between energy recovery and incineration (48 FR 11158, March 18, 1983), a minimum of 5,000 BTU per pound.

Two alternatives for this option would be to consider solely the BTU value of the reported chemical, as illustrated above, or to consider both the BTU value of the chemical and the wastes that contain the chemical. If the chemical is a constituent of RCRA wastes that are combusted, and both the chemical and the wastes each have a BTU value greater than or equal to 5,000 BTU per pound, then the chemical would be reported as combusted for heat or energy recovery and as recycled if the combustion is in some form of waste-to-energy device. If the chemical is a constituent of RCRA wastes and those wastes have a value of less than 5,000 BTU per pound, then regardless of the BTU value of the chemical, the chemical would be reported as incinerated for destruction and as treated. If the chemical is not a constituent of RCRA wastes, the determination is then based on the BTU value of the chemical and if it is being combusted in some form of waste-to-energy device.

EPA could provide a list of all chemicals subject to section 313 reporting that have BTU values of 5,000 BTU per pound or greater in the instructions for Form R, or could require respondents to research the information, in order for the respondents to make such determinations. EPA recognizes that this reporting option can be complex and burdensome. These determinations could be easily confused and could lead to the reporting of inaccurate information.

ii. *Report quantities combusted as recycled.* An alternative option is to continue to classify combustion for heat or energy recovery as recycling. Under this approach, any reported chemical that contributes to the fuel value of materials combusted in some form of waste-to-energy device would be reported as recycled. The entire amount of the chemical in wastes sent off-site for the purposes of such combustion would be reported.

For on-site recycling activities, facilities are required to report the amount of chemical exiting the process. This can be confusing in the case of combustion because the chemical is not truly physically recovered, with the exception of any residuals of the chemical that may be in bottom or fly ashes that are collected. The simplest method for reporting such quantities would be to multiply the amount entering the combustion process by the efficiency of that process and report the result as the amount recycled.

Another method for reporting quantities of chemical combusted on-site for heat or energy recovery would be to enter a zero as the amount recycled because none of the chemical is physically recovered, even though a certain mass equivalent of energy is obtained. An alternative would be to report the entire amount entering combustion as recycled because the mass equivalent of energy would be obtained from the chemical in the process. This would be highly inaccurate, however, because no combustion process is 100 percent efficient and the amount recycled would be overstated.

iii. *Creation of a separate reporting category.* The final option considered by EPA is to create a separate reporting category for quantities combusted for heat or energy recovery. However, there is no clear statutory mandate for such a separate reporting category. The effect would be to not include those quantities in the totals reported as either treated or as recycled. At issue is if EPA should require estimates for the prior year and the 2 years following the reporting year. If respondents were not required to report estimates of amounts anticipated to be combusted in the 2 years following the reporting year, the implicit decision is to consider combustion for heat or energy recovery as treatment. If respondents were required to report estimates of amounts anticipated to be combusted in the 2 years following the reporting year, then the implicit decision is to consider combustion for heat or energy recovery as recycling. EPA does not consider this option as offering any significant advantages over the other options. While the separate reporting category would make a clear distinction between quantities combusted for heat or energy recovery and other quantities treated or recycled, the same distinction can be made using the codes identifying specific recycling and treatment activities that would be provided for the other reporting schemes.

3. *In-process recycling.* Under the PPA, information on source reduction would be required for the first time. Under PPA section 6603(5)(A), "source reduction" includes any practice that "reduces the amount of any hazardous substance, pollutant, or contaminant entering any wastestream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal" and reduces the hazards to public health and the environment. PPA section 6603(5)(B) specifies that "source reduction" does not include any practice that alters the characteristics or volume of a hazardous substance, pollutant, or contaminant "through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service."

The primary issue raised by this definition is how to identify processes and activities that are "integral to and necessary for" a product or service. EPA believes that questions about the meaning of this phrase are most likely to arise in connection with activities that involve reuse of a chemical within a production process, particularly activities that involve some form of reclamation (e.g. distillation or sedimentation) prior to reuse of the chemical within the process. The major concern is how to distinguish this type of "in-process recycling" from recycling or treatment activities that occur after a waste has been generated.

For purposes of reporting, an in-process recycling activity would be considered source reduction if it is solely dedicated to the process and is physically integrated with the process by means of piping or some other conveyance system. Activities or processes that do not meet these criteria would be considered recycling processes rather than source reduction.

The Agency realizes that this definition of in-process recycling may exclude some activities that could potentially be considered integral to and necessary for the production of a product or providing of a service. However, EPA believes that it is important to draw as clear a line as possible between source reduction and recycling, to minimize confusion, reduce the reporting burden, and assure that facilities report their activities consistently.

One alternative considered by EPA was to exclude from the definition of "source reduction" all activities or processes that involve any type of recovery or reclamation of a chemical prior to reuse within the process. This definition of source reduction would be quite restrictive but would have the advantage of being straightforward to understand and administer. EPA solicits comment on this and other alternative definitions of "source reduction."

D. Other Source Reduction and Recycling Reporting Elements Considered

Other source reduction and recycling reporting elements that were considered for this proposal are grouped in the following categories: (1) More detailed information to assess effects of pollution prevention activities; and (2) mass balance or materials accounting information.

1. *Pollution prevention activities.* The first set of additional data elements that was considered would specifically address impacts on each environmental medium; this would require several additional questions to explain effects of source reduction activities on releases to air, water, land, and off-site transfers. Using this approach, respondents would need to explain the effects of source reduction activities on the amounts of the chemical entering wastes that subsequently become releases or transfers off-site. This information could be very useful and could add to the understanding of the value of specific source reduction activities on specific media releases.

A second set of data elements to aid in better understanding of the effects of pollution prevention would expand on the question on changes in estimation methods, accounting practices and point of estimation to require estimates of release values that could be more directly compared to previous year releases. The 1988 TRI National Report, "Toxics in the Community, National and Local Perspectives" (GPO # 055–000–00363), states that total reported releases and transfers in 1988 were 6.2 billion pounds compared to 7.0 billion pounds the previous year. However, the report also states that most of the reported changes were not due to pollution prevention.

When EPA researched the reasons why the 10 facilities with the greatest reductions in TRI releases from 1987 to 1988 reported lower releases for 1988, the Agency found that most of the

reductions were due to changes in methods of estimation rather than implementation of specific source reduction techniques. The Agency considered requiring respondents to quantify those differences, but rejected this data element due to burden considerations in favor of a Yes or No indication of whether the methods of developing release estimates had changed.

2. *Materials accounting data.* Materials accounting information would include additional data elements such as quantity of chemical input into processes, consumed in process, entering product, destroyed in treatment, and other related information. This information allows a rough calculation of the "efficiency" of a process--quantity input compared to quantity output in products or quantity entering waste. Although materials accounting information is sometimes seen as a substitute for information on source reduction and recycling activities and effects on wastes and releases, both types of information are needed. Although materials accounting information would be useful in providing a more comprehensive understanding of source reduction and recycling activities and their results, the burden on respondents and EPA of collecting and managing this data must be weighed against the benefits of the data. The proposed data elements provide sufficient information to assess general pollution prevention and recycling progress.

III. Draft Instructions

This unit presents for review and comment the draft instructions for completing the draft revised sections 6, 7, and 8 of EPA Form R.

Instructions for Completing Section 8, "Source Reduction and Recycling Activities"

This section includes the new data elements mandated by section 6607 of the Pollution Prevention Act of 1990 (PPA). Section 8 is now a required section of Form R and must be completed. This is the first reporting year these data are being collected. They are included in the Form R for reports due on or before July 1, 1992, covering source reduction and recycling activities in calendar year 1991. You are not required to amend previous year's submissions to include this information.

In Section 8, you must provide detailed information about source reduction and recycling activities related to the toxic chemical for which releases are being reported. For all appropriate questions, report only the quantity of the reported toxic chemical (in pounds per year). Do not include the weight of water, soil, or other waste constituents. When reporting on a metal compound, report the source reduction and recycling activities involving only the parent metal. All amounts must be reported in whole numbers and only two significant figures are required.

Sections 8.1 through 8.10 must be completed for each toxic chemical. Sections 8.11 through 8.16 must be completed only if a source reduction activity was newly implemented specifically (in whole or in part) for the reported toxic chemical during the reporting year. Implementation of a source reduction activity at any time during the reporting year, including initiating a multi-year project, requires that sections 8.11 through 8.16 be completed.

Definitions

For the purposes of this reporting requirement only, the following definitions apply to completing section 8 of Form R, as well as to the rest of Form R. These definitions are not intended for use in determining, under the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations, whether a secondary material is a waste when recycled. These definitions also do not apply to the information that may be submitted in the Biennial Report required under RCRA.

Any differences in terminology and reporting requirements, where they occur, are largely because EPCRA and the PPA have a chemical-specific focus, while RCRA and the Biennial Reports have a wastestream-specific focus. For example, a RCRA waste containing a section 313 toxic chemical is recycled to recover certain constituents of that waste but not the toxic chemical. The toxic chemical simply passes through the recycling process and remains in the residual from the recycling process. While the waste as a whole would be considered recycled under RCRA, the toxic chemical constituent would not be considered recycled under section 313. In this instance, the toxic chemical would be reported under section 313 as undergoing treatment, because it may have been incidentally treated during the recycling process and may undergo further treatment or disposal.

"Wastestream" for the purposes of reporting on Form R is a chemical or mixture of chemicals that is generated by any process at the facility prior to recycling, treatment, or disposal and is not further used in any other process within the facility or elsewhere without prior treatment or recycling. A process output stream that becomes a feedstock for a separate production process is not considered a wastestream if the toxic chemical is not treated or recycled prior to entering that other process. A toxic chemical that is recycled in-process is not considered a wastestream.

For example, a refining facility uses glycol ethers as solvents. During use, the glycol ethers become contaminated with dioxane. The contaminated solvents are transported to an on-site recovery unit that removes the dioxane; the glycol ethers are then transported to another process to be used again as solvents. Because the spent glycol ethers had to be recycled before the toxic chemical could be used in the other process, the spent glycol ethers generated are considered a wastestream and the amount must be included as such for all Form R calculations. If the contaminated glycol ethers could have been used in the other process without first undergoing treatment or recycling, then the stream would be considered a process stream and not a wastestream. If the recovered glycol ethers were returned to the original process and the on-site recovery unit was solely dedicated to that original process, then the glycol ethers would be considered recycled in-process.

"Source reduction" is any action or technique that reduces or eliminates the amount of a toxic chemical entering a wastestream. Source reduction also includes in-process accident prevention measures. Actions taken to recycle, treat, or dispose of a toxic chemical once it has entered a wastestream are not considered source reduction activities.

For example, a facility assembles and paints furniture. Both the glue used to assemble the furniture and the paints contain listed toxic chemicals. Usage projections predicted that 30,000 pounds of glue would be needed for the calendar year. However, mid-way through the year the facility exceeded the usage projection and the amount of waste glue generated was close to half of the purchased amount. By examining the gluing process, the facility discovered that a new drum of glue is opened at the beginning of each shift, whether the old drum is empty or not. By adding a mechanism that prevents the drum from being changed before it is empty, glue usage and waste glue generation is greatly reduced. As a result, this activity is considered source reduction. The painting process at this facility generates a solvent waste which is collected and recovered. The recovered solvent is used to clean the painting equipment. Because the solvents cannot be reused unless they are subjected to recycling, the solvents are considered a wastestream.

Recycling does not reduce the amount of toxic chemical entering wastestreams and, therefore, it is not considered a source reduction activity.

In-process recycling is the reuse or recirculation of a toxic chemical within a production process, and may involve recovery or reclamation. For the purposes of reporting on Form R, in-process recycling is considered a source reduction activity if it is solely dedicated to and physically integrated with the (production) process by means of piping or some other means of conveyance. For example, the return of unreacted feedstocks to a reactor in a continuous process would be considered in-process recycling. Quantities of the toxic chemical going through in-process recycling as defined here should not be reported as entering wastestreams, nor should they be reported as recycled on-site. In-process recycling first implemented during the reporting year should be recognized as a source reduction activity in sections 8.10 and 8.11. This definition is similar in scope to the RCRA classification of secondary materials that are generated and reused in a continuous or on-going production process as non-wastes (40 CFR 260.30) and to the RCRA definition of closed loop recycling (40 CFR 261.4(a)(8)). Providing that the reported toxic chemical is actually recycled, an activity that qualifies as closed-loop recycling under 40 CFR 261.4 will thus be considered in-process recycling for purposes of this reporting requirement.

"Recycling" activities, either at the facility or off-site, include but are not limited to the reuse, further use, reclamation, or extraction of the toxic chemical through a process or activity that is separate from the process or activity that produced the waste. This includes recycling where the recycled toxic chemical is used for its original purpose or for a different one.

For the purposes of this reporting requirement, recycling includes reuse or further use only if the toxic chemical is reclaimed or recovered prior to that further use or reuse. A toxic chemical that is reused or further used without being reclaimed is not considered recycled; it is considered a feedstock for the next process in which it is used. For the purposes of this reporting requirement, further use of a toxic chemical as a fuel (i.e., combustion of the toxic chemical for heat or energy recovery) is not considered recycling. Therefore, any amount of toxic chemical in a wastestream that is combusted or incinerated must be reported as an amount entering treatment. It is important to note that this reporting requirement does not change in any way the regulatory status, under RCRA, of wastes entering a combustion process. Further, any reporting differences that may occur between RCRA and EPCRA or the PPA do not imply that the Agency is revisiting the recycling and treatment standards for wastes under RCRA when such wastes are subjected to a combustion process.

Column A Reporting Year

Both columns A and B are applicable only to sections 8.1 through 8.5. Quantities for sections 8.1 through 8.5, column A must be reported for the current reporting year, during which data for the Form R were collected. For example, for reports due July 1, 1992, the reporting year is 1991 - the data collection year.

Column B Prior Year

Quantities for sections 8.1 through 8.5, column B must be reported for the year immediately preceding the reporting year. However, for the first year of reporting these data elements, prior year quantities are required only to the extent such information is available. EPA believes that such data should be available, especially in those cases where the facility has filed a Form R for the prior year. In the event that sufficient data are not available, enter not applicable, "NA." For the 1992 reporting year and beyond, however, the prior year estimate will be required.

Information available at the facility that can be used to estimate the prior year's quantities include the prior year's Form R submission and the supporting records and documentation, production ratio or activity index, production records, hazardous waste reports, incident or release reports, and recycling or treatment process operation logs.

Column C Following Year

Both columns C and D are applicable only to sections 8.1 through 8.3. Quantities for sections 8.1 through 8.3, column C must be estimated for the year immediately following the reporting year. For example, for reporting year 1991, estimates for the following year would represent calendar year 1992. EPA expects reasonable estimates using a logical basis of future quantities. Information available at the facility to estimate quantities of the chemical expected to enter wastestreams during this year include market projections, expected contracts, anticipated new product lines, company growth projections, planned source reduction activities, and production capacity figures.

For example, a pharmaceutical manufacturing facility uses a listed toxic chemical in the manufacture of a prescription drug. The company has recently received approval from the Food and Drug Administration to begin marketing their product as an over-the-counter drug beginning in 1992. As a result of this new market, the company estimates that sales and subsequent production of this drug will increase their use of the listed toxic chemical by 30 percent. Therefore, the facility can estimate the amount of toxic chemical entering wastestreams for the following year by adding an additional 30 percent to the amount of toxic chemicals entering wastestreams in the current reporting year.

Column D Second Year

Quantities for sections 8.1 through 8.3, column D must be estimated for the second year following the reporting year. For example, for reporting year 1991, estimates for the second year would represent estimates for calendar year 1993. EPA expects reasonable estimates using a logical basis of future quantities. Information available at the facility to estimate quantities of the chemical expected to enter wastestreams during this year include market projections, expected contracts, anticipated new product lines, company growth projections, planned source reduction activities, and production capacity figures.

Column E Process

Column E is only applicable to section 8.2. You must indicate what recycling process was used, if any, on the reported toxic chemical during the reporting year. Enter only one of the recycling codes given for section 8.2 in these instructions. If more than one code applies to the reported toxic chemical, report the code representing the recycling process that resulted in the largest quantity of the reported toxic chemical recycled. If no on-site recycling was conducted during the reporting year, enter not applicable, "NA."

8.1 Quantity prior to recycling, treatment, or disposal entering wastestreams or released to the environment. For section 8.1, report the quantity of the toxic chemical prior to any recycling, treatment, or disposal entering any wastestream or released to the environment for: (A) The reporting year; (B) the prior year; (C) the following year; and (D) the second year following the reporting year.

The quantity reported in section 8.1 must include amounts of the toxic chemical: (1) Entering wastestreams prior to treatment or recycling; (2) disposed of on-site or released directly to the environment without any prior treatment or recycling; (3) transferred

off-site without any prior treatment or recycling. Include in this total releases made directly to the environment such as fugitive or other direct releases of the toxic chemical that occurred prior to any treatment or recycling. For example, releases such as tank breathing losses, direct releases to water, fugitive air emissions from processes, and stack releases that are untreated are to be included. Do not include those releases that occur during treatment, disposal, or recycling operations.

The quantity entered in section 8.1 also should include amounts of the toxic chemical that result from spills, leaks, equipment clean-out, and other events routinely associated with production processes, regardless of frequency or anticipation of such events.

Do not double count both the amount of a toxic chemical entering a waste treatment process and fugitive or other subsequent releases that may occur during that treatment process. In this case, include only the amount entering the waste treatment process. Similarly, do not include in section 8.1, any amount entering a recycling activity after exiting a waste treatment process. For sequential treatment processes, include in section 8.1 only the amount entering the first step of the process.

Do not include in section 8.1 any quantities of the toxic chemical released into the environment due to remedial actions; catastrophic events such as earthquakes, fires, or floods; or unanticipated one-time events not associated with the production process such as tank ruptures or reactor explosions. These quantities should be reported in section 8.6.

In addition, do not include in section 8.1 the quantity of the toxic chemical involved with in-process recycling on-site. These quantities are considered part of the manufacturing process because they are being returned or recirculated and have not yet become wastes. However, any fugitive or other releases of the toxic chemical from such in-process activities must be included in section 8.1.

Some of the information necessary for completing section 8.1 may already have been collected for preceding Sections of Form R. Specifically, estimates made for Part II, Section 5, "Releases of the Chemical to the Environment," Section 6, "Transfers of the Chemical in Waste to Off-Site Locations," and Section 7, "Waste Treatment Methods and Efficiency," should be reexamined. The information reported in these sections can help to identify where recycling, treatment, or disposal occurs.

For example, section 5 will help you identify where direct releases to the environment on-site occur. Similarly, section 6 will identify amounts sent off-site for treatment, disposal, or recycling. By comparing the information in sections 5 and 6 to section 7, you can identify if any on-site treatment was conducted on the chemical before it was released or sent off-site. If pretreatment was conducted, influent concentration or treatment efficiency data or other collected information can be used to calculate amount of the toxic chemical entering wastestreams prior to treatment. If pretreatment was not conducted, the amount can be directly included in the quantity for section 8.1. It is important to remember that amounts included in the quantity for section 8.1 must be amounts calculated prior to recycling, treatment, disposal, or direct transfers off-site.

Most releases and disposal on-site reported in Part II, Section 5 and transfers off-site reported in part II, section 6 of Form R may have undergone on-site pretreatment prior to being released to the environment, disposed of, or sent off-site. For example, discharges to POTWs must often meet pretreatment standards for pollutant levels and often require pretreatment before being sent to the POTW. In all cases, part II, section 7 should be examined to identify on-site treatment activities.

Another calculation method that could be used for section 8.1 is mass balance. A mass balance calculation can be performed for the production process to either calculate part or all of the quantity for section 8.1 or to check the reasonableness of the estimate you calculated using another estimation technique. For purposes of a mass balance, the production process includes reactors, blending tanks, and coating booths, but does not include any waste treatment processes.

Begin with the amount of the toxic chemical that entered the production process and subtract any amounts consumed in the process, or contained in the product. The remainder represents the amount of toxic chemical in wastestreams or released to the environment from the production process prior to recycling, treatment, or disposal.

8.2 Quantity recycled on-site. For section 8.2, report the quantity of the toxic chemical that is recycled (i.e., the quantity of the chemical exiting or resulting from the recycling operation) on-site for: (A) The reporting year; (B) the prior year; (C) the following year; and (D) the second year following the reporting year. It is important to remember that the quantity reported in section 8.2 is the quantity that resulted from recycling (i.e., recovery) on-site, not the amount that entered the recycling process. In section 8.2.E, enter the appropriate code from the list below for the on-site recycling process used on the reported toxic chemical. If more than one recycling process is applied during the reporting year, enter the code for the recycling process resulting in the largest annual quantity of toxic chemical recycled. The following codes represent on-site recycling processes. Report the code that represents the method by which more than 50 percent of the reported toxic chemical is recycled (on-site).

R11 Solvents/organics recovery — batch still distillation
R12 Solvents/organics recovery — thin-film evaporation
R13 Solvents/organics recovery — fractionation
R14 Solvents/organics recovery — solvent extraction
R19 Solvents/organics recovery — other
R21 Metals recovery — electrolytic
R22 Metals recovery — ion exchange
R23 Metals recovery — acid leaching
R24 Metals recovery — reverse osmosis
R26 Metals recovery — solvent extraction
R27 Metals recovery — high temperature metals recovery
R28 Metals recovery — retorting
R29 Metals recovery — secondary smelting
R30 Metals recovery — other
R40 Acid regeneration
R99 Other reuse or recovery

Quantities recovered or reclaimed before being used as a raw material for a different process should be reported as recycled. For example, pyrometallurgy is a metals recovery technique that should be reported as recycling, not treatment.

Do not report amounts subject to incineration, thermal treatment, or combustion for heat or energy recovery as recycling. These activities are to be reported as treatment. Do not include any quantity entering into or exiting from in-process recycling. These materials are not considered waste because they are considered an integral part of the process and not as undergoing waste management.

This quantity for section 8.2 may be estimated using data collected and estimates made for part II, section 7 "Waste Treatment Methods and Efficiency." In section 7, estimates are made to determine the efficiency of on-site treatment processes. Also, section 7 includes codes for on-site recycling processes. An estimate of the amount of toxic chemical recycled on-site can be calculated for section 8.2 by using already collected influent or effluent concentration data and the efficiency of the process. Remember, it is the amount

that is recycled (i.e., recovered), not the amount entering recycling, that must be reported in section 8.2.

For example, an organic coatings manufacturer uses toluene both as an ingredient in their coating formulations and to clean blending tanks. The spent toluene which is generated when making the coating formulation is collected and sent to an on-site distillation unit to be reclaimed. Reclaimed toluene is then used to clean the blending tanks. When collecting data for section 8.1, it was determined that 600,000 pounds of toluene were used in the formulation process and 6,000 pounds of toluene was sent to the distillation unit to be reclaimed. When collecting data for part II, section 7, an efficiency of 96 percent was calculated for the distillation unit based on influent and effluent concentration data. Therefore, the amount of toluene recycled on-site is equal to 96 percent of the 6,000 pounds sent to the distillation unit, or 5,760 pounds. Reporting to two significant digits, 5,800 pounds would be entered in section 8.2 if this is the only on-site recycling of toluene.

8.3 Quantity sent off-site for recycling. For section 8.3, report the quantity of the toxic chemical that is or will be sent off-site for recycling for: (A) The reporting year; (B) the prior year; (C) the year following the reporting year; and (D) the second year. For 8.3(A) and 8.3(B), report only those quantities of the toxic chemical that you can document as being sent to an off-site location for the purpose of recycling. Report the amount of toxic chemical that was sent to the off-site recycler, not the amount of that chemical ultimately recovered or reused by the off-site recycler. Do not include in section 8.3 quantities that are sent off-site for the purposes of incineration, thermal treatment, or combustion for heat or energy recovery. These activities are considered treatment and should be reported in section 8.5 as amounts sent off-site for treatment.

Information for completing 8.3.A should be available in data provided in Part II, Section 6, "Transfers of the Chemical in Waste to Off-Site Locations," which includes transfers off-site for recycling. Quantities sent off-site for recycling can be most easily tracked by billing records and invoices for services rendered by these companies. If the chemical was contained in a waste that was sent to a waste service or broker with no action specified, billing records and invoices should be checked to determine if the chemical was treated, disposed, or recycled. In many cases, a toxic chemical will be recycled based on the profitability of recycling the toxic chemical. For example, precious metals in wastes, in most cases, will be recycled rather than treated and/or disposed. If you are not currently collecting or receiving information from your recycler about the amount sent to be recycled and the recycling process used, you may want to consider requiring this information to be included on your invoices as part of your contract.

8.4 Quantity entering treatment on-site. For section 8.4, report the quantity of the toxic chemical that entered on-site treatment or on-site sequential treatment (including wastewater pretreatment) for: (A) The reporting year; and (B) the prior year. Include in this quantity amounts treated on-site by incineration, thermal treatment, or combustion for heat or energy recovery. For calculating this quantity, include only those amounts of the toxic chemical entering waste treatment or a sequential waste treatment for the first time. Do not double count amounts. Do not include quantities in other steps within a sequential waste treatment operation or that are disposed of on-site. Note that the amounts reported here can be included in the quantity reported in section 8.1.

The necessary data needed to complete section 8.4 may already have been collected to calculate treatment efficiencies for Part II, Section 7 "Waste Treatment Methods and Efficiency." An estimate of the amount of toxic chemical entering treatment on-site can be calculated using influent concentration data, or by working backwards using the treatment efficiency and effluent concentration data to calculate pretreatment amounts. Also, Part II, Section 5, "Releases of the Chemical to the Environment," may include information about the amount of the toxic chemical exiting an on-site waste treatment system if the toxic chemical is discharged to the environment following treatment. This amount could be used in a mass balance calculation to determine the amount of toxic chemical entering the waste treatment. In addition, information such as waste treatment system capacity, and operating, inventory, and production records can also be useful in calculating the quantity of toxic chemical entering treatment on-site.

For example, a facility uses chromium in an electroplating operation. Some chromium is deposited onto the metal parts and the unutilized chromium reacts to form hexavalent chromium. The hexavalent chromium is then sent to the on-site sequential waste treatment process where hexavalent chromium is reduced to trivalent chromium. Calculations made for influent concentration and treatment efficiency in part II, section 7 used monitoring data to determine the effluent concentration and the flow rate of the stream entering the waste treatment process. By multiplying the influent concentration by the flow rate, and using conversion factors to yield pounds per year, you can calculate the amount of chromium that entered the waste treatment process over the calendar year. The effluent concentration should not be used in this calculation because it measures the amount of chromium exiting, not entering, the sequential treatment process.

8.5 Quantity sent off-site for treatment. For section 8.5, report the quantity of the toxic chemical that was sent off-site for the purpose of waste treatment for: (A) The reporting year; and (B) the prior year. Include in this quantity the amounts sent off-site for incineration or combustion with or without heat or energy recovery. Do not include in this quantity any amounts sent off-site for disposal or recycling.

Information necessary to complete 8.5.A should be available in data in Part II, Section 6, "Transfers of the Chemical in Waste to Off-Site Locations." Because section 6 includes information about off-site treatment as well as recycling and disposal of wastes containing the toxic chemical, the off-site activity codes must be examined to separate the amounts sent for disposal or recycling from those sent for treatment. Include only amounts sent off-site that are associated with codes M40, M50, M56, M61, M69, and M73.

Quantities sent off-site for waste treatment can be most easily tracked by billing records and invoices for services rendered by these companies. If the chemical was contained in a waste that was sent to a waste service or broker with no action specified, billing records and invoices should be checked to determine if the chemical was treated, disposed of, or recycled. If you are not currently collecting or receiving information from your off-site waste treatment company about the amount sent to be treated and the waste treatment process used, you may want to consider requiring this information to be included on your invoices as part of your contract.

8.6 Quantity released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes. The purpose of this section is to separate direct releases to the environment that could be reduced or

eliminated by source reduction activities from those releases that are accidental or unpredictable and would require more extensive actions to prevent. For example, spills that could be eliminated by improved handling, loading, or unloading procedures are included in the quantity reported in section 8.1. A total loss of containment resulting from a tank failure is included in the quantity reported in section 8.6. Although such an event could be prevented by better practices, such as routine inspections, it is such an unusual and unanticipated event that source reduction activities do not focus on it.

Similarly, the amount of a toxic chemical spilled or released from normal operations would be included in the quantity reported in section 8.1; however, the releases that result from any remedial action to clean up the spill are included in the quantity reported in section 8.6 because such remedial actions are not predictable and cannot be directly addressed by source reduction.

Finally, releases caused by catastrophic events are reported in section 8.6. Such releases may be caused by natural disasters (e.g., hurricanes and earthquakes) or by large scale accidents (e.g., fires and explosions). These amounts are not included in the quantity reported in section 8.1 because they distort the amount of waste generated that could be reduced by source reduction techniques.

In Section 8.6, enter the total quantity of toxic chemical released into the environment during the reporting year due to any of the following events: (1) Remedial actions, (2) catastrophic events such as earthquakes, fires, or floods, or (3) one-time events not associated with normal or routine production processes.

By checking your documentation for calculating estimates made for Part II, Section 5 "Releases of the Chemical to the Environment," you may be able to identify release amounts from the above sources. You should also check facility incident reports and maintenance records to identify one-time or catastrophic events. Inventory reconciliation and contaminant concentration levels in the environmental media can also provide useful information.

Note that while the information reported for section 8.6 distinguishes between routine and one-time events not associated with production, the information reported in section 5 (the release section) of Form R does not. Quantities reported elsewhere in Form R must include all releases and transfers as appropriate, regardless of whether they arise from catastrophic or other one-time events.

For example, a chemical manufacturer produces a toxic chemical in a reactor that requires low pressure. The reactants and the toxic chemical product are piped in and out of the reactor at monitored and controlled temperatures. During normal operations, small amounts of fugitive emissions occur from the valves and flanges in the pipelines. These fugitive emissions are included in the quantity reported in section 8.1 because they are normal and routine releases that could be reduced or eliminated by source reduction.

However, due to a malfunction in the control panel, the temperature and pressure in the reactor increase, the reactor ruptures, and the toxic chemical is released. Because this release could not be reduced or eliminated by specific source reduction activities, the amount released is included in section 8.6, not section 8.1. In this case, much of the toxic chemical is released as a liquid and pools on the ground. Calculations determine that 1,000 pounds of the toxic chemical pooled on the ground as a liquid. In addition, it was estimated that another 200 pounds of the toxic chemical vaporized directly to the air from the rupture. The total amount released is equal to the amount pooled on the ground plus the amount that vaporized into the air, or 1,200 pounds, which would be entered in section 8.6.

8.7 Changes in accounting practices, estimation methods, or other factors. This data element applies only to the quantity reported in 8.1.A (reporting year) as compared to 8.1.B (prior year). Check "Yes" if your facility has implemented revisions in accounting practices, estimation methods, or monitoring procedures used to develop estimates for section 8.1 this reporting year as compared with the prior year. Check "No" if there were no changes in the way the estimate for section 8.1 was derived for the reporting year as compared to the way the estimate for the prior year was derived.

8.8 Did you add on-site recycling equipment or capacity in the reporting year? Check "Yes" if you expanded your on-site recycling capacity for the toxic chemical during the reporting year. Expansion of recycling capacity includes the addition of new or supplemental recycling equipment as well as any activity that results in an increase in capacity, such as the institution of a new method or process of recycling. This data element does not include the addition of equipment or capacity for in-process recycling activities. The addition of equipment or capacity for in-process recycling should be reported as a source reduction activity in section 8.11.

Check "No" if you did not install new equipment or increase capacity or if you did not recycle the reported chemical on-site during the reporting year.

8.9 Production Ratio or Activity Index. Enter the ratio of reporting-year production to the prior-year production, or provide an "activity index" based on a variable other than production that is the primary influence on the quantity of toxic chemical entering wastes. Acceptable indices include the amount of toxic chemical produced, the amount or number of products produced, the amount of toxic chemical used at the facility, or another factor that is appropriate for your facility. Note that the amount of the toxic chemical used at the facility has already been calculated for the threshold determination.

You do not need to indicate the units on which the activity index is based on Form R. The ratio or index should reflect production or activities most closely associated with the manufacture, process, or use of the reported toxic chemical. Consideration must also be given to the impact of source reduction activities on the production or activity index. For example, if reduction in use of the chemical is implemented as a source reduction activity, then an index based on use of the chemical would be inappropriate.

To determine the index, divide the current year's production (or activity) by the prior year's production (or activity). Examples include:

(1) Amount of toxic chemical produced in 1991 divided by the amount of toxic chemical produced in 1990. For example, a company manufactures 200,000 pounds of a toxic chemical in 1990 and 250,000 pounds of the same toxic chemical in 1991. The index figure to report would be 1.3 (1.25 rounded to two significant digits).

(2) Amount of toxic chemical used throughout the facility in 1991 divided by the amount of toxic chemical used throughout the facility in 1990.

(3) Amount of paint produced in 1991 divided by the amount of paint produced in 1990.

If you report for more than one toxic chemical under section 313 of EPCRA, note that the ratio or index may vary from one toxic chemical to the next.

For example, a chemical manufacturer uses sulfuric acid in numerous processing and otherwise use activities throughout the facility. By examining the calculations made for the section 313 threshold determination, the facility determined that 300,000 pounds of sulfuric acid was processed and 100,000

pounds of sulfuric acid was otherwise used at the facility during the reporting year. To avoid double counting, the facility examined its uses of sulfuric acid and discovered that 25,000 pounds of sulfuric acid was first processed with other ingredients into a mixture that was subsequently used to adjust the pH of the facility's wastewater prior to discharge. Therefore, the total amount of sulfuric used at the facility is equal to 300,000 pounds processed plus 100,000 pounds otherwise used minus the 25,000 pounds that was used twice, or 375,000 pounds. By performing the same analysis on the threshold determination records for the prior year, it is determined that 330,000 pounds of sulfuric acid were used in the prior year. Therefore, the index is equal to the amount used in the reporting year divided by the amount used in the prior year, or 1.1 (1.14 rounded to two significant digits).

As another example, a small toy manufacturer otherwise uses a cleaner that contains a listed toxic chemical to clean toys prior to shipment for packaging. Because the number of toys produced directly affects the amount of cleaner used, and, therefore, the amount of toxic chemical entering wastes, it is an appropriate index. By examining production records, it is determined that 560,000 toys were produced in the reporting year and 520,000 toys were produced in the prior year. By dividing the number of toys produced in the reporting year by the number of toys produced in the prior year, the index is calculated to be 1.1 (1.08 rounded to two significant digits).

8.10 Did your facility implement any new source reduction activity for this chemical in the reporting year? If your facility implemented any new source reduction activities in whole or in part at any time during the reporting year, check "Yes" and complete sections 8.11 through 8.16. If your facility did not implement any source reduction activities for the reported toxic chemical in the reporting year, check "No." If you check "No," do not complete sections 8.11 through 8.16; this portion of the Form R may be left blank.

Source reduction activities reduce the amount of toxic chemical entering any wastestream from process streams prior to recycling, treatment, or disposal as well as reducing direct releases to the environment (air emissions, water discharges, land releases) from processes. Treatment, disposal, and other activities that destroy wastes after they have been generated (e.g., combustion for energy recovery), shifting a toxic chemical in waste from one environmental medium to another (e.g., settling heavy metals out of wastewaters into a sludge), or stabilizing wastes (e.g., solidification), are not considered source reduction activities. Recycling, with the exception of in-process recycling, is not considered source reduction.

The following are examples of activities that are not considered source reduction activities which must be reported as treatment or disposal activities:

-Incineration or other thermal treatment for destruction.

-Installation of a filter press or other equipment to reduce water content.

-Treatment to reduce volume or toxicity.

-Installation of a scrubber on an incinerator.

-Sending the toxic chemical off-site for treatment or disposal.

-Combustion for heat or energy recovery.

8.11 Source reduction activities and the methods used to identify them. Indicate the source reduction activities that have been newly implemented during the reporting year for the reported toxic chemical. Enter the appropriate code from the list below for each type of source reduction activity implemented in the reporting year for the reported toxic chemical.

This list is basically the codes provided in the RCRA biennial report, but is not all inclusive. If you have implemented an activity that is not listed, but is successful in reducing the amount of toxic chemical entering wastes, enter the appropriate "Other" code that best corresponds to the general source reduction category.

Source Reduction Activity Codes:

Good Operating Practices

W13 Improved maintenance scheduling, recordkeeping, or procedures

W14 Changed production schedule to minimize equipment and feedstock changeovers

W19 Other changes in operating practices

Inventory Control

W21 Instituted procedures to ensure that materials do not stay in inventory beyond shelf-life

W22 Began to test outdated material — continue to use if still effective

W23 Eliminated shelf-life requirements for stable materials

W24 Instituted better labeling procedures

W25 Instituted clearinghouse to exchange materials that would otherwise be discarded

W29 Other changes in inventory control

Spill and Leak Prevention

W31 Improved storage or stacking procedures

W32 Improved procedures for loading, unloading, and transfer operations

W33 Installed overflow alarms or automatic shut-off valves

W35 Installed vapor recovery systems

W36 Implemented inspection or monitoring program of potential spill or leak sources

W39 Other spill and leak prevention

Raw Material Modifications

W41 Increased purity of raw materials

W42 Substituted raw materials

W49 Other raw material modifications

Process Modifications

W51 Instituted in-process recycling

W52 Modified equipment, layout, or piping

W53 Changed process catalyst

W54 Instituted better controls on operating conditions (flow rate, temperature, pressure, residence time)

W55 Changed from small volume containers to bulk containers to minimize discarding of empty containers

W58 Other process modifications

Cleaning and Degreasing

W59 Modified stripping/cleaning equipment

W60 Changed to mechanical stripping/cleaning devices (from solvents or other materials)

W61 Changed to aqueous cleaners (from solvents or other materials)

W63 Modified containment procedures for cleaning units

W64 Improved draining procedures

W65 Redesigned parts racks to reduce dragout

W66 Modified or installed rinse systems

W67 Improved rinse equipment design

W68 Improved rinse equipment operation

W71 Other cleaning and degreasing modifications

Surface Preparation and Finishing

W72 Modified spray systems or equipment

W73 Substituted coating materials used

W74 Improved application techniques

W75 Changed from spray to other system

W78 Other surface preparation and finishing modifications

Product Modifications

W81 Changed product specifications

W82 Modified design or composition

W83 Modified packaging

W89 Other product modifications

Methods Used to Identify Source Reduction Activities:

For each source reduction activity, enter one or more (maximum of six) of the following code(s) that correspond to the method(s) used to identify that activity.

T01 Internal pollution prevention opportunity audit(s)

T02 External pollution prevention opportunity audit(s)

T03 Materials balance audits

T04 Participative team management

T05 Employee recommendation (independent of participative team program)

T06 State government technical assistance program

T07 Federal government technical assistance program

T08 Trade association/industry technical assistance program

T09 Vendor assistance

T10 Other

8.12 Quantity that would have entered any wastestream or been released without source reduction activity(ies). In section 8.12.1 enter your best estimate of the total quantity of the reported toxic chemical that would have, prior to treatment, disposal, or recycling, entered any wastestream or been directly released to the environment in the reporting year if the source reduction activities identified in section 8.11 had not been implemented. In section 8.12.2 enter one of the following letter codes to indicate what method you used to develop the estimate:

(A) - *Prior Year Quantity Method*

Estimate is the prior year quantity, i.e., the quantity reported is the same as the quantity reported in section 8.1.B on this reporting year's Form R. This method should be used if the production or activity level at the facility does not affect the waste/release quantity.

(B) - *Production Ratio or Activity Index Method*

Estimate is the product of the prior year quantity reported in section 8.1.B and the Production Ratio or Activity Index reported in section 8.9. This method should be used if the production or activity level at the facility is directly related to the waste/release quantity.

(C) - *Other Methods*

Any estimate based on a method other than method A or B above.

For example, a printed circuit board manufacturer uses nickel compounds (a listed toxic chemical category) in the electrodeposition solution. During the reporting year, a system was implemented where the spent electrodeposition solution, which contains the nickel compounds, is sent through ultrafiltration and recirculated into the process. Because "nickel compounds" is a toxic chemical metal compound category, the amounts are calculated based on the parent metal and not on the compound as a whole. By using invoices for the prior year from the off-site recycling facility, it is calculated that 50,000 pounds of nickel, the parent metal, were shipped off-site without prior treatment on-site as part of the spent electrodeposition solution. These 50,000 pounds are the quantity that was entered in section 8.1.B. In addition, the production ratio was calculated as 1.2, based on the number of circuit boards produced. By multiplying the prior year quantity of toxic chemical entering wastestreams by the production ratio, it is calculated that 60,000 pounds of nickel would have entered any wastestream if the source reduction activity had not been implemented. Therefore, 60,000 pounds would be entered in section 8.12.1. Code B, because the production ratio or activity index method was used, would be entered in section 8.12.2.

8.13 Quantity prevented due to source reduction. Report the quantity of toxic chemical that was prevented from entering any wastestream or being released to the environment due to source reduction activities implemented during the reporting year. Subtract the entry in section 8.1.A from your entry in section 8.12.1 and enter the difference in section 8.13. Verify that it is reasonable given the operations at your facility. If it does not appear to be consistent given your operations, recalculate your estimate for section 8.12.1 to be sure it is consistent and accurate with your estimate for section 8.13.

8.14 RCRA hazardous wastes affected (enter RCRA waste code). List the RCRA code for each RCRA hazardous waste, if any, reported in your facility's Annual or Biennial Report that is affected by the source reduction activities implemented in the reporting year for the reported toxic chemical. Include those wastes for which the quantity generated decreased or increased as a result of the source reduction activities reported in this section. If more than five RCRA hazardous wastes are affected by these activities, report the RCRA codes for the five hazardous wastes that are most affected in terms of absolute quantity. If your facility does not complete a RCRA Annual or Biennial Report, or has no hazardous wastes which are affected by the source reduction activities, enter not applicable, NA, in section 8.14.a.

8.15 Other TRI chemicals affected (enter CAS Number or category code). List the CAS number or category code for any other listed toxic chemical(s) you report this year, if any, that is affected by the source reduction activities you have implemented for the reported toxic chemical. Include toxic chemicals whose quantity entering waste or otherwise released decreased or increased as a result of source reduction. If more than five other listed toxic chemicals are affected by these activities, report the CAS number or category code of the five toxic chemicals most affected in terms of quantity. If you do not submit Form R for other chemicals, or if no other TRI chemicals are affected, enter not applicable, NA, in section 8.15.a.

Toxic Chemical Category Codes

N01 Antimony compounds
N02 Arsenic compounds
N03 Barium compounds
N04 Beryllium compounds
N05 Cadmium compounds
N06 Chlorophenols
N07 Chromium compounds
N08 Cobalt compounds
N09 Copper compounds
N10 Cyanide compounds
N11 Glycol ethers
N12 Lead compounds
N13 Manganese compounds
N14 Mercury compounds
N15 Nickel compounds
N16 Polybrominated biphenyls (PBBs)
N17 Selenium compounds
N18 Silver compounds
N19 Thallium compounds
N20 Zinc compounds

8.16 Is additional information on source reduction, recycling, or pollution control activities included with this report? Check "Yes" if you have attached to this report any additional, voluntary information on source reduction, recycling, or pollution control activities you have implemented in the reporting year or in prior years for the reported toxic chemical. If you submit additional, voluntary information, EPA requests that you limit that information to five pages or less and to activities that have occurred within 5 years prior to the reporting year. If you are not including additional information, you must check "No."

Instructions for Completing Section 6, "Transfers of the Chemical in Waste to Off-Site Locations"

You must report in this section the total annual quantity of the toxic chemical sent to any off-site treatment, disposal, or recycling facilities. Report the amount of the toxic chemical transferred off-site after any on-site treatment or removal is completed. Report zero for releases of listed mineral acids if they have been neutralized to pH of 6 or above prior to discharge to a POTW.

In section 6.1.1, report the amount of the listed toxic chemical transferred to a POTW. In the space provided, enter the name, address, and NPDES permit number for the POTW to which your facility discharges wastewater containing the reported toxic chemical. If you transfer waste containing the toxic chemical to more than one POTW, check the box at the bottom of section 6 and use the part III, Supplemental Information page to report those transfers. If you do not discharge wastewater containing the reported toxic chemical to a POTW, enter not applicable, NA, in the box for the POTW name in part II, section 6.1.1.

In sections 6.2.1 through 6.2.4, report the amount of the toxic chemical which you ship or transfer in wastes to other off-site locations for treatment, disposal, or recycling. In the space provided, enter the name, address, and EPA identification number (RCRA ID

number) for each off-site location to which you ship or transfer the wastes containing the reported toxic chemical. The EPA ID number may be found on the Uniform Hazardous Waste Manifest, which is required by RCRA regulations. You may report multiple activities for each off-site location entered by reporting the appropriate codes and corresponding amounts transferred in columns C and A, respectively. If you need additional space, check the box at the bottom of section 6 and use the Supplemental Information page (part III, section 6) to report transfers to additional off-site locations. If you do not ship or transfer wastes containing the reported toxic chemical to off-site locations, enter not applicable, "NA," in the box for off-site location name in part II, section 6.2.1.

6.A Total Transfers. For each POTW or other off-site location to which you ship or transfer wastes containing the reported toxic chemical, enter the amount, in pounds, of the toxic chemical that is transferred, including mixtures or trade name products containing the toxic chemical. Do not enter the total poundage of wastes. If the total amount transferred is less than 1,000 pounds, you may report a range by entering the appropriate range code listed below.

Reporting range codes to be used for Part II, Section 6, "Transfers of the Chemical in Waste to Off-Site Locations:"

Code	Reporting Range (in pounds)
A	1–10
B	11–499
C	500–999

6.B Basis of Estimate. You must identify the basis for your estimate. Enter the letter code that applies to the method by which the largest percentage of the estimate was derived.

The codes are as follows:

M - Estimate is based on monitoring data or measurements for the toxic chemical as released to the environment and/or off-site facility.

C - Estimate is based on mass balance calculations, such as calculation of the amount of the toxic chemical in streams entering and leaving process equipment.

E - Estimate is based on published emission factors, such as those relating release quantity to through-put or equipment type (e.g., air emission factors).

O - Estimate is based on other approaches such as engineering calculations (e.g., estimating volatilization using published mathematical formulas) or best engineering judgment. This would include applying an estimated removal efficiency to a wastestream, even if the composition of the stream before treatment was fully identified through monitoring data.

6.C Type of Treatment/Disposal/Recycling. Enter one of the following codes to identify the type of treatment, disposal, or recycling method used by the off-site location for the toxic chemical being reported. You should use more than one line and code for a single location when the toxic chemical is subject to different treatment, disposal, or recycling methods. You may have this information in your copy of EPA Form SO, Item S of the Annual/Biennial Hazardous Waste Treatment, Storage, and Disposal Report (RCRA) or in your invoices from the waste service(s) or broker(s) receiving your wastes for treatment, disposal, or recycling.

Applicable codes for Part II, Section 6, column C are as follows:

M10 Storage only
M20 Solvents/organics recovery
M24 Metals recovery
M26 Other recovery
M28 Acid regeneration
M40 Solidification/stabilization
M50 Incineration/thermal treatment
M56 Heat or energy recovery
M61 Wastewater treatment (excluding POTW)
M69 Other treatment
M71 Underground injection
M72 Landfill/disposal surface impoundment
M73 Land treatment
M79 Other land disposal
M90 Other off-site management
M91 Transfer to waste broker
M99 Unknown - considered disposal

Instructions for Completing section 7A, "On-Site Waste Treatment Methods and Efficiencies"

In section 7A, you must provide the following information related to the on-site treatment of the reported toxic chemical: (A) The general wastestream type containing the toxic chemical; (B) the amount of the toxic chemical entering on-site treatment; (C) the treatment method(s) used; and (D) the overall efficiency of the treatment method(s) used to remove the toxic chemical. Use a separate line for each type of treatment or treatment sequence used.

In this section, report only information about treatment of toxic chemicals in wastestreams at your facility, not about off-site treatment. Information about off-site treatment must be reported in Part II, Section 6, "Transfers of the Chemical in Wastes to Off-Site Locations," and in Part II, Section 8, "Source Reduction and Recycling Activities." If you do not conduct on-site treatment of wastes containing the reported toxic chemical, check the Not Applicable (NA) block at the top of section 7A. Beginning with reporting year 1991, you must include amounts of the reported toxic chemical that are incinerated, combusted for heat or energy recovery, or thermal treated in section 7A. These activities are reported as treatment not recycle. In situations when the toxic chemical constituent contributes to the incineration or energy recovery (e.g., a solvent), the solvent is considered treated and not recycled or reused. This is consistent with the instructions for Part II, Section 8, "Source Reduction and Recycling Activities."

7A.A General Wastestream. For each waste treatment method sequence, indicate the type of wastestream containing the reported toxic chemical entering the on-site treatment sequence. Enter the letter code that corresponds to the general wastestream type:

A = Gaseous (gases, vapors, airborne particulates)
W = Wastewater (aqueous waste)
L = Liquid waste (non-aqueous waste)
S = Solid waste (including sludges and slurries)

If a waste is a mixture of water and organic liquid, you should report it as wastewater unless the organic content exceeds 50 percent. Slurries and sludges containing water must be reported as solid waste if they contain appreciable amounts of dissolved solids, or solids that may settle, such that the viscosity of the waste is considerably different from that of process wastewater.

7A.B Amount Entering Treatment. For each wastestream, enter the total amount, in pounds, of the toxic chemical that entered an on-site waste treatment system during the reporting year. Include only the amounts entering treatment or a sequential treatment system for the first time. Do not include amounts at other stages in a sequential treatment system or amounts disposed of on-site. Also, do not count quantities of the toxic chemical involved in in-process recycling on-site. These processes are not considered waste treatment.

7A.C Treatment Method(s) Sequence. Enter the appropriate code from the list below for the on-site treatment method used to treat a wastestream containing the reported toxic chemical, regardless of whether the treatment method actually removes the reported toxic chemical. If the treatment process involves a sequence of treatment methods, enter the appropriate treatment method codes in the order in which they occur. Enter not applicable, "NA," in the block following the last step of the treatment sequence.

Wastestreams containing the toxic chemical may have a single source or may be aggregates of many sources. For example, process water from several pieces of equipment at your facility may be combined prior to treatment. Report the treatment methods used on the aggregate wastestream as a single stream.

If your facility treats the reported toxic chemical using the same treatment method and efficiency at more than one location within your facility, you may enter the treatment method on one line and enter the total amount of the reported toxic chemical treated by the same treatment method. For example, if your facility treats two wastestreams containing sulfuric acid with the same treatment method and efficiency (i.e., neutralization), the amounts entering treatment for both wastestreams can be combined and reported in section 7A, column B. However, if your facility treats the same toxic chemical in a sequential treatment process that contains different steps or the same steps in a different order, they must be reported on separate lines.

The following codes represent on-site waste treatment methods that are to be reported in section 7A, column C.

Air Emissions Treatment
A01 Flare
A02 Condenser
A03 Scrubber
A04 Absorber
A05 Electrostatic precipitator
A06 Mechanical separation
A07 Other air emission treatment

Biological Treatment
B11 Biological treatment — aerobic
B21 Biological treatment — anaerobic
B31 Biological treatment — facultative
B99 Biological treatment — other

Chemical Treatment
C01 Chemical precipitation — lime or sodium hydroxide
C02 Chemical precipitation — sulfide
C09 Chemical precipitation — other
C11 Neutralization
C21 Chromium reduction
C31 Complexed metals treatment (other than pH adjustment)
C41 Cyanide oxidation — alkaline chlorination
C42 Cyanide oxidation — electrochemical
C43 Cyanide oxidation — other
C44 General oxidation (including disinfection) — chlorination
C45 General oxidation (including disinfection) — ozonation
C46 General oxidation (including disinfection) — other
C99 Other chemical treatment

Incineration/Thermal Treatment
F01 Liquid injection
F11 Rotary kiln with liquid injection unit
F19 Other rotary kiln
F31 Two stage
F41 Fixed hearth
F42 Multiple hearth
F51 Fluidized bed
F61 Infra-red
F71 Fume/vapor
F81 Pyrolytic destructor
F82 Wet air oxidation
F83 Thermal drying/dewatering
F99 Other incineration/thermal treatment

Physical Treatment
P01 Equalization
P09 Other blending
P11 Settling/clarification
P12 Filtration
P13 Sludge dewatering (non-thermal)
P14 Air flotation
P15 Oil skimming
P16 Emulsion breaking — thermal
P17 Emulsion breaking — chemical
P18 Emulsion breaking — other
P19 Other liquid phase separation
P21 Adsorption — carbon
P22 Adsorption — ion exchange (other than for recovery/reuse)
P23 Adsorption — resin
P29 Adsorption — other
P31 Reverse osmosis (other than for recovery/reuse)
P41 Stripping — air
P42 Stripping — steam
P49 Stripping — other
P51 Acid leaching (other than for recovery/reuse)
P61 Solvent extraction (other than for recovery/reuse)
P99 Other physical treatment

Heat or Energy Recovery
U01 Use as fuel — industrial kiln
U02 Use as fuel — industrial furnace
U03 Use as fuel — boiler
U04 Use as fuel — fuel blending
U09 Use as fuel — other

Solidification/Stabilization
G01 Cement processes (including silicates)
G09 Other pozzolonic processes (including silicates)
G11 Asphaltic processes
G21 Thermoplastic techniques
G99 Other solidification processes

7A.D Treatment Efficiency Estimate. In the space provided, enter the number indicating the percentage of the toxic chemical removed from the wastestream through destruction, biological degradation, chemical conversion, or physical removal. The treatment efficiency (expressed as a percent removal) represents the mass or weight percentage of the toxic chemical destroyed or removed, not merely changes in volume or concentration of the toxic chemical in the wastestream. The efficiency refers only to the percent destruction, degradation, conversion, or removal of the listed toxic chemical from the wastestream, not the percent conversion or removal of other wastestream constituents which may occur together with the listed toxic chemical. The efficiency also refers not to the general efficiency of the method for any wastestream, but to the efficiency of the method for the specific toxic chemical. For some treatments, the percent removal will represent removal by several mechanisms, as in an aeration basin, where a toxic chemical may evaporate, be biodegraded, or be physically removed in the sludge.

Percent removal must be calculated as follows:

$(I-E)/I \times 100$

where I = mass of the toxic chemical in the influent wastestream and E = mass of the toxic chemical in the effluent wastestream.

Calculate the mass or weight of the toxic chemical in the wastestream being treated by multiplying the concentration (by weight) of the toxic chemical in the wastestream by the flow rate. In most cases, the percent removal compares the treated effluent to the influent for the particular type of wastestream. However, for some treatment methods, such as incineration or solidification of wastewater, the percent removal of the toxic chemical from the influent wastestream would be reported as 100 percent because the wastestream does not exist in a comparable form after treatment. Some treatments applied to a wastestream do not destroy, chemically convert, or physically remove a specific toxic chemical. For these treatment methods, an efficiency of zero must be reported for that chemical.

For metal compounds, the calculation of the amount entering treatment and the treatment efficiency is based on the weight of the parent metal, not on the weight of the metal compounds. Metals are not destroyed, only physically removed or chemically converted from one form into another. The treatment efficiency reported represents only physical removal of the parent metal from the wastestream, not the percent chemical conversion of the metal compound. If a listed treatment method converts but does not remove a metal (e.g., chromium reduction), the method must be reported, but the treatment efficiency must be reported as zero.

Listed toxic chemicals that are strong mineral acids which are neutralized to a pH of 6 or above are considered treated at a 100 percent efficiency.

All relevant data available at your facility should be utilized to calculate the amount entering treatment and the treatment efficiency. You are not required to collect any new data for the purposes of this reporting requirement. If data are lacking, estimates must be made using best engineering judgement or other methods.

Instructions for Completing Section 7B, "On-Site Recycling Methods"

In section 7B, you must provide the following information related to the on-site recycling of the reported toxic

chemical: (A) The general wastestream type containing the reported toxic chemical; (B) the recycling method used on the reported toxic chemical; and (C) the amount of the reported toxic chemical recycled. Use a separate line for each recycling method used.

In this section, report only information about the recycling of the reported toxic chemical at your facility, do not list any off-site recycling activities. Information about off-site recycling must be reported in Part II, Section 6, "Transfers of the Chemical in Wastes to Off-Site Locations," and Part II, Section 8, "Source Reduction and Recycling Activities." If you do not conduct any on-site recycling of the reported toxic chemical, check the Not Applicable (NA) block at the top of section 7B.

Beginning with reporting year 1991 and beyond, you must not include amounts of the reported toxic chemical that are incinerated, combusted for heat or energy recovery, or thermally treated as recycling activities, even if the toxic chemical constituent contributes to heat or energy recovery. These activities are reported as treatment, not recycling. These activities are considered waste treatment and must be reported in section 7A. This interpretation is consistent with Part II, Section 8, "Source Reduction and Recycling Activities."

7B.A General Wastestream. For each recycling method, indicate the type of wastestream containing the reported toxic chemical entering the on-site recycling method. Enter the letter code that corresponds to the general wastestream type:

A = Gaseous (gases, vapors, airborne particulates)
W = Wastewater (aqueous waste)
L = Liquid waste (non-aqueous waste)
S = Solid waste (including sludges and slurries)

If a waste is a mixture of water and organic liquid, you must report it as wastewater unless the organic content exceeds 50 percent. Slurries and sludges containing water must be reported as solid waste if they contain appreciable amounts of dissolved solids, or solids that may settle, such that the viscosity of the waste is considerably different from that of process wastewater.

7B.B Recycling Method. Enter the appropriate code(s) from the lists below for each on-site recycling method used on a wastestream containing the reported toxic chemical. If the same recycling method is used at more than one location within your facility, and the wastestream is the same type, you may enter the amount recycled and recycling method on one line. The following codes represent on-site recycling methods that are reported in section 7B, column B.

R11 Solvents/organics recovery — batch still distillation
R12 Solvents/organics recovery — thin-film evaporation
R13 Solvents/organics recovery — fractionation
R14 Solvents/organics recovery — solvent extraction
R19 Solvents/organics recovery — other
R21 Metals recovery — electrolytic
R22 Metals recovery — ion exchange
R23 Metals recovery — acid leaching
R24 Metals recovery — reverse osmosis
R26 Metals recovery — solvent extraction
R27 Metals recovery — high temperature metals recovery
R28 Metals recovery — retorting
R29 Metals recovery — secondary smelting
R30 Metals recovery — other
R40 Acid regeneration
R99 Other recovery

7B.C Amount Recycled. Enter the amount, in pounds, of the reported toxic chemical that was recycled (i.e., recovered or resulted from the recycling process) at your facility for each recycling method reported. Do not include quantities entering or exiting in-process recycling. These materials are considered to be part of the manufacturing process because they are returned or recirculated and have not yet become wastes. However, quantities that undergo reclamation before being used as a raw material for a different process are considered recycled.

IV. Additional Issues

A. Relationship to Other Laws

The definition of source reduction and recycling used in Form R is solely for purposes of reporting under PPA section 6607 and EPCRA section 313, and is not intended to amend or restrict the definition of solid waste or to affect the requirements or authorities of other laws, including RCRA. Many facilities that are subject to reporting under section 313 also are subject to regulation under Subtitle C of RCRA, and the public should be aware that RCRA definitions will differ from those presented in this proposal.

It is important to emphasize that RCRA Subtitle C requirements apply to solid and hazardous wastes as defined under RCRA, while the reporting requirements in today's proposal apply to individual chemicals. This means that the characterization of a wastestream for RCRA purposes may not be determinative of how to report under PPA section 6607 on individual chemicals entering that wastestream.

Thus, for example, if a solvent waste contaminated with metals is sent off-site to a solvent recovery facility, the waste may be considered to be legitimately recycled for purposes of regulation under RCRA. However, under PPA section 6607, the facility would report the amounts of solvent as quantities transferred off-site for recycling, and would report on amounts of metals as quantities transferred off-site for treatment. EPA believes that these differences are unavoidable in light of the PPA's focus on individual toxic chemicals in wastes rather than on wastestreams per se.

It also should be understood that this proposed reporting scheme is not intended to have any effect on the classification of processes as recycling or treatment for RCRA purposes. In particular, the classification of energy and heat recovery as treatment for purposes of PPA section 6607 should not be taken to affect the RCRA definitions and requirements that apply to these processes.

Similarly, the definition of "in-process recycling" for purposes of reporting on source reduction under PPA section 6607 is not intended to alter the RCRA standards for "closed-loop recycling" under 40 CFR 261.4(a)(8). It is EPA's intent that these definitions be generally consistent to the extent possible, and the Agency expects that a process that meets § 261.4(a)(8) will also qualify as "in-process recycling" for reporting purposes. However, the definition of "in-process recycling" may be narrower than the potential scope of 40 CFR 260.31, which allows for case-by-case determinations through a variance procedure. Such a variance procedure is not being proposed for use with the new reporting requirements proposed for Form R.

In some cases, facilities may be required to report on quantities of a specific toxic chemical entering wastes under Question 8.1 when the material containing the chemical would not be considered a solid waste for RCRA purposes. Such differences are largely due to specific statutory or regulatory exemptions from RCRA's definition of solid waste which are not reflected in the PPA. For instance, under the RCRA definition of solid waste in 40 CFR 261.2, certain secondary materials (e.g., manufacturing byproducts that exhibit a hazardous waste characteristic) would not be considered solid wastes when recycled. However, quantities of a toxic chemical entering such a manufacturing byproduct stream would be reportable under PPA section 6607 as quantities entering wastestreams prior to recycling. The requirement to report on the chemical in these circumstances does not imply that such a stream should be

considered a solid waste for RCRA purposes.

This proposal is not intended to and should not be read to propose amendments to or open for comment any aspect of the RCRA Subtitle C regulations. EPA does solicit public comment on any aspects of this proposed rule or of Form R and its instructions that should be revised or clarified to avoid confusion or conflict with current requirements under RCRA or other EPA-administered programs.

B. Results of Pilot Study

EPA conducted a pilot test of the proposed source reduction and recycling section to be added to Form R. The test consisted of two parts, which were combined to evaluate the results. For the first part, five companies completed the draft reporting form section, two companies provided general written comments, and two companies provided comments over the telephone. For the second part, comments were solicited from three industry trade associations and five public interest groups. The pilot study report is available for review in the public docket for this rulemaking.

One purpose of the test was to identify areas in the form and instructions that were potentially confusing so these areas could be clarified. A number of such areas were identified and have been revised in the draft form published today. For example, industry groups suggested that a short description for each new data element and sample process diagrams in the instructions would be useful. Industry groups also suggested clearly establishing separate production ratios or activity indexes for each chemical, renaming "expected" changes as "estimated" changes in Questions 8.1 through 8.3, and expanding the examples of potential types of source reduction activities in Question 8.11.

The second purpose was to identify broader issues of concern. For example, public interest groups suggested that further data should be collected to improve cross-referencing between RCRA and TRI data and to provide more detailed toxic chemical information for each stream. Industry groups expressed concern over the loss of the exemption from reporting off-site transfers for recycling; the scope and estimation of one-time events in Question 8.6; their ability to estimate percent changes for specific chemicals in Questions 8.1 through 8.3; the low percentage change threshold for reporting accounting changes in Question 8.7; the lack of opportunity to report on previous source reduction activities; and the current definitions of the production ratio or activity index and in-process recycling. Many of these issues are addressed in this preamble.

C. Technical Assistance

EPA has developed a draft technical assistance document for completing the new questions proposed for section 8 of Form R. This draft document, titled "Pollution Prevention Reporting for EPCRA Section 313," has undergone preliminary review by representatives of the respondent community and others. EPA is encouraging interested persons to review and comment on the document. Copies are available for review in the public docket for this rulemaking.

V. EPA's Intended Use of the Data

The Agency has begun to implement a national pollution prevention program and conducted research to identify pollution prevention data needs and assess the extent to which available information meets those needs. EPA has identified several major functions that pollution prevention data will be used for. These uses include:

1. Monitor progress of the Agency's strategy to encourage pollution prevention by industry.
2. Enable EPA and the public to identify the levels of pollution prevention and environmental protection activity being undertaken by industry and allow the measurement of progress in release/waste reduction and improvement in environmental quality against those levels.
3. Over time, enable the Agency and the public to understand how, where, and why progress is being made.
4. Target Agency regulatory initiatives, technology transfer, and outreach.
5. Feed these data into technical assistance, implementation, and outreach efforts.
6. Raise public and industry awareness and use their assistance in these efforts.
7. Define the potential and develop reasonable expectations for results of pollution prevention activities.

The Agency found that the main information types are the same as those included in the PPA. Assessment of available data indicate that information currently collected by the Agency does not meet these needs. The information types being added to Form R are needed to carry out these purposes.

Data reported under TRI can be used to assess trends in quantities released after treatment. This information is valuable, but additional information on quantity changes prior to treatment and recycling is needed. Information is also needed to determine why quantity changes have occurred. In addition, information is needed to fully understand the effects of pollution prevention and other efforts to reduce loadings to the environment.

These data will allow EPA to measure progress, understand how, where, and why pollution prevention is being implemented over time, and define the potential for pollution prevention in the industry sectors covered by section 313. This base set of data will also support EPA efforts in targeting technical assistance, outreach, and implementation.

EPA will use the data submitted pursuant to this rulemaking to conduct analyses such as:

1. Trends in quantity of chemical entering wastestreams, treated, and recycled.
2. Number of facilities that report source reduction and recycling activities for the nation as a whole, by region, State, industry category, chemical, and other subpopulations of interest.
3. Percentage of facilities nationwide and in each subpopulation reporting source reduction and recycling.
4. Estimates of changes in quantity entering wastestreams, recycling, treatment, and disposal due to source reduction and recycling and changes due to one time events not related to manufacturing processes.

Measuring progress is probably the most visible function of information being added to Form R in this proposal. The information will be used by EPA, States, the public, and industry to track the results of the full hierarchy of environmental protection--source reduction, recycling, treatment, and disposal--and the progress due to source reduction. This will help the Agency to determine whether pollution prevention can succeed on a voluntary basis or whether a more enforcement-oriented approach will be more effective in reducing the use of toxic chemicals at the source. This will also be useful in evaluating the Agency's progress in implementing its Pollution Prevention Strategy.

VI. Rulemaking Record

All documents related to this rulemaking (reference docket number 400054) are available to the public in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Executive Order (E.O.) 12291 requires each federal agency to classify as "major" any regulation likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

EPA's economic analysis estimates that a maximum of 28,000 facilities are expected to submit a maximum of 112,000 reports on releases of toxic chemicals listed under EPCRA section 313 in 1992.

The total cost to industry of reporting pollution prevention information under the proposed option is estimated to be $49.5 million the first year, $37.7 million in the second year, and $36.4 million in subsequent years. This incremental compliance cost increases the total annual burden for reporting under section 313 from a current $146.7 million to $196.2 million in the first year of reporting. In the second year and subsequent years, the total annual burden would be $184.4 million and $183.1 million, respectively. Assuming 4 reports will be submitted per facility in 1992 (for the 1991 reporting year) and thereafter, the total first-year cost of reporting pollution prevention information for these facilities is estimated to be $1,768 per facility. Costs in the second year and subsequent years are estimated to be $1,334 and $1,298, respectively, per facility. The Agency anticipates that this proposed additional reporting requirement will not have a significant effect on competition, costs, or prices and has therefore determined that this proposed rule is not "major."

This proposed rule and economic analysis have been submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291. The analysis is available in the public docket for review as part of the rulemaking record for this proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

Section 313 and the reporting rule (40 CFR part 372) exempt certain small businesses from reporting; specifically, those facilities with fewer than 10 full-time employees. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Because the proposed rule to gather information on the source reduction and recycling affects only facilities that already must report under section 313, no additional small businesses will be affected by the proposed rule. The rule will increase the costs to small businesses that currently report under section 313. The small business analysis for this rule is based on facilities in SIC codes 20 to 39 that employ between 10 and 19 employees. This is estimated to be 2,806 facilities. The analysis is also based on incurring the total increase in reporting burden in the first year, which slightly exaggerates the impact.

The magnitude of the increase in costs will depend on the specific pattern of chemical usage and releases from each facility, but the analysis supporting this proposed rule anticipates that no segment of the manufacturing sector is likely to suffer significant adverse effects because of this rule. The first-year, before-tax compliance cost as a percentage of sales is estimated not to exceed 0.5 percent for small businesses in any SIC code. For small businesses in the majority of SIC code categories, that financial measure is estimated to be less than or equal to 0.3 percent. In subsequent years, that measure is estimated not to exceed 0.34 percent for small businesses in any SIC code.

The impact of first-year, after-tax compliance costs on net income is more pronounced, however, for small businesses in SIC codes 22 (Textile Products), 23 (Apparel and Other Fabrics), and 31 (Leather and Leather Products). For those SIC codes, the percentage ratio of first-year, after-tax compliance cost to net income are estimated to be 11.5, 16.5, and 7.4 percent, respectively. In subsequent years, the reduction in burden is estimated to reduce those ratios to 8.2, 11.7, and 5.2 percent, respectively. Combined, those three SIC codes are estimated to include 110 small businesses (facilities), less than four percent of the total number of small businesses estimated to report under section 313 in 1992.

EPA therefore certifies that this proposed rule will not have a significant impact on a substantial number of small entities and that no Regulatory Flexibility Analysis is needed.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR #1363.04). A copy may be obtained from Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

The industry reporting burden for collecting the proposed source reduction and recycling information for the first year is estimated to average 45 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The actual burden to a specific facility may deviate from this estimate depending on the complexity of the facility's operations and the profile of the release. The burden is estimated to decrease to 35 hours in the second year and then to 34 hours in subsequent years.

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, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 372

Chemicals, Environmental protection, Mass balance, Materials accounting, Notification requirements, Recordkeeping, Recycling, Reporting, Source reduction, Toxic chemicals.

Dated: September 12, 1991.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR Part 372 be amended to read as follows:

PART 372 — [AMENDED]

1. By revising the authority citation for part 372 to read as follows:

Authority: 42 U.S.C. 11023, 11048, 11076.

2. In § 372.3 by adding the following definition:

§ 372.3 Definition.

* * * * *

Publicly owned treatment works, or *POTW,* means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature that is owned by a State or municipality. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW.

* * * * *

3. In § 372.10 by adding new paragraphs (a)(3)(viii), (a)(3)(ix), (a)(3)(x), (a)(3)(xi), (a)(3)(xii), (a)(3)(xiii), and (a)(3)(xiv) to read as follows:

§ 372.10 Recordkeeping.

(a) * * *

(3) * * *

(viii) Documentation supporting the estimates of the amounts of the chemical entering any wastestream, recycled on-site, entering treatment on-site, sent off-site for recycling or treatment, and entering any wastestream as a result of remedial actions, catastrophic, or one-time events.

(ix) Documentation supporting the estimates for the previous year and the first and second years following the reporting year of the amounts of the chemical entering any wastestream or otherwise released to the environment, recycled on-site, and entering recycling off-site. Documentation supporting the estimates for the previous year of the amounts of the chemical entering treatment on-site and sent off-site for treatment.

(x) Documentation supporting the validity of the method used to estimate the amount that would have been generated in waste if source reduction had not been implemented, and the calculation of the estimate of that quantity, including index of production or activity level in the reporting year to prior year level.

(xi) Documentation supporting the indication of whether changes in accounting practices, estimation methods, or point of measurement occurred in the reporting year versus the previous year.

(xii) Documentation supporting the indication of the process of recycling used on-site and off-site.

(xiii) Documentation of implementation of source reduction and recycling activities, including receipts for new capital equipment.

(xiv) Documentation demonstrating how the production ratio or activity index was calculated.

* * * * *

4. In § 372.85 by adding paragraph (b)(16)(i)(C), revising paragraph (b)(16)(ii)(B), (b)(17) and (b)(18) to read as follows:

§ 372.85 Toxic chemical release reporting form and instructions.

* * * * *

(b) * * *

(16) * * *

(i) * * *

(C) The National Pollution Discharge Elimination System (NPDES) number of each POTW to which the chemical is transferred.

* * * * *

(ii) * * *

(B) An estimate of the amount of the toxic chemical in any wastestream transferred in pounds per year (transfers of less than 1,000 pounds may be indicated in ranges) to each off-site location, and an indication of the basis for the estimate and an indication of the type of treatment, recycling, or disposal used.

(17)(i) For reports applicable to activities for reporting year 1991, the following information relative to on-site waste treatment:

(A) An indication of the general type of wastestream containing the reported chemical.

(B) The treatment method applied to the wastestream.

(C) An indication of the concentration of the chemical in the wastestream prior to treatment.

(D) An estimate in percent of the efficiency of the treatment plus an indication of whether the estimate is based upon operating data.

(E) An indication (use is optional) of whether treatments listed are part of a treatment sequence.

(ii) For reports applicable to activities for reporting year 1992 and beyond, the following information relative to on-site waste treatment and recycling:

(A) The following information relative to on-site waste treatment activities:

(*1*) An indication of the general type of wastestream containing the reported chemical.

(*2*) An estimate of the amount of the reported chemical contained in the wastestream and entering treatment.

(*3*) The treatment method or sequence of methods applied to the chemical.

(*4*) An estimate in percent of the efficiency of the treatment method, or the overall efficiency of the treatment sequence.

(B) The following information relative to on-site waste recycling activities:

(*1*) An indication of the general type of wastestream containing the reported chemical.

(*2*) An estimate of the amount of the reported chemical recycled.

(*3*) The recycling process applied to the chemical.

(18) Source reduction and recycling data elements as follows:

(i) Amount of the toxic chemical, in pounds per year, entering any wastestream (or otherwise released to the environment) prior to recycling, treatment, or disposal, in the reporting year and the prior year, and the amount expected in this category for the first and second years following the reporting year.

(ii)(A) For reports applicable to activities for reporting year 1991, the amount of the toxic chemical, in pounds per year, recycled on-site in the reporting year and the prior year, the amount expected to be recycled on-site in the first and second years following the reporting year, and an indication of the recycling process used.

(B) For reports applicable to activities for reporting year 1992 and beyond, the amount of the toxic chemical, in pounds per year, recycled on-site in the reporting year and the prior year, and an estimate of the amount expected to be recycled on-site in the first and second years following the reporting year.

(iii) Amount of the toxic chemical, in pounds per year, sent off-site for the purpose of recycling in the reporting year and the prior year, the amount expected to be sent off-site for the purpose of recycling in the first and second years following the reporting year, and an indication of the recycling process used.

(iv) Amount of the toxic chemical, in pounds per year, entering treatment on-site in the reporting year and the prior year.

(v) Amount of the toxic chemical, in pounds per year, sent off-site for treatment in the reporting year and the prior year.

(vi) Amount of the toxic chemical, in pounds per year, released to the environment in the reporting year as a result of non-routine events such as remedial actions, catastrophic events, or one-time events not associated with production processes. This amount should not be included in the total quantity provided in paragraph (b)(18)(i) of this section for the reporting year.

(vii) An indication of whether changes in accounting practices, estimation methods, or factors other than the implementation of source reduction activities affected the calculation of the estimate provided for the reporting year in paragraph (b)(18)(i) of this section.

(viii) An indication of whether recycling equipment or capacity for the reported toxic chemical has been added in the reporting year.

(ix) Ratio of production in the reporting year to production in the prior year or, where appropriate, an activity index based on any other variable that is the primary influence on the amount of the toxic chemical entering wastes in the reporting year versus the prior year.

(x) An indication of whether source reduction activities were applied to the reported toxic chemical, and if so:

(A) An indication of the source reduction activities applied to the toxic chemical being reported and the methods used to identify those activities.

(B) Amount of the toxic chemical, in pounds per year, that would have entered wastes or been released to the environment if source reduction had not been implemented, and an indication of the method used to estimate that amount.

(C) Change in the amount of the toxic chemical entering wastes or released to the environment due to source reduction.

(D) A listing of RCRA hazardous wastes affected by the same source reduction activities as applied to the reported toxic chemical.

(E) A listing of other toxic chemicals reported under EPCRA section 313 affected by the same source reduction activities as applied to the reported toxic chemical.

(F) An indication of whether optional, additional information on source reduction, recycling, or pollution control activities implemented in the reporting year or in prior years for the toxic chemical is included with the Form R submittal.

[FR Doc. 91-22871 Filed 9-24-91; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 91-269; FCC 91-278]

Widespread Implementation of Home Automation and Communication Technology

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would establish a uniform limit on RF energy that can be conducted into the AC power lines by carrier current transmitters operating under 47 CFR part 15. The existing rules: (1) Unfairly restrict carrier current transmitters that operate on frequencies below 450 kHz, thereby impeding home automation efforts; and (2) may not provide adequate and appropriate protection to AM broadcasting.

The proposed rule would also clarify the television interface device requirements in 47 CFR part 15 as they apply to television distribution systems used in the home. The existing rules are somewhat confusing and, perhaps, unnecessarily restrictive.

DATES: Comments must be submitted on or before December 9, 1991, reply comments on or before January 8, 1992.

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

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653-8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making in ET Docket No. 91-269, FCC 91-278, adopted September 10, 1991 and released September 20, 1991. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Summary of the Notice of Proposed Rule Making:

1. The Commission proposes to amend 47 CFR part 15 to enable the introduction of home automation and communication systems. This proposal addresses petitions for rule making before the Commission filed by the Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") on February 21, 1990, and Smart House Limited Partnership ("Smart House") on June 20, 1990.

2. Industry has spent several years developing standards and technologies that take a new approach to communications systems intended for use in residences. Several companies promise substantial benefits with systems that integrate a variety of these functions. For example, a single system could be used to help prevent fire and theft, to efficiently control the energy use of household appliances, and to distribute radio and television signals throughout a home. EIA/CEG and Smart House each filed petitions seeking to modify current regulations that they believe pose impediments to the introduction of this technology.

EIA/CEG Petition

3. EIA/CEG states that its home automation system uses the home's AC power lines as communications links between components of the system. Such systems are regulated as carrier current systems, as defined in 47 CFR 15.3(f). EIA/CEG states that its standard calls for use of carrier frequencies below 450 kHz. EIA/CEG notes that, under the current rules, carrier current systems using frequencies below 450 kHz are subject to a conducted limit of 250 microvolts. EIA/CEG notes that the Commission completely exempts carrier current systems operating on frequencies above 450 kHz from any conducted limits. A test report submitted by EIA/CEG with its petition indicates that the proposed carrier current system, operating below 450 kHz, would not interfere with AM radio. Accordingly, EIA/CEG requests that carrier current systems operating below 450 kHz be exempted from the present limits on conducted emissions.

4. Echelon Corporation ("Echelon") submitted late-filed comments along with a technical study that purported to show that EIA/CEG system would result in harmful interference to AM broadcasting. EIA/CEG replied to Echelon's comments with a study demonstrating that such interference does not occur when carrier current conducted emissions are below 1000 microvolts in the AM band. EIA/CEG states that it is willing to accept as a compromise a limit of 1000 microvolts for spurious and harmonic emissions in the AM band. The National Association of Broadcasters (NAB) also submitted a reply to Echelon supporting a conducted limit of 1000 microvolts in the AM band for non-broadcast carrier current systems. Adaptive Networks, Inc., CyberLYNX, Intellon Corporation, and X-10 (USA), Inc. replied to Echelon's comment by indicating that they did not believe the change proposed by EIA/CEG posed a risk of interference. Bonneville International Corporation filed reply comments in support of Echelon's position, claiming that EIA/CEG's original test results were not valid because the tests were conducted in an area where there were no AM stations operating on harmonic frequencies of the signal under test.

Smart House Petition

5. In its petition, Smart House states that it is designing a home automation system that uses coaxial cable as the communications link between video sources, such as television receiving antennas, cable television systems,

video cassett recorders, and television sets located throughout a home. Smart House contends that the general TV interface device (TVID) output signal limit contained in 47 CFR part 15 is not high enough to ensure reliable distribution of television signals throughout a home. Smart House notes that a 6 dB higher limit on output signals is permitted for TVIDs used as master antenna systems, and it contends that it system is in fact used as a master antenna system. The TVID regulations describe a master antenna system as including central distribution video systems in apartment or office buildings.

Discussion

6. We recognize that there is considerable interest in the new technology offered by home automation and communication systems. We are initiating this rule making looking toward removal of unnecessary impediments to these systems while examining potential concerns about interference, particularly to AM broadcasting.

7. With regard to the EIA/CEG petition, we note that there had been no intent to exclude carrier current systems operating between 450 kHz from the exemption from power line conducted emissions requirements. This was simply an oversight in crafting the regulations. The rationale for the exemption was that these systems are already covered by limits on radiated emissions as described in 47 CFR 15.107(c) and 15.207(b). Radiated emissions emanating from the power line are the principal interference mechanism for carrier current systems. Thus, power line conducted emissions requirements were deemed unnecessary.

8. The Echelon and EIA/CEG studies show that radio frequency signals, conducted through the AC power lines into the power supply of an AM receiver, are capable of causing interference to AM broadcasting. However, the studies do not provide any information as to the levels of radiated emissions caused by the emissions conducted on and radiated from the power line. Thus, we are unable to determine whether our radiated emissions limits would have proven sufficient to control the interference found in the tests. In any event, we consider protection of AM broadcasting against interference to be a high priority. A limit on conducted emissions, in addition to our current radiated emissions limits, would provide added assurance against interference to AM broadcasting. We believe the EIA/CEG study accurately represents the interference potential of home automation systems. Accordingly, we are proposing to limit AC power line conducted emissions from home automation and communication systems to 1000 microvolts in the AM broadcasting band (535–1705 kHz), as recommended by EIA/CEG and NAB. We invite comment on this proposal.

9. We find no basis for excluding other carrier current systems from this same limit. Accordingly, we are also exploring to extend our proposal to encompass all carrier current systems having emissions falling in the AM broadcasting band. However, this limit would not apply to transmissions intended for reception by AM broadcast receivers, such as those of low-power broadcast and campus radio stations, because they represent desirable communication signals. We also are not applying this limit to power line carrier systems because experience has shown that the existing requirements are adequate. We invite comment on whether the proposed conducted limit may be necessary only for carrier current systems used in residential environments. The greater separation between carrier current systems and AM receivers in business and industrial environments may obviate the need for a conducted limit.

10. The Smart House petition calls to light the need to clarify our description of a master antenna system in the TVID rules. The current rules suggest that only video distribution systems in large buildings, such as hospitals, office buildings, and apartment buildings, qualify as master antenna systems. We are proposing to amend 47 CFR 15.115(b)(3) to state that the term master antenna refers to TV interface devices employed for central distribution of all available over-the-air TV signals to all TV broadcast receivers in any building. We believe the TVID master antenna standards will provide adequate interference protection in residences. We also solicit comment on whether it is necessary to maintain the lower limit for TVIDs that are designed to serve only one TV receiver, such as video cassettee recorders. A single limit could avoid confusion that may result in attempting to determine whether a TVID is designed to serve only one or multiple TV receivers. While we are not proposing to change the output limits for TVIDs to match those of master antennas, we note that if we were to do this, it may be appropriate to change the TVID transfer switch requirements to match those of master antennas as well.

11. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial analysis is as follows:

I. Reason for Action: The rules regarding carrier current systems, as well as those for TV interface devices, are consistent. As a result, they are hindering the development of advanced home automation systems, thereby depriving the general public of the potential benefits of these systems.

II. Objective: The objective of the proposed rules is to clarify some of the regulations that affect advanced home automation systems, thus encouraging the development of such systems to the ultimate advantage of the general public.

III. Legal Basis: Action is proposed in accordance with sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 303(s) of the Communications Act of 1934, as amended.

IV. Description, potential impact and number of small entities affected: The proposed changes in the regulations would affect a maximum of 50 small entities. Manufacturers producing carrier current systems that are not for use in conjunction with standard AM broadcast receivers, and that have conducted emissions in the 535 kHz–1705 kHz band in excess of 1000 microvolts, will be required to reduce their conducted emissions in the AM broadcast band. This could result in some expense to these manufacturers. There would be no cost to manufacturers of AM broadcast carrier current systems and power line carrier systems because they would not be required to make any changes to their current operations.

V. Recording, record keeping and other compliance requirements: All carrier current transmitters not intended for use in conjunction with AM broadcast receivers would be required to demonstrate that conducted emissions in the 535 kHz–1705 kHz band do not exceed 1000 microvolts.

VI. Federal rules that overlap, duplicate or conflict with the proposed rule: None.

VII. Any significant alternative minimizing the impact on small entities and consistent with the stated objectives: None.

12. *Comment Provisions.* 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 December 9, 1991 and reply comments on or before January 8, 1992. To file formally in this proceeding, you must file an original and five 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 Dockets Reference Room of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

13. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rule making 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).

14. For further information on this proceeding contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, 202–653–8138.

List of Subjects in 47 CFR Part 15

Communications equipment, Television, Home improvement.

Part 15 of title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, and 307.

2. Section 15.107 is amended by revising paragraph (c) to read as follows:

§ 15.107 Conducted limits.

* * * * *

(c) The limits shown in paragraphs (a) and (b) of this section shall not apply to carrier current systems operating as unintentional readiators on frequencies below 30 MHz. In lieu thereof, these carrier current systems shall be subject to the following standards:

(1) For carrier current systems containing their fundamental emission within the frequency band 535–1705 kHz and intended to be received using a standard AM broadcast receiver: No limit on conducted emissions.

(2) For all other carrier current systems: 1000 uV within the frequency band 535–1705 kHz.

(3) Carrier current systems operating below 30 MHz are also subject to the radiated emission limits in § 15.109(e).

* * * * *

3. Section 15.115(b)(3) is revised to read as follows:

§ 15.115 TV interface devices, including cable system terminal devices.

* * * * *

(b) * * *

(3) The term "master antenna" used in this paragraph refers to TV interface devices employed for central distribution within a building. Such TV interface devices must be designed to:

(i) Distribute multiple television signals at the same time;

(ii) Distribute such signals by cable to all TV broadcast receivers in the building in which they are installed; and

(iii) Distribute all over-the-air and, if appropriate, cable signals.

Note: Cable-ready video cassette recorders continue to be subject to the provisions for general TV interface devices.

* * * * *

4. Section 15.207 is amended by revising paragraph (b) to read as follows:

§ 15.207 Conducted limits.

* * * * *

(b) The limit shown in paragraph (a) of this section shall not apply to carrier current systems operating as intentional radiators on frequencies below 30 MHz. In lieu thereof, these carrier current systems shall be subject to the following standards:

(1) For carrier current systems containing their fundamental emission within the frequency band 535–1705 kHz and intended to be received using a standard AM broadcast receiver: No limit on conducted emissions.

(2) For all other carrier current systems: 1000 uV within the frequency band 535–1705 kHz.

(3) Carrier current systems operating below 30 MHz are also subject to the radiated emission limits in §§ 15.205 and 15.209, 15.221, 15.223, 15.225 or § 15.227, as appropriate.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–23141 Filed 9–24–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 63

[CC Docket No. 91-273; FCC 91-285]

Notification by Common Carriers of Service Disruptions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) seeks comment on the Federal Communications Commission's proposed amendment to part 63 of its rules governing extension of lines and discontinuance of service by carriers. We propose to add § 63.100 to the rules to require that selected facilities-based common carriers notify the Commission, in writing, within 90 minutes of the commencement of the service outage, of disruptions to the carriers' service that affects a substantial number of customers for 30 minutes or more. Recent incidents of facilities-based common carrier service disruptions demonstrate that the Commission's informal mechanisms for gathering information about network outages are inadequate. The proposed rule amendment is designed to improve the reporting procedure of Carriers with a view to enhancing service reliability.

DATES: Pursuant to § 1.415 of the rules, 47 CFR 1.415, interested persons are afforded an opportunity to participate in this rulemaking proceeding through the written submission of data, views or arguments. The Commission requests comment on all aspects of the proposal and the specific proposed rule. Comments must be filed on or before November 26, and reply comments on or before December 30, 1991. The requirements for filing comments in a rulemaking proceeding are contained in § 1.419 of the rules, 47 CFR 1.419.

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

FOR FURTHER INFORMATION CONTACT: Abraham A. Leib, Chief (202) 634–1816, or Jim Ferris (202) 634–1830, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in CC Docket No. 91–273, FCC 91–285, adopted September 16, and released September 19, 1991. The item is available for inspection and copying during normal hours in the Commission's Dockets Branch (room 230), 1919 M St., NW., Washington, DC, or a copy may be purchased from the duplicating contractor, Downtown Copy Center (202) 452–1422, 1114 21st St., NW., Washington, DC 20036. The NPRM will be published in the FCC Record.

OMB Review

The following collection of information contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Copies of this submission may be purchased from the Downtown Copy Center (202) 452–1422, 1114 21st St., NW., Washington, DC 20036. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt (202) 395–4814, Office of Management and Budget (OMB), room 3235 NEOB Washington, DC 20503. Copies of comments filed with OMB shall be sent also to the Federal Communications Commission, Information Resources Branch, Paperwork Reduction Project, room 416, Washington, DC 20554. For further information contact Judy Boley at the Commission, (202) 632–7513.

Title: Amendment of part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions.

OMB Number: None.

Action: Proposed new collection, and amendment of rules.

Respondents: Businesses or others for profit.

Frequency of Response: On occasion and other. Initial report due 90 minutes after service disruption; final report required 30 days thereafter.

Estimated Annual Burden: 56 responses; 2.3 hours per response; 129 hours total. The information to be furnished is generally gathered by carriers after outage events, so providing it to the Commission should not be burdensome. See 5 CFR part 1320 (53 FR 16618, May 10, 1988).

Needs and Uses: The NPRM solicits public comment on the Commission's proposal to amend part 63 of its rules, 47 CFR part 63, to require the filing of service disruption reports by any facilities-based common carrier that provides access service or that provides interstate or international telephone service. Under this proposal an Initial Service Disruption Report delivered to Commission headquarters, by facsimile or other record means within 90 minutes of the commencement of the service outage, would be required when such a carrier experiences a loss of telephone service to 50,000 or more of its customers or voice grade equivalent circuits, if the service loss continues for 30 or more minutes. Thirty days after the incident, carriers would be required to file with the Chief, Common Carrier Bureau, a Final Service Disruption Report, providing all available information on the incident, including any information not contained in their initial reports.

The Commission requests comment on all aspects of the proposal and the specific proposed rule, and has offered a number of questions which interested persons may address. The proposed reporting requirement should permit the Commission to detect, in a more prompt and reliable manner, the causes and frequency of major failures in telecommunications services.

Summary of NPRM

1. Recently, a number of incidents have occurred in which the introduction of new technology into the telecommunications infrastructure has led to service disruptions. In January of 1990, for example, AT&T experienced a large scale service failure when software used with its Signaling System 7 (SS7) network contained a coding error. Other major interexchange carriers also have experienced outages associated with the introduction of SS7. In June and July of this year, local exchange carriers Pacific Bell and Bell Atlantic also experienced major outages. Currently, the Commission has no systematic way by which to become informed quickly of significant service disruptions and is unable to determine whether certain kinds of technology or equipment threaten service reliability. the proposed rule will provide a vehicle by which the Commission will better be informed of telephone network reliability, including the steps taken by carriers to restore service and to prevent further outages.

2. The NPRM proposes to amend part 63 of the rules to require the filing of service disruption reports by any facilities-based common carrier that provides access service or that provides interstate or international telephone service. Written reports would be required when such a carrier experiences a loss of telephone service to 50,000 or more of its customers or voice grade equivalent circuits, if the service loss continues for 30 or more minutes. Carriers would be required to notify the Commission within 90 minutes of the commencement of any such service outage. An Initial Service Distruption Report, in a prescribed format, would be served on the Commission's Monitoring Watch Officer, on duty 24 hours a day, by facsimile or other record means delivered to Commission headquarters. Thirty days after the service disruption, the carrier would file with the Chief, Common Carrier Bureau, a Final Service Disruption Report, providing all available information on the incident, including any information not contained in its Initial Service Disruption Report.

Regulatory Flexibility Analysis: We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined in section 601(3) of the Regulatory Flexibility Act. The Secretary shall send a copy of this NPRM, including the certification, 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.* (1981).

Ex Parte Presentations: This is a nonrestricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as required by Commission rules. *See generally* 47 CFR 1.1202, 1.1203 and 1.1206(a).

Legal Basis: Sections 1, 4, 201–205, 218, 220 and 403 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 63

Telephone common carriers, Service disruptions, Reporting and recordkeeping requirements.

Federal Communications Commissions.

Donna R. Searcy,

Secretary.

[FR Doc. 91–23142 Filed 9–24–91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–122, Notice 1]

RIN 2137–AB 15

Gas Gathering Line Definition

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the definition of the term "gathering line" so that the beginning and end of a gas gathering line are clearly described. The points where a gas gathering line begins and ends are confusing under the current definition. Identifying these points is important because gathering lines in onshore rural locations outside certain areas are not subject to the Federal gas pipeline safety standards, while gas transmission and distribution lines in those locations are subject to the standards. The proposed definition of gathering line would include pipelines used to transport gas from the first production facility down stream from the well to the inlet of the first natural

gas processing plant, the point of custody transfer of the gas, or the last point downstream where gas produced in the same or adjacent production fields is commingled. In addition, this notice proposes to define "production facility" and "production field."

DATES: Interested persons are invited to submit written comments on this proposal by November 25, 1991. Late filed comments will be considered to the extent practicable.

ADDRESSES: Comments should identify the docket and notice numbers and be submitted in duplicate to the Dockets Unit, room 8417, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon on (202) 366–1640. This notice and all docketed materials are available for inspection and copying in room 8421, between 8:30 a.m. and 5 p.m. each working day, or telephone the Dockets Unit on (202) 366–5046.

SUPPLEMENTARY INFORMATION:

Problem

As a general concept, gas gathering is the first stage of pipeline transportation which collects gas from production sites for subsequent transmission to distribution systems or end use points. The Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1671 *et seq.*) (the Act) and the Federal gas pipeline safety standards (49 CFR part 192) issued under that Act do not apply to the gathering of gas in rural locations that lie outside certain populated areas (49 App. U.S.C. 1671(3); 49 CFR 192.1(b)(2)). However, both the statute and the safety standards apply to the transmission and distribution of gas by pipeline in those rural locations. Thus, to determine whether a rural gas pipeline is subject to 49 CFR part 192, one must first determine whether the pipeline is a gathering line.

Operators and pipeline safety enforcement personnel have had difficulty distinguishing a gathering line from a transmission or distribution line. This difficulty arose because part 192 defines the term "gathering line" with reference to a "transmission line" or "main," a type of distribution line. It then defines the term "transmission line" with reference to a gathering line, and defines "distribution line" with reference to a gathering or transmission line:

"Distribution line" means a pipeline other than a gathering or transmission line.

"Gathering line" means a pipeline that transports gas from a current production facility to a transmission line or main.

"Transmission line" means a pipeline, other than a gathering line, that:

(a) Transports gas from a gathering line or storage facility to a distribution center or storage facility;

(b) Operates at a hoop stress of 20 percent or more of SMYS; or

(c) Transports gas within a storage field.

As a result of this cross-referencing, the point where a gathering line ends and transmission or distribution begins is often subject to varying interpretation. RSPA believes this ambiguity would be eliminated if the definition of "gathering line" in part 192 were clearly stated without reference to transmission or distribution lines.

Background

In an effort to clarify the definition of "gathering line," the Office of Pipeline Safety (OPS) issued a notice of proposed rulemaking (Docket No. OPS–31, Notice 74–7; 39 FR 34569) on September 20, 1974, which proposed the following definition:

> 'Gathering line' means a pipeline that transports gas from the point where gas is produced to the end of any treatment or other processing necessary to make the gas generally fit for consumers.

Subsequently, Notice 74–7 was withdrawn because OPS determined, as a result of the public comments and a discussion by the Technical Pipeline Safety Standards Committee (TPSSC), that many words and phrases were open to varied interpretation. For example, produced gas containing natural gas liquids, which normally would be removed by processing, might be "generally fit for consumers" in some cases but not others. Also, the word "treatment" could be construed to include odorization or the addition of propane to natural gas, causing some normal transmission or distribution functions to become gathering under the proposed definition.

The problem of distinguishing a gathering line did not abate after Notice 74–7 was withdrawn. State and Federal enforcement personnel and pipeline operators interpreted the definition of gathering line differently from each other. Consequently, OPS continued to try to develop a clear definition of "gathering line."

In response to a TPSSC request for information in 1986, OPS asked the National Association of Pipeline Safety Representatives (NAPSR), an association of state pipeline safety inspection personnel, for comments concerning the extent of the interpretation problem. Responses from NAPSR members indicated that in the 30 states where gathering lines exist, there are at least 2,800 gathering operators and 111,000 miles of gathering lines (as interpreted by the states). NAPSR members from five states, with about 54 percent of the operators of gathering lines and 75 percent of the mileage, indicated they have had disagreements with operators over classification of rural pipelines as gathering lines or transmission lines. Members from three of these states indicated that the disagreements were too numerous to list. One NAPSR member indicated numerous disagreements with two major gas gathering and transmission pipeline operators regarding the point where the gathering line ended. Another NAPSR member indicated continuing disagreements over the classification of various segments of pipeline operated by one of the largest gas gathering line operators in the U.S.

Inspectors from the five regional offices of RSPA have had many disagreements with pipeline operators in Alaska, Arizona, California, Kansas, Kentucky, Louisiana, Michigan, New Mexico, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, West Virginia, and Wyoming over whether various pipelines are designated as gathering or transmission lines.

Because both RSPA inspectors and inspectors in states with a majority of gathering operators and 75 percent of the U.S. gathering line mileage have had numerous disagreements with pipeline operators over the meaning of "gathering line," RSPA believes the problem is well established.

In 1983, the 5th Circuit Court of Appeals interpreted the current definition of gathering in *Hammon* vs. *Southwestern Gas Pipeline*, 721 F. 2d 140 (5th Cir. 1983). In that private action, the Court held that Southwestern Gas line known as the "Worthington Lateral" was not a gathering line. In reaching its decision, the Court was forced into making two interpretations of the DOT definitions:

(1) A production facility is a wellhead.

(2) To be a gathering line a pipeline must connect directly to a production facility.

Since the "Worthington Lateral" did not attach directly to a gas well but rather led to several wells, through a block valve, the Court held that it was not a gathering line. The DOT did not participate in that litigation.

Alternative Definitions Discussed With Advisory Committee

Three draft proposed definitions of "gathering line" were discussed with members of the TPSSC at a meeting held in Washington, DC on September 22, 1987. Two of these proposed definitions which were developed by OPS were based solely on the function of the line. The third draft proposed definition discussed at that meeting was proposed by the State pipeline safety representatives from the Southwest Region. The state agencies in that region, which contain a large portion of the gathering lines in the country, suggested a definition based on function, stress level, size, and population density. The TPSSC deferred giving an opinion pending a review of any further draft revisions or a notice of proposed rulemaking.

A revised draft proposed definition developed by OPS was presented and discussed at a TPSSC meeting on September 13, 1988. That definition was based on function, stress level, and size. Under it, a "gathering line" was proposed to be defined as a pipeline 4 inches, or less, in nominal diameter operating at a stress level of less than 20 percent of SMYS that transports gas from a production facility. During that meeting a representative from American Petroleum Institute (API), presented written comments on the draft together with letters of support from industry associations and state agencies. This document is in the docket. The API stated that the proposed definition would result in many pipelines that were classified as gathering lines being re-classified as transmission pipelines. It states that the proposed definition would result in an estimated 197,000 additional miles of existing rural gathering lines being re-classified as transmission pipelines and cost the industry $630,600,000 of initial implementation costs and recurring annual compliance costs of $105,000,000. API argued that the pipeline safety benefits of the proposal are minimal because most of the 197,000 additional miles would be located in rural areas, where there is little risk to the public from the operation of these lines. The TPSSC voted unanimously that the proposed definition was not technically feasible, reasonable, or practicable.

RSPA met with several representatives from the American Petroleum Institute and the Interstate Natural Gas Association of America on January 31, 1989, to further discuss this issue. Another draft proposed definition was developed which was based on the function of the line, as previously interpreted, rather than being based on pipe size and pressure. This proposed definition was sent to the state pipeline safety representatives for comments in the summer of 1989, which, with some minor revisions, is the proposed rulemaking in this NPRM. RSPA again met with representatives of API on November 6, 1990, to again discuss this definition as well as the definition of "production facility." This group supported a definition that was based on the function of the pipeline as previously interpreted. The API representatives believed that such an approach would result in few, if any, pipelines that had previously been classified as a "gathering line" to be re-classified as a "transmission line" and would result in minimal, if any, costs to industry.

During the most recent discussion with state pipeline safety representatives, some state agencies expressed a desire that the definition of gathering line be revised so as to add a part 192 jurisdiction a significant number of pipelines in rural areas that transport highly toxic sour gas. It is not the intent of this notice to extend the jurisdiction of part 192 to cover additional pipelines. RSPA is addressing the safety problems associated with transporting sour gas by pipeline in a separate rulemaking proceeding. An advance notice of proposed rulemaking published in that proceeding (54 FR 24361; June 7, 1989) will assist RSPA in determining if additional or more stringent regulations are needed for gas pipelines, including gathering lines, to safeguard the public against the hazards of sour gas.

Proposal

Most gas gathering lines have processing plants where the heavier hydrocarbons are removed from the gas to be sold separately. Downstream of the processing plant, the gas is in a condition fit for customers. Beyond the processing plant, the gas generally is transported for delivery to a distribution center; in some instances it is delivered directly to customers through service lines. Produced gas may reach a processing plant through one or a series of pipelines of the same or different owners, and may be commingled with gas from the same or different production fields.

In applying the current gathering line definition, RSPA has always interpreted a gathering line to end at the outlet of the gas processing plant. Five such interpretations during the period 1972–1990 are included in the docket. These interpretations are consistent with the following definition of "gathering system" in the Manual of Oil and Gas Terms, Williams and Meyers, 7th Edition (1987).

> The gathering lines (q.v.) pumps, auxiliary tanks (in the case of oil), and other equipment used to move oil or gas from the well site to the main pipeline for eventual delivery to the refinery or consumer, as the case may be. In the case of gas, the gathering system includes the processing plant (if any) in which the gas is prepared for the market

In addition, the processing plant and pipelines upstream from the first processing plan have traditionally been viewed as part of the gathering system by the Federal Energy Regulation Commission (FERC) and its predecessor the Federal Power Commission (*Phillips Petroleum Company*, (10 FPC 246, 277 (1951)). (*Rev'd on other ground*, 205 F.2d 706 (D.C. Cir. 1953); *Reversal aff'd*, 347 U.S. 672 (1954)). Federal Energy Regulatory Commission *Pacific Offshore Pipeline Company*, (18 FERC ¶61,070 (1982)). *Pacific Offshore Pipeline Company and Exxon Corporation* (Docket CP 74–35 and CJ 79–533 (March 17, 1981)). *Pacific Offshore Pipeline Company and Exxon Corporation* (15 FERC ¶61,235 (June 8, 1981)).

The TPSSC reviewed a draft of this NPRM on September 12, 1989 which included the processing plan in the definition of "gathering line." The Committee membership was concerned whether the Department had legal authority to end a gathering line at the outlet of the natural gas processing plant, thereby including the natural gas processing plant as part of the gathering system. Industry commenters at that TPSSC meeting contended that the natural gas plant should not be part of either the gathering or the transmission pipeline system. A "Position Paper" dated May 2, 1989, regarding the "Applicability of Natural Gas Pipeline Safety Act of 1968 (NGPSA) and Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) to gas processing plants" was presented at that meeting by a representative of the Gas Processors Association (GPA). The document is in the docket. In it, the GPA contends that although "(t)he NGPSA defines 'pipeline facilities' as (including) * * * the treatment of gas during the course of transportation * * *' 49 U.S.C. 1671(4)", the term "treatment of gas" should not include gas processing plants. The GPA Position Paper drew a distinction between "treatment of gas" and "processing of gas," asserting that the "treatment of gas" refers to the removal of constituents (e.g., carbon dioxide, hydrogen sulfide, water etc.) which interfere with safe and efficient handling of gas while "processing of gas" usually

refers to the removal of constituents from the gas stream (e.g., liquefiable hydrocarbons, helium, etc.) which have a higher economic value when sold separately. Therefore, the GPA does not believe that gas processing plant facilities are included within the NGPSA definition of pipeline facilities and asserts that the Department has no statutory authority to regulate gas processing plants.

RSPA disagrees that the "treatment of gas" does not include the processing of gas. Under the GPA interpretation of the term "treatment of gas," RSPA could only regulate the gas treatment performed at the production facilities. Since we have generally held operations of production facilities to be excluded from regulation as not involved in transportation, the GPA interpretation would exclude all "treatment of gas" from regulation contrary to the language of the statute.

Nonetheless, because the current regulations in part 192 are not directly applicable to processing plants and because OSHA has proposed extensive regulations that would cover these processing plants (55 FR 29150; July 17, 1990), under the proposed definition, a "gathering line" would not include processing plants. Under the proposed definition, a "gathering line" would end at the inlet of the first natural gas processing plant downstream from production that removes liquefied petroleum gases or other natural gas liquids from the gas stream for commercial reasons. However, RSPA may re-examine this issue at a later date if the OSHA rules do not adequately address pipeline-related safety concerns at processing plants.

Not all plants that perform a processing function, however, are considered gas processing plants in accordance with the proposed definition. Natural gas, depending on the volume of gas transported and temperature differentials, will form light hydrocarbons while being transported in the transmission pipelines because of the recurring compression and subsequent pressure drops. "Straddle plants," as used in the gas pipeline industry, are located adjacent to gas transmission lines for the purpose of extracting these newly formed light hydrocarbon liquids from the gas. These "straddle plants" are not considered gas processing plants as used in the proposed definition of "gathering line" because these plants provide only supplementary re-processing of the gas necessary to the transmission rather than the gathering of gas. Furthermore, since these straddle plants are located along the transmission pipeline and will not be the first natural gas processing plant used to remove liquefied petroleum gases or natural gas liquids on the gathering line, they should not be considered a processing plant. A processing plant, according to the proposed gathering line definition, would be located at the beginning of a transmission line (i.e., at the end of a gathering line).

While most gathering lines have processing plants, there is a small percentage of gathering lines that do not have such plants. When there is no processing plant, RSPA proposes to define the end of a gathering line as the point where custody of the gas is transferred to others who then transport the gas by pipeline to a distribution center, storage facility, or industrial consumers. These delivery points for the transported gas are characteristic of the delivery points in the definition of "transmission line." Such custody transfer normally would be to a transmission company, but it may be to a separate operating entity of the same company. Transfers usually occur at a meter.

Although typically a natural gas processing plant or point of custody transfer will mark the end of gathering, there is a very small percentage of produced gas that does not move through processing plants or change custody downstream as described above. As a basis for determining the end of gathering in that event, RSPA examined two other tests that FERC applies: The "primary function" test (*Ben Bolt Gathering Company*, 26 F.P.C. 825, 827 (1961), *aff'd* 323 F. 2d 610 (5th Cir. 1963), and the "central-point-in-the-field" test (*Barnes Transportation, Inc.*, 18 F.P.C. 369 (1957)).

The "primary function" test is a determinative procedure based on several indicia FERC has found common to gathering: (1) Pipe diameter and length, (2) location of compressors and processing plants, (3) extension of the facility beyond the central point in the field, (4) location of wells along the facility, and (5) geographical configuration of the system. (*Farmland Industries, Inc.*, 23 FERC 61,063 (1983).) The "central-point" test attempts to measure where the separate and various lateral lines in a production field bring gas to a central point for delivery to a single line. Beyond this point, gathering has ended for that production field and the single line is more an extension of the downstream transmission facility than a line collecting gas from wells. Although FERC applies both tests on a case-by-case basis, because the "central-point" test is more objective, RSPA believes that for purposes of this rule, it provides a better basis for a definition of the end of the gathering of gas.

RSPA believes that the concept of a central point is represented by the point of last commingling of gas transported from separate production facilities in a single production field or adjacent production fields. Thus, RSPA is proposing that, in the absence of a downstream processing plant or point of custody transfer described above, a gathering line be defined to end at the last point downstream from a production facility where the produced gas is commingled with gas produced in the same production field or two adjacent production fields. Adjacent fields are fields that are next to each other but are not in contact with each other. Comments are requested if the term "adjacent" is adequate criteria to use in identifying the end of the gathering line in this situation. A "production field" would be defined as an area underlaid by at least one reservoir containing natural gas or natural gas associated with crude oil.

Exceptions to "Gathering Line"

The proposed definition includes three limitations to pipelines that may fit the definition of gathering line discussed above. First, once produced gas reaches the appropriate gathering end point described above, a pipeline that transports the gas beyond that end point would be either a transmission line or distribution line as defined by part 192. If a pipeline is designated as a transmission line or distribution line, no portion of it may be redesignated as a gathering line even if further commingling of gas occurs downstream. For example, further downstream, a transmission or distribution line may join lateral pipelines transporting gas from one or more production fields. Under the proposed definition of gathering line, these laterals would be gathering lines if there is no gathering end point on the lateral upstream from the junction with the transmission line, and the lateral gathering line would terminate at the junction with the transmission or distribution line. Even if laterals are classified as gathering lines, however, their commingling with gas from a transmission or distribution line would not change any segment of the transmission or distribution line to a gathering line. Under this concept, a pipeline would not lose its classification as a transmission or distribution line upon joining a lateral gathering line.

Secondly, if downstream from a production facility, there is no processing plant, no custody transfer of gas, and no commingling with gas produced in the same field or two adjacent fields, then under the proposed definition the pipeline that transports gas from the outlet of that production facility would not be a gathering line. Consequently, it would be either a transmission or distribution line. This situation might occur where gas is transported from a production facility to a distribution center through a pipeline operated by the distribution company. Another situation might occur where gas is transported to a consumer from a production facility through a pipeline owned by the consumer.

Thirdly, because the criteria proposed to delineate gathering lines could inadvertently result in classifying some interstate transmission facilities as gathering, language is proposed to expressly exclude from the definition of gathering line any pipeline facility subject to FERC jurisdiction under the Natural Gas Act (15 U.S.C. 717 *et seq.*). Under the Natural Gas Pipeline Safety Act of 1968, "interstate transmission facilities" are defined as all pipeline facilities used in the transportation of gas that are subject to FERC jurisdiction under the Natural Gas Act, other than certain direct sales lines. The Natural Gas Act does not apply to gathering lines. Thus, care must be taken not to define interstate transmission facilities subject to FERC jurisdiction as gathering lines.

Production Facility

The proposed gathering line definition includes any pipelines or part of a connected series of pipelines used to transport gas from a well or the first production facility where gas is separated from produced hydrocarbons, whichever is farther downstream. This conforms with § 192.1(b) which established the extent of applicability of Part 192 on the outer continental shelf, as well as establishing a similar demarcation line in state waters. The gathering system may include several production facilities, such as free-water knockout, dehydrator, scrubber, heater-treater, and similar production equipment. A flow line connects a wellhead to the first production facility downstream from a well. RSPA proposes the following definition of "production facility":

"Production facility" means (1) piping or equipment used in the production, extraction, recovery, treatment, separation or lifting of gas from the ground; or (2) associated measurement, storage of petroleum liquids, field compression, gas lift, gas injection, or fuel gas systems that are used in the production of gas.

This definition is based on the definition of "production facility" in 49 CFR 195.2 and on the concept that "production" is the process of producing gas and oil from the ground. The production facilities will vary significantly in different production fields depending on the condition and methodology of the gas or oil being produced. Also, a production well can produce oil and gas and the gas is separated using the production facilities.

It should be noted that only those facilities associated with extracting gas from the ground and preparing it for transportation by pipeline are "production facilities." For example, storage and measurement facilities in use at the production site are "production facilities," but storage and measurement facilities in use in other parts of a pipeline system are not production facilities which are not related to the production and extraction process. Further, the term "production facility" applies only to gas production from wells and does not include gas manufacturing facilities.

Impact Assessment

RSPA has considered the impact of this rulemaking on pipeline operators who have historically treated pipelines as gathering lines exempt from part 192, but which could be re-classified under the proposed definition of "gathering line." RSPA believes that there would be very few of these pipelines because the proposed definition is very similar to the way the current definition of "gathering line" has been interpreted and enforced over the past twenty years. If there are any pipelines that are re-classified as transmission pipelines, those lines would only be subject to the operating and maintenance requirements and RSPA will assist the pipeline operator in overcoming any problems encountered in complying with those regulations.

If a gathering line is re-classified as a transmission line, that pipeline would be subject to the reporting requirement in part 191. RSPA seeks comments on how many miles of pipelines currently classified as gathering lines would have to be reclassified as transmission lines. Have these pipelines been the subject of dispute, between the pipeline operator and state or federal enforcement personnel? RSPA also seeks comments on any costs associated with reclassification.

This proposed rule is considered nonmajor under Executive Order 12291 because the proposed definition of "gathering line" is generally consistent with RSPA's interpretations and enforcement practices regarding gathering lines, and, therefore will not result in an annual effect of the economy of $100 million or more and will not result in a significant increase in consumer prices. The proposed rule is significant under Department of Transportation procedures (44 FR 11034) because the definition has been the subject of litigation. RSPA believes that a full Draft Evaluation is not necessary, because, if adopted, the proposed definition will have minimal economic impacts. In addition, the rule will reduce the confusion over classification of certain pipelines located in rural areas. RSPA welcomes comments on the economic impact of this rule.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action, if adopted as final, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule, does not amend current reporting and recordkeeping requirements. Because this rule is consistent with agency interpretation, RSPA believes that this proposed rulemaking will have a negligible effect on the reporting and record keeping currently required in gas pipeline safety regulations.

Federalism Assessment

RSPA has analyzed this proposed rule in accordance with the criteria and principles contained in Executive Order 12612 and has determined that it does not have sufficient Federalism implications to warrant preparing a Federalism Assessment. In clarifying the definition of gathering line this proposed rule will assist the State Pipeline Safety representatives to discharge their responsibilities under the Federal/State Pipeline Safety Program. None of the states participating with RSPA in enforcing part 192 wishes to assert its own definition of gathering line. Moreover, a variety of definitions at the state level would not be consistent with the policy of the NGPSA to get a minimum National floor for safety.

List of Subjects in 49 CFR Part 192

Gathering line, Pipeline safety, Production facilities, Transmission line.

RSPA proposes to amend part 192 of title 49 of the Code of Federal Regulations as follows:

1. The authority citation for part 192 continues to read as set forth below:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.3 would be amended by revising the definition of *gathering line*, and by adding definitions of *production facility* and *production field* as follows:

§ 192.3 Definitions.

* * * * *

Gathering line means, except as provided in paragraph (4), any pipeline or part of a connected series of pipelines used to transport gas from a well or the first production facility where gas is separated from produced hydrocarbons, whichever is farther downstream, to an applicable end point described in paragraphs (1), (2), or (3) below:

(1) The inlet of the first natural gas processing plant used to remove liquefied petroleum gases or other natural gas liquids.

(2) If there is no natural gas processing plant, the point where custody of the gas is transferred to others who transport it by pipeline to:

(i) A distribution center;

(ii) A gas storage facility; or

(iii) An industrial consumer.

(3) If there is no natural gas processing plant or point where custody of the gas is so transferred, the last point downstream where gas produced in the same production field or two adjacent production fields is commingled.

(4) A gathering line does not include any part of a pipeline that transports gas downstream—

(i) From the end points in (1), (2), or (3) in this definition;

(ii) From a production facility, if no end point exists; or

(iii) In any interstate transmission facility subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C. 717 *et seq.*).

* * * * *

Production facility means (1) piping or equipment used in the production, extraction, recovery, treatment, separation or lifting of gas from the ground; or

(2) associated measurement, storage of petroleum liquids, field compression, gas lift, gas injection, or fuel gas systems that are used in the production of gas.

Production field means an area that is underlaid by at least one reservoir containing natural gas or natural gas associated with crude oil.

* * * * *

Issued in Washington, DC on September 19, 1991, under authority delegated by 49 CFR part 106, appendix A.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-23015 Filed 9-24-91; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 12)]

Transfer or Operation of Lines of Railroads in Reorganization

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise the regulations in 49 CFR part 1180 subpart B by (1) removing obsolete references to transactions under 45 U.S.C. 904(b) and 915(b); (2) updating the procedures and information requirements; and (3) making them apply exclusively to applications to transfer and applications for authority to operate the rail lines of bankrupt railroads under plans of reorganization under 11 U.S.C. 1172.

DATES: Comments must be submitted by October 25, 1991.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 12) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. It will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1180

Railroads.

Decided: September 11, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner McDonald commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, 11343-11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. Subpart B of part 1180 is proposed to be revised to read as follows:

Subpart B—Transfer or Operation of Lines of Railroads in Reorganization

Sec.
1180.20 Scope.
1180.21 Definitions.
1180.22 Contents of the application.
1180.23 Procedures.

§ 1180.20 Scope.

(a) The procedures in this subpart govern applications under 11 U.S.C. 1172 for the transfer or operation of lines of bankrupt railroads under a plan of reorganization.

(b) Transfer or operation of lines of bankrupt railroads not under a plan of reorganization are governed by the procedures in subpart D of part 1150 of this chapter if the buyer or operator is not a railroad or Subpart A of this part if the buyer or operator is a railroad.

§ 1180.21 Definitions.

(a) *Applicant.* The parties initiating a transaction.

(b) *Applicant carriers.* Applicant, all carriers related to applicant, and all other carriers involved in the transaction.

(c) *Bankruptcy Court.* The Bankruptcy Court having jurisdiction over Seller's bankruptcy.

(d) *Buyer.* The acquiring entity, and all carriers related to the acquiring entity.

(e) *Railroad.* Any common carrier by railroad as defined in 49 U.S.C. 10102(17)-(18).

(f) *Seller.* The bankrupt railroad.

§ 1180.22 Contents of the application.

Unless waived, the application must include the following information in the form of verified statements. All

testimony must be filed and served with each application.

(a) *Information about applicant.* (1) Applicant's full name and address.

(2) The name, address, and telephone number of applicant's representative to receive correspondence about the application.

(3) Whether applicant is a common carrier by railroad or has been organized to implement the proposal for which approval is being sought.

(4) Whether the rail line will be operated by applicant. If not, the operator must join in the application and provide all information required for an applicant. If the operator has not yet been selected, state who is being considered.

(5) If applicant is a corporation, the names and addresses of its officers and directors.

(b) *Description of line.* The exact location of the line to be transferred or operated including:

(1) Milepost designations;

(2) Origin and termination points;

(3) Stations;

(4) Terminals;

(5) Principal points of interchange;

(6) Amount of main and branch line mileage involved; and

(7) Counties and States traversed.

(c) *Information about the transaction.* A description of the proposed transaction including:

(1) The proposed time schedule for consummation;

(2) The significant terms and conditions of the transaction;

(3) The consideration to be paid (monetary or otherwise);

(4) Copies of all relevant agreements and;

(5) A copy of the court order referring the application to the Commission.

(d) *Public interest.* A discussion of the public interest aspects of the proposed transaction and its effect on:

(1) Adequate rail and other transportation services to the public;

(2) Employees of the seller and buyer or operator;

(3) The remaining system and operations of the seller, if any.

(e) *Map.* A detailed map of the line to be transferred or operated clearly showing:

(1) The area to be served;

(2) The lines of buyer and operator (if any) and other carriers in their relation to the line to be acquired or operated; and

(3) The principal geographic points in the area to be served.

(f) *Operating plan.* An operating plan describing in detail the service to be provided on the line and the interchange connections, including:

(1) Traffic projections;

(2) Schedule of operations;

(3) Crews to be used and where employees will be obtained;

(4) rolling stock requirements and sources;

(5) Operating experience of the proposed operator, unless it is an operating railroad;

(6) Plans to rehabilitate and upgrade the line, yards, and terminals;

(7) Federal Railroad Administration level of the line;

(8) significant changes in service patterns;

(9) Traffic level and density of lines proposed for joint service;

(10) Impact on commuter and other passenger service operated over the line being acquired or operated;

(11) Expected service improvements; and

(12) Any associated discontinuances or abandonments.

(g) *Financial information.* Financial information above the transaction and applicant including:

(1) Economies to be effected in operations; increases expected in traffic; revenues and earnings available for fixed charges; and net earnings resulting from the transaction.

(2) How the buyer or operator proposes to finance the transaction including:

(i) The kind and amount of securities, if any, to be issued;

(ii) The approximate terms of their sale and total fixed charges;

(iii) The extent to which funds are now available;

(iv) Whether any of the securities issued would be underwritten by industries to be served by the proposed line; and

(v) How fixed charges will be met.

(3) Whether any governmental financial assistance is involved and, if so, its form, amount, source, and application.

(4) A balance sheet and income statement of buyer or operator for the most recent calendar year prior to filing the application.

(5) A 2-year statement of projected net income based on traffic projections and a 2-year statement of projected cash flows.

(h) *Additional support.* Any additional information applicant deems material, including statements from shippers, community interests, etc.

(i) *Certificate of service.* A certificate of compliance with the service requirements of § 1180.23(a).

§ 1180.23 Procedures.

(a) *Service.* When filed, a copy of the application must concurrently be served by first class mail on:

(1) The designated State agency in the State(s) where the line is located;

(2) All rail patrons who originated and/or received traffic on the line during the 12-month period preceding the month in which the application is filed;

(3) The National Railroad Passenger Corporation (Amtrak) (if it operates on the line);

(4) The Bankruptcy Court; and

(5) The national offices of labor unions with employees on the affected line(s).

(b) *Acceptance or rejection of an application.* (1) The Commission, through the Director of the Office of Proceedings will accept an application no later than 10 days after it is filed by publishing notice in the **Federal Register.** An application is complete if it has been properly filed and contains substantially all the information required by § 1180.22 of this part, except as modified by advance waiver. The notice will also announce the schedule for filing comments and responses.

(2) The Commission, through the Director of the Office of Proceedings, will reject an incomplete application by a decision served no later than 10 days after the application is filed. The decision will explain specifically why the application was incomplete. A revised application may be resubmitted incorporating portions of the prior application by reference.

(c) *Directly related applications.* Applicant must file concurrently all directly related applications (*e.g.,*) those seeking authority to construct or abandon rail lines, to issue securities, control motor carriers, obtain terminal operations, or acquire trackage rights). Directly related applications will be considered under the schedule set for the initial application.

(d) *Comments.* Unless otherwise scheduled in the notice, verified, written comments addressing the proposed transaction must be filed no later than 30 days after the application is accepted.

(1) The comments must contain:

(i) The name, address, and telephone number of the commenting party's representative upon whom service shall be made;

(ii) The commenting party's position (in support, opposition, or undetermined) and verified statements in support of that position; and

(iii) A list of conditions and modifications sought, with supporting evidence.

(2) Any person who files timely written comments will be a party to the proceeding, without the need to petition for leave to intervene.

(3) Comments must be concurrently served by first class mail on:

(i) Applicant (at each address given in the application), and

(ii) The Bankruptcy Court.

(e) *Replies.* Unless otherwise directed in the notice, applicant's verified replies to comments must be filed no later than 40 days after an application is accepted.

(f) *Additional evidence or proceedings.* The Commission may order the parties to submit supplemental evidence or direct additional proceedings, as warranted.

(g) *Decision.* A final decision will be served by the 180th day after the filing of the application, unless otherwise ordered by the Bankruptcy Court.

(h) *Waiver or clarification.* At least 20 days before the application is filed, applicant may petition to waive or clarify specific portions of this subpart. A decision by the Director of the Office of Proceedings granting or denying a waiver petition will be issued within 30 days of the date the petition is filed and any appeals will be decided by the full Commission.

[FR Doc. 91-23081 Filed 9-24-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018-AB30

Export of American Alligators Taken in 1992 Through 1994 Harvest Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed findings and proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed on appendix II of the Convention may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection. Based on documentation presented for consideration by the Convention Parties in 1983, the U.S. Fish and Wildlife Service (Service) has determined that the American alligator is listed on appendix II for reasons of similarity in appearance under article II.2(b) of the Convention as well as the potential threat to the species survival under Convention article II.2(a).

This notice announces proposed findings by the U.S. Scientific Authority and Management Authority on the export of alligators harvested during the 1992–1994 taking seasons from certain States previously approved for such export for the 1989–1991 harvest seasons. These proposed findings also stipulate that monitoring procedures previously established for this species be continued.

The Service requests comments on these proposed findings and information on the species involved.

DATES: The Service will consider comments received on or before October 25, 1991, in making its final determination and rule.

ADDRESSES: Please send correspondence concerning this document to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., room 432, Arlington, Virginia 22203. Materials received will be available for public inspection, by appointment, from 7:45 a.m. to 4:15 p.m. Monday through Friday, at the Office of Management Authority, 4401 N. Fairfax Dr., room 432, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Scientific Authority: Dr. Charles W. Dane, Office of Scientific Authority, Mail Stop: ARLSQ, room 725, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-1708.

Management Authority: Lawrence G. Kline, Office of Management Authority, U.S. Fish and Wildlife Service, room 420, 4401 N. Fairfax Dr., Arlington, Virginia 22203, telephone (703) 358-2095.

SUPPLEMENTARY INFORMATION: Beginning in 1977, the Service has employed the rulemaking process to develop and issue decisions on the export of certain species under the Convention. The reason for this approach is that it is more effective to issue general decisions on the export of all specimens harvested in a given State and season than to issue such decisions separately for each permit application. This is true especially for Convention appendix II species that are frequently exported, such as the American alligator. On August 14, 1989, (54 FR 33231) the Service published rules granting export approval for American alligators (*Alligator mississippiensis*) from specified States for the 1989–1991 harvest seasons. The purpose of this current proposal is to develop a rule that will allow the export of legally taken American alligators (hides, meat, parts, and products) for the 1992–1994 harvest years from previously approved States.

Scientific Authority Findings

Article II, paragraph 2, of the Convention establishes that appendix II shall include:

(a) All species which although not necessarily now threatened with extinction, may become so unless trade in specimens of such species is subject to strict regulations in order to avoid utilization incompatible with their survival; and

(b) Other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

The American alligator is listed in appendix II to respond both to problems of potential threat to the survival of the species (Convention article II.2(a)), and to the similarity of appearance of other crocodilians that are threatened with possible extinction (Convention article II.2(b)). Article IV of the Convention requires that an export permit for any specimen of a species included in appendix II shall only be granted when certain findings have been made by the Scientific Authority and Management Authority of the exporting country. The marking of hides with specified tags, the marking and documentation of shipments of meat and parts, and the issuance of export permits, specifically for American alligator parts and products is considered sufficient to address the issue of identification due to similarity in appearance between American alligators and other listed crocodilian species (see Management Authority findings for export tagging program specifications). Because the alligator is listed partly due to the potential threat to its survival, based on previous population declines that have been reversed in most parts of its range in the United States, the Service must determine that allowing exports and thereby stimulating harvest will not be detrimental to the survival of the species itself.

The U.S. Scientific Authority must develop advice on nondetriment for the export of appendix II species in accordance with section 8A of the Endangered Species Act (Act) of 1973, as amended. The Act states that the Secretary of the Interior, "shall base such determinations and advice given by him under article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally

accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice."

Guidelines developed for Scientific Authority advice on exports of American alligator under provisions of the Convention article II.2(a), are summarized as follows:

A. Minimum Requirements for Biological Information

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State choice), and population estimates where such information is available.

(2) Information on total harvest of the species, for each harvest season;

(3) Information on distribution of harvest; and

(4) Habitat evaluation.

B. Minimum Requirements for a Management Program

(1) There should be a controlled harvest, methods and seasons to be a matter of State choice;

(2) All hides, meat, and parts should be registered and marked; and

(3) Harvest level objectives should be determined annually by the State.

In applying these guidelines, the Service considers the following types of information on the conditions of the population: (a) A current estimate (if such information is available) of the total number of animals in the preharvest population derived by extrapolating the number of animals per unit area in each of the major habitat types to obtain an estimate of the total number of animals where the number of animals per unit is determined by direct count, by indirect indications of abundance in the State, or by population modeling; (b) a description of ongoing research being conducted to assess the distribution, abundance, or general condition of the species in the State, with a summarization of results obtained, including results of any analysis of age structure or reproductive parameters; and (c) an assessment of long-term population trends of the species in the State, and the relationship of these trends to habitat conditions, management practices, harvest pressure, and/or other factors.

Information on anticipated harvest to be considered by the Service includes: (a) The number of animals to be harvested (by county or game management unit, if data are available at these local levels); (b) the number of alligator hunters expected to be licensed, and (c) the time of the harvest season.

In the case of the alligator, as with most other wild animals, the resource is monitored by a variety of techniques that yield information used in evaluating the condition of a population. As these data are accumulated over time, they reflect trends and call attention to changes in the populations. Habitat information, indices of population size, age and sex structure, and harvest information, are all used to evaluate population status. Although the Endangered Species Act Amendments of 1982 provided that population estimates are not to be required for the approval of appendix II wildlife, if such estimates are provided by the States seeking export approval, or are otherwise available, they will be considered together with information of the types listed above in making findings on nondetriment.

In addition to considering the effect of trade on species or populations native to the United States that are being exported, the Scientific Authority will also monitor the status of the American alligator to (1) determine whether treatment of the alligator remains appropriate and to (2) detect any significant downward trends in the population and, where necessary, advise on more restrictive export controls in response to these trends. This monitoring and assessment will follow the same procedures adopted for other Convention-listed species (see 47 FR 590). The Service will review information on population status and harvest data relevant to the no detriment finding process from each export-approved State, as appropriate. When indicated by available information and a thorough review of accumulated data, a determination can then be made about the treatment of this species and whether the management program needs to be adjusted in a particular State.

The status of the American alligator has dramatically improved throughout its range since the species was placed under State and Federal control. One of the primary reasons for this improvement has been the effective management programs administered by State wildlife agencies. The Service expects these management programs to continue to be effective in conserving the alligator in the future.

The export of American alligators taken in the 1989 through 1991 harvest seasons in certain States was previously approved by the Service (54 FR 33231). In that rule, the Service found that current information on the population status, management, and harvest available from those States, along with other information collected by the Service, supported a finding that the export of alligators taken in accordance with State regulations in those States and in those harvest seasons would not be detrimental to the survival of the species in those States approved for export. The Service's previous assessment of the status of the alligator under the Endangered Species Act was sufficient to support reclassification of the species throughout its range from threatened to threatened for similarity of appearance. This reclassification was accomplished in different parts of its range as the alligator improved its biological status. The following rulemaking documents provide the rationale for the removal of threatened and endangered listings: September 26, 1975–40 FR 44412, January 10, 1977–42 FR 2071, June 25, 1979–44 FR 37130, August 10, 1981–46 FR 40664, October 12, 1983–48 FR 46332, June 20, 1985–50 FR 25672, and June 2, 1986–51 FR 19760.

Based upon information available from the previously approved States and in consideration of the tagging requirements stipulated by the Management Authority, the Service proposes to issue Scientific Authority advice in favor of export of alligator hides and parts legally harvested in those States during the 1992–94 harvest seasons.

Management Authority Findings

Exports of appendix II species are to be allowed under the Convention only if the Scientific Authority advises that the exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the specimens were not obtained in contravention of laws enacted for the protection of the involved species. The Service, therefore, must be satisfied that the alligator hides, meat, or products being exported were not obtained in violation of State or Federal law in order to allow export. For the American alligator, evidence of legal take is provided by Service-approved State export tagging and container marking programs.

To assist these State export tagging programs, the Service annually contracts for the manufacture and delivery of special Convention animal-hide tags for Service-approved, export-qualified States.

In a **Federal Register** notice, published on April 24, 1986 (51 FR 15548), the Service announced the introduction, use, and protection of a US–CITES tag symbol. This symbol appears on every Service-approved export tag to provide legal evidence of U.S. export approval for certain species listed on appendix II

of the Convention. Hides marked with tags that lack this US–CITES symbol are not legally exportable from the United States.

Guidelines developed for Management Authority findings on State-managed American alligator export programs, under provisions of Convention Article IV.2(a), are summarized as follows:

(1) Current State alligator trapping, hide tagging, meat and parts processing, marking, and shipping regulations must be on file with the Office of Management Authority;

(2) Sample reporting forms, export tag, meat and parts packing seal, parts tag, and specifications of the State's standard meat and parts package/container must be on file with the Office of Management Authority;

(3) The hide export tag must be durable and permanently locking, and must show US–CITES logo, State of origin, year of take, species, and be serially unique;

(4) The export tag, meat seal, and parts tag or seal must be applied by the State to all hides, meat, or parts within a minimum time after take or processing, as specified by State law, and such time should be as short as possible to minimize movement of untagged hides, meat, or parts;

(5) The tags or seals must be permanently attached, as mandated by the State;

(6) All alligator harvesters and processors must be State registered;

(7) All alligator hide, meat, and parts dealers must be State registered;

(8) All State-registered alligator harvesters, processors, and dealers must make available their alligator harvest and commerce data to the State on at least an annual basis, as specified by the State;

(9) State-registered alligator dealers and State licensed harvesters authorized to attach export tags must account for tags received and must return unused tags to the State, within a specified time after taking season closes; and

(10) Manufactured hide products may be exported from the United States when the CITES export tags that were removed from the hides contained in the products are surrendered to the Service prior to export.

Based upon (1) the finding of non-detriment by the Scientific Authority, and (2) information available from the previously export-approved States, the Service proposes to issue Management Authority approval for the export of 1992–1994 legally harvested alligators from those States previously approved for such export.

Multiyear Findings

The Service has monitored existing State programs for the American alligator in most of the previously approved States for many years and expects these States will continue to satisfy Convention requirements. States seeking for the first time to establish a harvest program for alligators should apply for Convention export approval no later than January 2 of the year they plan to initiate such a program. To ensure that export-approved States maintain successful programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State management and export marking programs through evaluation of State annual reports and export reports from U.S. ports. Annual State program reports should be provided to the Office of the Management Authority (address given above) for review no later than May 31 of each year.

Proposed Findings

The Service proposes to find that the status of the species and State programs is such that the 1992–1994 harvests of American alligators for export will not be detrimental to the survival of the species. Accordingly, the Service proposes to approve exports of 1992–1994 harvested alligators from the States previously approved for export on the grounds that both Scientific Authority and Management Authority export requirements are satisfied.

Comments Solicited

The Service requests comments on these proposed findings. Final findings will take into consideration the comments and any additional information received, and such consideration might lead to final findings that differ from this proposal.

The proposal is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*). The primary author is Mr. Lawrence G. Kline, Office of Management Authority.

Note: The Department has previously determined that the export of alligators of various States taken in the 1989–1991 harvest seasons was not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act, therefore, the preparation of an Environmental Impact Statement was not required (54 FR 33231). Because these proposed findings do not significantly differ from the previous export findings, and present biological data has not significantly changed, the Service believes that the previous determination not to prepare an Environmental Impact Assessment on export of alligators taken during specified harvest seasons in certain States remains valid. The Department had also previously determined that such harvest was not a major rule under Executive Order 12291 and did not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because the existing rule treats exports on a State-by-State basis and proposes to approve export in accordance with State management/export programs, the final rule will have little effect on small entities in and of itself. This proposed rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend part 23 of title 50, Code of Federal Regulations, as set forth below:

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

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 108; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

* * * * *

Subpart F—Export of Certain Species

* * * * *

2. In § 23.57 revise paragraph (a) as follows:

§ 23.57 American alligator (Alligator mississippiensis).

(a) 1979–1994 harvests (wild and captive bred for each year unless noted).

	AL	FL	GA	LA	MS	SC	TX
1979*	–	+	–	+	–	–	–
1980	–	+	–	+	–	–	–
1981	–	+	–	+	–	–	–
1982	–	+	–	+	–	–	–
1983	–	+	–	+	–	–	–
1984	–	+	–	+	–	–	+
1985	–	+	–	+	–	–	+
1986	–	+	–	+	–	–	+
1987	–	+	–	+	–	–	+
1988	–	+	+	+	–	+	+
1989	+	+	+	+	+	+	+
1990	+	+	+	+	+	+	+
1991	+	+	+	+	+	+	+
1992	+	+	+	+	+	+	+
1993	+	+	+	+	+	+	+
1994	+	+	+	+	+	+	+

* And prior year.
– Export not approved.
+ Export approved.

* * * * *

Dated: August 6, 1991.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service

[FR Doc. 91-22926 Filed 9-24-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 186
Wednesday, September 25, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of the fee for dairy import licenses for the 1992 quota year; correction.

SUMMARY: This notice corrects the applicable year for the $75 fee for import licenses which was announced in the **Federal Register** on August 9, 1991 (56 FR 37888).

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Import Quota Manager, Import Policy and Trade Analysis Division, room 5531-South Building, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202)447–2916.

SUPPLEMENTARY INFORMATION: The last sentence of the Notice published in the Federal Register on August 9, 1991 (56 FR 37888, column 2) incorrectly stated that the fee for each license issued to a person or firm would be $75 per license for the 1991 calendar year.

The last sentence of the Notice should read: "Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 1992 calendar year, in accordance with the regulations codified at 7 CFR 6.20–6.34, will be $75 per license."

Richard P. Warsack,
Licensing Authority.

[FR Doc. 91–23096 Filed 9–24–91; 8:45 am]

BILLING CODE 3410–10–M

National Agricultural Statistics Service

Cattle Report Date Changes

Notice is hereby given that the National Agricultural Statistics Service (NASS) is proposing a change in the release date for its cattle inventory and cattle on feed reports. The change would move the release to Fridays beginning in 1992. When Friday is a holiday, the report will be issued on the last workday before the holiday. When possible, reports that had been released on Monday will be released on Friday of the previous week. Reports that had been released on Tuesday through Thursday will be held until Friday of the same week. This proposal responds to comments from livestock producers.

Comments from interested parties regarding this action should be sent to William L. Pratt, Chief, Livestock, Dairy and Poultry Branch, Estimates Division, Room 5906 South Building, NASS/USDA, Washington, DC 20250. Comments should be forwarded within 30 days of this notice.

Done at Washington, DC, this 20th day of September 1991.

Charles E. Caudill,
Administrator.

[FR Doc. 91–23130 Filed 9–24–91; 8:45 am]

BILLING CODE 3410–20–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for farm products in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by John Kennedy, Secretary of State, for an additional farm product produced in that State as follows:

Rabbits

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR §§ 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: September 17, 1991.

Virgil M. Rosendale,
Administrator, Packers and Stockyards Administration.

[FR Doc. 91–23139 Filed 9–24–91; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Testing of the Construction Project Report – State and Local Governments.

Form Number(s): Forms C–700(SL)–A and C–700(SL)–B.

Agency Approval Number: 0607–0691.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 140 hours.

Number of Respondents: 80.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The Census Bureau uses information collected in the Construction Project Report (State and local Governments), Form C–700(SL), to publish estimates of the dollar value of new construction put in place at construction projects owned by state or local government agencies. These projects include public schools, courthouses, prisons, hospitals, civic centers, high–ways, water systems, etc. Recent investigations have revealed that many respondents either ignore critical questions on the form or report incorrect information. Two test forms, Form C–700(SL)–A and Form C–700(SL)–B were approved by OMB for use through December 31, 1991. The test forms are variations of the C–700(SL) and are designed to help us better understand current reporting discrepancies. The test forms are also designed to gauge the availability of data for completed projects. We will use the results of this field testing for evaluation purposes only to revise Form C–700(SL) as required. This submission requests a two–year extension of the testing because construction has not been

completed on many of the projects in the testing sample.

Affected Public: State or local governments.

Frequency: Form A – Monthly, Form B – One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 19, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–23131 Filed 9–24–91; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A-570-814 and A-549-807]

Postponement of Preliminary Antidumping Duty Determinations: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China and Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377–4198.

POSTPONEMENT: On September 13, 1991, the U.S. Fittings Group, petitioner in these investigations, requested that the Department postpone the preliminary determinations in accordance with section 733(c)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(c)(1)). Accordingly, we are postponing the date of the preliminary determinations until not later than December 18, 1991.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: September 18, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–23132 Filed 9–24–91; 8:45 am]

BILLING CODE 3510–DS–M

[C-401-401]

Certain Carbon Steel Products From Sweden; Preliminary Results of Countervailing Duty; Administrative Review

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

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain carbon steel products from Sweden. We preliminarily determine the total subsidy to be 2.98 percent *ad valorem* for the period January 1, 1989 through December 31, 1989. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 40931) of the countervailing duty order on certain carbon steel products from Sweden (50 FR 41547; October 4, 1985). On October 31, 1990, USX Corporation, the petitioner, requested an administrative review of the order. We initiated the review, covering the period January 1, 1989 through December 31, 1989, on December 10, 1990 (55 FR 50739). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments from Sweden of cold-rolled carbon steel flat-rolled products, whether or not corrugated or crimped; whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. Through 1988 such merchandise was classifiable under item numbers 607.8320, 607.8350, 607.8355 and 607.8360 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 7209.11.00, 7209.12.00, 7209.13.00, 7209.21.00, 7209.22.00, 7209.23.00, 7209.24.50, 7209.31.00, 7209.32.00, 7209.33.00, 7209.34.00, 7209.41.00, 7209.43.00, 7209.44.00, 7209.90.00, 7211.30.50, 7211.41.70 and 7211.49.50 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and ten programs. Svenskt Staal AB (SSAB) was the only Swedish producer of the subject merchandise exported to the United States during the review period.

Analysis of Programs

(1) Regional Development Incentives

The Government of Sweden allocates funds to county administrative boards for regional development and employment incentives to firms conducting business in specified regions. The regional development incentives are intended to compensate firms for the additional costs connected with business activities in those areas. The incentives consist of location-of-industry loans and grants, freight relief, regional investment projects, employment and training grants, and other miscellaneous grants. Except for the employment and training grants, which are not limited to particular regions or specific industries, we consider these incentives to be countervailable because they are provided to particular regions or specific industries. SSAB has not received incentives for regional investment projects on other miscellaneous grants. SSAB did receive location-of-industry grants in every year between 1979 and 1985, and a long-term variable interest rate location-of-industry loan in 1983.

For the location-of-industry grants, we used our declining balance grant methodology to measure the benefit. We allocated the benefits from each grant over 15 years, the average useful life of assets in the steel industry, according to the asset guideline classes of the Internal Revenue Service.

We preliminarily determine that the location-of-industry loan was not countervailable during the review period

because the variable interest rate in effect during the review period was higher than our benchmark rate.

SSAB also received freight relief under this regional program on shipments of the subject merchandise during the review period. Freight relief is expensed in the year of receipt.

We divided the sum of these benefits by SSAB's total sales in 1989. On this basis, we prelimarily determine the benefit from the regional development incentive program to be 0.11 percent *ad valorem*.

(2) Reconstruction Loans

The Government of Sweden provided reconstruction loans to SSAB between 1979 and 1985. The initial reconstruction loans were intended to cover expected operating losses during the 1978–1982 restructuring period. Subsequent reconstruction loans were granted for employment promotion and investment in certain plants and equipment. These loans were interest free for three years, after which they carried an interest rate of either 9.5 percent or 11.5 percent. Up to half of the loan amount can be written off after the second calendar year following the disbursement. The remainder of the loan may be forgiven in its entirety at the end of the ninth calendar year after disbursement. Principal and interest payments on the outstanding loans are required only if SSAB pays dividends to its shareholders. Each year that a dividend is declared, SSAB is obligated to make a payment in an equal amount to the government. In 1989, SSAB made a payment on reconstruction loans equivalent to the total dividend paid in that year.

Because these loans were authorized under special government legislation and were given to SSAB on terms inconsistent with commercial considerations, we preliminarily determine that they are countervailable.

To calculate the benefit, we treated the portions of the reconstruction loans that were written off through 1989 as grants and used the grant methodology described in the Section on "Regional Development Incentives" above. We treated the outstanding loan balances as of January 1, 1989 as a series of short-term loans because the loans bear a variable interest rate that changes each year.

We divided the sum of the grant and loan benefits by the value of SSAB's total 1989 sales. On this basis, we preliminarily determine the benefit from this program to be 1.83 percent *ad valorem*.

(3) Structural Loans

Between 1978 and 1983, SSAB received ten structural loans from the Swedish government for investment in plant and equipment. Two loans carried a five percent fixed interest rate for the entire 25-year term, and the remaining eight loans carried interest rates that are fixed every five years over the 25-year term. The five-year fixed interest rate is adjusted based on the prevailing state loans' interest rate plus a margin. The rates of these structural loans during the review period ranged between 8.75 percent to 11.63 percent, all of which were below our benchmark rates.

All of the structural loans are interest free for the first three years. There is no repayment of principal during the first five years, after which the principal is repaid in twenty equal installments at the end of each calendar year.

To calculate the benefit from the 25-year fixed rate loans, we compared the difference between the annual payment of principal and interest actually made and the annual payment of principal and interest that SSAB would have made under loan terms that were consistent with commercial considerations. We then calculated the "grant equivalent" of the loan, which is the amount equal to the value, at the time the preferential loan is made, of all the annual benefits that accrue during the life of the loan.

We treated the 25-year loans with readjustable five-year fixed rates as a series of five-year loans and, instead of calculating the grant equivalent for the entire life of the loan, we calculated discrete grant equivalents for each five-year period. For the first five-year period, we calculated the annual differentials in interest payments using the interest rate differential prevalent in year one. The grant equivalent of the first five-year period is the sum of the present values of the annual interest differentials. In order to account for the effect on the entire loan of the uncapitalized interest from the three-year interest grace period, we calculated a separate grant equivalent for the interest benefits that accrued during the grace period and allocated that amount over the 25-year term of the loan.

We allocated the grant equivalents from both the five-year and 25-year fixed rate loans using the declining balance methodology. On this basis, we preliminarily determine the benefit from the structural loans to be 0.54 percent *ad valorem*.

(4) Government Equity Infusions

SSAB received an equity infusion from the Government of Sweden at the time of its formation in 1978, and again in 1981 when additional equity was required. We previously determined that SSAB was unequityworthy in those years. There have been no government equity infusions since 1981.

In each year of review, we measure the subsidy through the rate of return shortfall methodology. We multiply the amount of the equity received by the rate of return on equity shortfall in the year of review. The shortfall is the difference between the national average rate of return on equity and the company's rate of return on equity. In 1989, SSAB's rate of return on equity (15.00 percent) exceeded the national average rate of return on equity (6.90 percent). As a result, there is no return on equity shortfall and no benefit from the government equity infusion for the review period.

(5) Government Acquisition of Assets for SSAB

A. In 1978, Granges transferred its plant, equipment and mining operations valued at 700 Million Swedish Krona (MSEK) to SSAB in return for a 25 percent share of SSAB's stock. In doing so, Granges incurred losses (in its financial statements) because the book value of the transferred assets was higher than the 700 MSEK value received by Granges in SSAB stock. The Swedish government in Bill 1977/78:87 proposed that Granges' losses be covered by SSAB's reimbursement of 480 MSEK to Granges for its railway operation.

SSAB took over Granges's operation, TGOJ, by paying Granges 343.3 MSEK for its TGOJ shares. SSAB effected this payment to Granges in the form of a promissory note issued by the Government of Sweden and made available to SSAB for the purposes of this acquisition. The terms of the promissory note was 12 years at 8.25 percent interest. SSAB signed over the note to Granges and payments have been made directly to Granges by the Swedish government.

We previously determined that the government of Sweden's payment to Granges for the railway, TGOJ, was a grant which bestowed a countervailable benefit to SSAB. SSAB was relieved from a debt that it otherwise would have had to pay absent government intervention.

B. Norrbottens Jarnverk AB (NFA), a wholly owned government company, contributed steel assets valued at 700 MSEK in 1978 to SSAB in return for 25 percent share of stock. The book value of the transferred assets was higher than the transfer price. The Swedish government in Bill 1977/78:87 proposed

to cover NJA's loss resulting from NJA's sale of assets to SSAB by issuing a promissory note to Statsforetag, NJA's parent company, in the amount of 530 MSEK on NJA's behalf.

We determined that the government's payment of 530 MSEK to Statsforetag on NJA's behalf was a grant which bestowed a countervailable benefit on SSAB because the government assumed the cost for the acquisition of assets for SSAB.

Using our declining balance grant methodology, we allocated the grants over 15 years. We divided the result by SSAB's total sales in 1989. On this basis, we preliminarily determine the benefit to be 0.46 percent *ad valorem.*

(6) Research and Development Grants

The Swedish Board for Technical Development provides research and development loans and grants to Swedish industries for research and development purposes. Repayment is conditional upon the success of the project. Because we have previously determined that these funds were provided to a specific industry on terms inconsistent with commercial considerations (See, Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Sweden (50 FR 33380; August 19, 1985)) and we do not have evidence that the results of the research and development programs were made available to the public, we preliminarily determine that they continue to be countervailable. Under this program, SSAB received grants from 1979 through 1984 and in 1987. SSAB did not receive any grants under this program during the review period.

We used the grant methodology described above to calculate the benefit. On this basis, we preliminarily determine the benefit from this program to be 0.01 percent *ad valorem.*

(7) Employment Promotion Grants

The Swedish Parliament passed Government Bill 1976/77:95 in March 1977 in response to the general economic downturn in Sweden. The Bill provided employment grants, in order to prevent layoffs, to be paid to companies recognized as dominant employers in particular communities. These grants were designed to cover 75 percent of the wages and salaries of surplus workers who performed work at the company that was unrelated to direct production. The Government of Sweden passed several overlapping bills that appear to have made employment promotion grants available to all industries throughout Sweden. However, the Swedish government did not provide a breakdown of the industries that used the program and what the proportion of the benefits were to each industry. Moreover, SSAB did not provide information demonstrating that it was not relieved of any obligations that it otherwise would have incurred absent grants under this program.

As in Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review (54 FR 31714; August 1, 1989), we determine, using best information available, that the grants were specifically provided and that the Government of Sweden assumed costs that SSAB otherwise would have had to pay and that this program confers a countervailable domestic subsidy.

To calculate the subsidy from the program, we used the grant methodology described above. On this basis, we preliminarily determine the benefit from this program to be 0.03 percent *ad valorem.*

(8) Other Programs

We also examined the following programs and preliminarily determine that SSAB did not use them during the period of review:

(A) Government Export Credits
(B) Municipal and County Subsides; and
(C) Government Restructuring Program for the Specialty Steel Industry

Preliminary Results of Review

As a result of our review, we preliminarily determine the total subsidy to be 2.98 percent *ad valorem* for the period January 1, 1989 through December 31, 1989.

The Department intends to instruct the Customs Service to assess countervailing duties of 2.98 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989, except for Surahammars Bruks AB, which is excluded from the order.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.98 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Sweden, except for Surahammars Bruks AB, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodologies and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with CFR 19 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 20, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-23133 Filed 9-24-91; 8:45 am]

BILLING CODE 3510-05-M

Johns Hopkins University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-069. *Applicant:* The Johns Hopkins University, Baltimore, MD 21218. *Instrument:* 26 Soller Collimators for Neutron Scattering Instrument. *Manufacturer:* Riso National Laboratory, Denmark. *Intended Use:* See notice at 56 FR 23873, May 24, 1991. *Reasons:* The foreign

instrument provides collimation for a 4-inch beam height with an 8-inch polychromatic neutron beam. *Advice Received From:* Argonne National Laboratory, July 19, 1991.

Docket Number: 91–038. *Applicant:* Carnegie Mellon University, Pittsburgh, PA 15213. *Instrument:* Metallorganic Chemical Vapor Deposition System, Model EPITOR 04. *Manufacturer:* Thomas Swan and Company Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 13625, April 3, 1991. *Reasons:* The foreign instrument provides a horizontal, small-volume quartz reactor geometry with rectangular section and a water jacket to permit minimum purge time and short source molecule residence time for atomic layer expitaxy growth operation. *Advice Submitted By:* National Institutes of Standards and Technology, July 30, 1991.

Docket Number: 91–057. *Applicant:* Oregon State University, Corvallis, OR 97331–5503. *Instrument:* Towed Underwater Vehicle, Model SEASOAR. *Manufacturer:* Chelsea Instruments Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 30558, July 3, 1991. *Reasons:* The foreign instrument provides controllability of depth and tow path to within a few meters over the 0–300 meter towing range and towed speed to 10 knots. *Advice Submitted By:* National Oceanic and Atmospheric Administration, November 29, 1990.

Docket Number: 91–084. *Applicant:* University of California, Irvine, Irvine, CA 92717. *Instrument:* Time Resolved Picosecond Diffraction X-ray Streak Camera. *Manufacturer:* Kentech, United Kingdom. *Intended Use:* See notice at 56 FR 28372, June 20, 1991. *Reasons:* The foreign instrument provides resolution of 1.5 ps at an x-ray energy of 250 eV and can detect x-rays in the energy range of 1–100 eV. *Advice Received From:* National Institute of Standards and Technology, May 24, 1991.

Docket Number: 91–086. *Applicant:* Hawaii Institute of Geophysics, Honolulu, HI 96822. *Instrument:* Soil Gas Radon Probes, Model 611 AlphaLogger. *Manufacturer:* Alpha Nuclear Corporation, Canada. *Intended Use:* See notice at 56 FR 30558, July 3, 1991. *Reasons:* The foreign instrument provides: (1) Radon measurements under natural, undisturbed conditions of the soil gas on a pre-programmed time basis, (2) computer readout of data in the field and (3) direct detection of radon parent nuclides. *Advice Received From:* National Institute of Standards and Technology, January 9, 1991.

Docket Number: 91–088. *Applicant:* University of Nebraska-Lincoln, Lincoln, NE 68588–0340. *Instrument:* Electro-magnetic Geophysical Survey Instrument. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* See notice at 56 FR 30558, July 3, 1991. *Reasons:* The foreign instrument provides battery-powered measurements of ground conductivity by electromagnetic induction to a depth of 30m in the vertical coplanar mode. *Advice Received From:* U.S. Geological Survey, August 2, 1991.

Docket Number: 90–165R. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* 12-Channel Anemometer with Accessories. *Manufacturer:* AA Lab Systems Ltd., Israel. *Intended Use:* See notice at 55 FR 41739, October 15, 1990. *Reasons:* The foreign instrument provides: (1) An output noise level of 0.1 mV rms over a 0–20 KHz bandwidth and (2) operation in either a constant temperature or constant current mode. *Advice Submitted By:* National Institute of Standards and Technology, August 7, 1991.

The Argonne National Laboratory, the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology and the U.S. Geological Survey advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–23134 Filed 9–24–91; 8:45 am]

BILLING CODE 3510–DS–M

University of California; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–024. *Applicant:* University of California, Livermore, CA 94550. *Instrument:* Three Gigabit Per Second Bit Error Rate Tester. *Manufacturer:* Anritsu Corp., Japan. *Intended Use:* See notice at 56 FR 11546, March 19, 1991.

Comments: No comments have been received with respect to this application. *Decision:* Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument wa ordered November 29, 1990.

Reasons: The foreign instrument provides an 80 ps signal rise/fall time at an output signal rate of 1.0 GHz. The National Institute of Standards and Technology advises that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes at this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–23135 Filed 9–24–91; 8:45 am]

BILLING CODE 3510–05–M

University of California, Santa Barbara; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–067. *Applicant:* University of California, Santa Barbara, Santa Barbara, CA 93106. *Instrument:* Charcoal Scrubber. *Manufacturer:* Thomas Swan and Company, United Kingdom. *Intended Use:* See notice at 56 FR 23873, May 24, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory

for an instrument previously imported for the use of the applicant. The accessory is pertinent to the intended uses.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-23136 Filed 9-24-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Guatemala; Correction

September 19, 1991.

In the letter to the Commissioner of Customs, second column, 10th line, published in the **Federal Register** on September 13, 1991 (56 FR 46599), correct Category 847 to 347.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-23128 Filed 9-24-91; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 20, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 200 is being increased by application of swing and carryforward. The limit for Category 369-S is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 32558, published on July 17, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 20, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 11, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on September 20, 1991, you are directed to amend the directive dated July 11, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	847,500 kilograms.
369-S [2]	159,235 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-23046 Filed 9-24-91; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with Costa Rica on Certain Wool Textile Products

September 19, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on categories for which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On August 30, 1991, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1991, the Government of the United States requested consultations with the Government of Costa Rica with respect to wool suits in Category 443, produced or manufactured in Costa Rica.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Costa Rica, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 443, produced or manufactured in Costa Rica and exported during the twelve-month period which began on August 30, 1991 and extends through August 29, 1992, at a level of not less than 176,810 numbers.

A summary market statement concerning Category 443 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 443, or to comment on domestic production or availability of products included in Category 443, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; attn: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the

Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 443. Should such a solution be reached in consultations with the Government of Costa Rica, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Costa Rica

Category 443—Men's and Boys' Wool Suits

August 1991

Import Situation and Conclusion

U.S. imports of men's and boys' wool suits, Category 443, from Costa Rica reached 184,857 units (15,405 dozen) during the year ending in June 1991, 25 percent above the 147,372 units (12,281 dozen) imported during the year ending in June 1990. In the first six months of 1991 imports of Category 443 from Costa Rica reached 96,702 units (8,059 dozen), 32 percent above the 73,155 units (6,096 dozen) shipped during the same time period in 1990. Costa Rica is the fourth largest supplier of men's and boys' wool suits to the U.S., accounting for 7.7 percent of total Category 443 imports during the first half of 1991. In calendar year 1990, Costa Rica's Category 443 imports accounted for 5.5 percent of total category imports.

The sharp and substantial increase in Category 443 imports from Costa Rica is disrupting the U.S. market for men's and boys' wool suits.

U.S. Production, Import Penetration and Market Share

U.S. production of men's and boys' wool suits, Category 443, has declined sharply since 1988, falling to 354,000 dozen in 1990, 25 percent below the 470,000 dozen produced in 1989, and 27 percent below the 482,000 dozen produced in 1988. In contrast, U.S. imports of men's and boys' wool suits, Category 443, increased from 167,000 dozen in 1988 to 195,000 dozen in 1990, a 17 percent increase. Category 443 imports continue to increase in 1991, surging to 104,959 dozen in the first six months of 1991, 16 percent above the January-June 1990 level. The ratio of imports to production in Category 443 has risen from 35 percent in 1988 to 55 percent in 1990. The domestic manufacturers' share of the men's and boys' wool suit market fell from 74 percent in 1988 to 65 percent in 1990, a decline of 9 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 443 imports from Costa Rica during the first six months of 1991 entered the U.S. under HTSUSA number 6203.11.2000—men's and boys' wool suits, other than those containing 30 percent or more by weight of silk. These garments entered at a duty-paid landed value below U.S. producers' prices for comparable suits.

[FR Doc. 91-23129 Filed 9-24-91; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with the Philippines on Certain Man-Made Fiber Woven Fabric

September 19, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 27, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On August 30, 1991, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines, the United States Government requested consultations with the Government of the Philippines with respect to man-made fiber woven fabric in Category 611.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Category 611, the Government of the United States has decided to control imports during the ninety-day period which began on August 30, 1991 and extends through November 27, 1991.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 611, produced or manufactured in the Philippines and exported during the prorated period beginning on November 28, 1991 and extending through December 31, 1991 of not less than 335,463 square meters.

A summary market statement concerning Category 611 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 611, under the agreement with the Government of the Philippines, or to comment on domestic production or availability of products included in Category 611, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; attn: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption

contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 611. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Philippines

Category 611—Woven Fabric 85 Percent or More Artificial Staple Fiber

August 1991

Import Situation and Conclusion

U.S. imports of woven fabrics containing 85 percent or more artificial staple fiber, Category 611, from the Philippines reached 3,001,080 square meters during the year ending May 1991, three an a half times the 844,823 square meters imported a year earlier. In the first five months of 1991, the Philippines shipped 1,542,366 square meters, more than three times their January-May 1990 level and 80 percent of their total calendar year 1990 imports. Category 611 imports from the Philippines, accounted for three percent of total imports for the year ending May 1991. In the year ending May 1990, the Philippines accounted for one percent of total Category 611 imports.The sharp and substantial increase of Category 611 imports from the Philippines is causing a real risk of disruption in the U.S. market for woven fabrics containing 85 percent or more artificial staple fiber.

Import Penetration and Market Share

Production data for woven fabrics containing 85 percent or more artificial staple fiber, Category 611, became available on a reliable basis beginning in July 1989, and it is not comparable with prior years' production data. Data for the eleven month periods of July 1989-May 1990 and July 1990-May 1991 are comparable and reflect a 24 percent decrease in production while imports from all sources increased 21 percent.The U.S. producers' share of the market for woven fabric containing 85 percent or more artificial staple fiber dropped 11 percentage points, falling from 67 percent during July 1989-May 1990 to 56 percent during July 1990-May 1991. During these same periods, the ratio of imports to domestic production increased from 49 percent to 79 percent.

Duty-Paid Value and U.S. Producers' Price

Approximately 96 percent of Category 611 imports from the Philippines during the year ending May 1991 entered under HTSUSA number 5516.11.0010—woven plain weave fabric 85 percent or more of artificial staple fiber whether or not bleached. These fabrics entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable fabrics.

Committee for the Implementation of Textile Agreements

September 19, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 27, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber woven fabric in Category 611, produced or manufactured in the Philippines and exported during the ninety-day period beginning on August 30, 1991 and extending through November 27, 1991, in excess of 1,050,378 square meters [1].

Textile products in Category 611 which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group II limit established in the directive dated December 12, 1990 for the period January 1, 1991 through December 31, 1991.

Textile products in Category 611 which have been exported to the United States prior to August 30, 1991 shall not be subject to the ninety-day limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-23130 Filed 9-24-91; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after August 29, 1991.

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Record System Amendment

AGENCY: Department of the Army, DOD.

ACTION: Amendment of a Records Systems.

SUMMARY: The Department of the Army proposes to amend twenty-three record systems in its inventory of record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed actions will be effective without further notice on October 25, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to Ms. Alma Lopez, Office of Systems Management Branch (ASOP-MP) Ft. Huachuca, AZ 85613-5000.

SUPPLEMENTARY INFORMATION: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11847, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 46965, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21897, May 30, 1990 (Army Address Directory)
55 FR 41743, Oct. 15, 1990
55 FR 46707, Nov. 6, 1990
55 FR 46708, Nov. 6, 1990
55 FR 48678, Nov. 21, 1990

55 FR 48671, Nov. 21, 1990 (Amended ID Numbers)
55 FR 51467, Dec. 14, 1990
56 FR 7018, Feb. 21, 1991
56 FR 15593, Apr. 17, 1991
56 FR 21134, May 7, 1991
56 FR 27949, Jun. 18, 1991
56 FR 42986, Aug. 30, 1991
56 FR 42991, Aug. 30, 1991
56 FR 42995, Aug. 30, 1991
56 FR 46162, Sep. 10, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), which requires the submission of an altered system report. The specific changes to the record systems being amended are set forth below, followed by the record system notices, as amended, published in their entirety.

Dated: September 19, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0001-20SALL

System name:

Congressional Inquiry File (50 FR 22144, May 29, 1985).

Changes:

* * * * *

System location:

Add "Official mailing addresses are published as an appendix to the Army's compilation of record systems notices." to the end of the entry.

Categories of individuals covered by the system:

Delete entry and replace with "Any citizen who writes to a Member of Congress requesting that the Member solicit information from Department of the Army on their behalf."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310-1600; or to the legislative liaison and control officer at the Army Staff or field office known to have the record.

For verification purposes, individual should provide the full name, current address and telephone number, and sufficient detail to permit locating the record."

Record access procedures:

Delete entire entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310-1600; or to the legislative liaison and control officer at the Army Staff or field office known to have the record. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

For verification purposes, individual should provide the full name, current address and telephone number, and sufficient detail to permit locating the record."

* * * * *

A0001-20SALL

SYSTEM NAME:

Congressional Inquiry File.

SYSTEM LOCATION:

Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310.

A segment of this system may exist at Department of the Army staff agencies, field operating agencies, major commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any citizen who writes to a Member of Congress requesting that the Member solicit information from the Department of the Army on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request to the Member of Congress, the Member's inquiry to the Army, the Army's response, and relevant supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1034.

PURPOSE(S):

To conduct necessary research and/or investigations so as to provide information responsive to Congressional inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on microfilm records in an automatic retrieval device.

RETRIEVABILITY:

Retrieved by Congressmen and individual's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized persons having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

In the Chief of Legislative Liaison, Office of the Secretary of the Army, records are destroyed after 5 years. In other offices of legislative coordination and control at Army Staff level and at headquarters of major and subordinate commands, records are destroyed after 3 years; at lower echelons, records are destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS;

Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310; or to the legislative liaison and control officer at the Army Staff or field office known to have the record. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

For verification purposes, individual should provide the full name, current address and telephone number, and sufficient detail to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310; or to the legislative liaison and control officer at the Army Staff or field office known to have the record. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

For verification purposes, individual should provide the full name, current address and telephone number, and sufficient detail to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations

by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual Member of Congress; Army records and reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0015–34DARP

System name:

Army Civilian/Military Service Review Board (52 FR 18804, May 19, 1987).

Changes:

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–PAS–ENC, 9700 Page Boulevard, St Louis, MO 63132–5200.

For verification purposes, individual should provide the full name at the time of the recognized military service, date and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–PAS–ENC, 9700 Page Boulevard, St Louis, MO 63132–5200.

For verification purposes, individual should provide the full name at the time of the recognized military service, date and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature."

* * * * *

A0015–34DARP

SYSTEM NAME:

Army Civilian/Military Service Review Board.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian or contractual personnel (or their survivors) who were members of a group certified by the Secretary of the Air Force to have performed active duty with the Armed Forces of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application of individuals for recognition of service, evidence that supports claim of membership in approved group, action of the Army Civilian/Military Service Review Board, DD Form 214 and DD Form 256 or DD Form 257 as appropriate, and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 401, Pub. L. 95–202 and DoD Directive 1000.20, Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel.

PURPOSE(S):

To determine whether individual applicants were members of civilian or contractual groups approved as having rendered service to the Army and whose service constitutes active military service, and to issue appropriate discharge or casualty documents, including applicable pay and equivalent rank or grade.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Copy of DD Form 214 is furnished to the Veterans Administration for benefits entitlements.

The "Blanket Route Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers stored in file folders.

RETRIEVABILITY:

By applicant's surname.

SAFEGUARDS:

Information is accessible only to designated persons having official need therefore in the performance of their duties. During non-duty hours, guards assure that records areas are secured.

RETENTION AND DISPOSAL:

Upon favorable Board decision, an Official Military Personnel File is created, containing individual's application, Board action, DD Form 213, DD Form 256 or DD Form 257 as appropriate, and DD Form 1300 if applicable. This file is transferred to the National Personnel Records Center, General Services Administration, where it is retained permanently.

Disapproved applications, together with supporting documentation and the Board's decision, are retained for 2 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–PAS–ENC, 9700 Page Boulevard, St Louis, MO 63132–5200.

For verification purposes, individual should provide the full name at the time of the recognized military service, date and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–PAS–ENC, 9700 Page Boulevard, St Louis, MO 63132–5200.

For verification purposes, individual should provide the full name at the time of the recognized military service, date and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–1HSC

System name:

Professional Personnel Information file (50 FR 22218, May 29, 1985).

Changes:

* * * * *

Categories of records in the system:

Delete the word "consultants" and replace with "staff officers".

* * * * *

System manager:

Delete entry and replace with "The Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041-3258."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Health Services Command, ATTN: HSCL-C, Fort Sam Houston, TX 78234-6000.

For verification purposes, individual should provide the full name, current address and telephone number, and signature".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Health Services Command, ATTN: HSCL-C, Fort Sam Houston, TX 78234-6000.

For verification purposes, individual should provide the full name, current address and telephone number, and signature."

* * * * *

A0040-1HSC

SYSTEM NAME:

Professional Personnel Information File.

SYSTEM LOCATION:

Office of the Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041-3258.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Practicing physicians, residents, psychologist, social workers, and pharmacists assigned or employed in medical treatment facilities operated by the Army Medical Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personal information provided to the various professional staff officers assigned to Department of the Army Surgeon General by practitioners assigned to medical treatment facilities. This includes personal data questionnaires, curricula, vitae, assignment preferences, personal correspondence, and other records pertaining to the professional qualifications and experience of personnel being monitored by the consultant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013.

PURPOSE(S):

To establish and maintain familiarity with the locations, assignments, utilization, marital and family status, professional and military experience and qualifications, and assignment preferences of professional staff in medical treatment activities, and as an aid in monitoring the utilization of professional personnel and to assist in career management and assignment activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Clinical privileged information may be provided to civilian and military medical facilities, Federation of State Medical Boards of the United States, State Licensure Authorities and other appropriate professional regulating bodies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on index card files.

RETRIEVABILITY:

By last name of professional person.

SAFEGUARDS:

Records are stored in buildings protected by security guards; access to records is restricted to designated individuals having need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Records are destroyed within 1 year following termination of practitioner's assignment or employment.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041-3258.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041-3258.

For verification purposes, individual should provide the full name, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041-3258.

For verification purposes, individual should provide the full name, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official Personnel Rosters, registers, and Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0195-2aUSACIDC

System name:

Source Register (50 FR 22146, May 29, 1985).

Changes:

* * * * *

System location:

After the word "Command" add "(USACIDC)". Change ZIP code to "22041-5015". Add at the end "Official mailing addresses are published as an appendix to the Army's compilation of record systems notices."

Categories of individuals in the system:

Delete "informants" and substitute "sources".

* * * * *

Purpose(s):

Delete the words "informants" and "informant" and substitute "sources".

* * * * *

Storage:

Delete entry and replace with "Card files, computer/magnetic tapes, disks, and paper printouts."

Retention and disposal:

Delete entry and replace with "Records concerning Level I Drug Suppression Team sources are maintained for 10 years after termination of source's service. At Headquarters, U.S. Army Criminal Investigation Command, information concerning other sources is retained for 10 years after termination of source's service. At other locations of U.S. Army Criminal Investigation Command, source files and cross-index cards are retained for 3 years after termination of source's service; master source cards are retained until no longer needed to control or facilitate work. Destruction is by shredding. Retention period for automated records varies according to Headquarters, U.S. Army Criminal Investigation Command and field element, but total retention does not excess 10 years."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041-5015.

For verification purposes, individual should provide the full name, date of birth, current address, and signature."

Record access procedures:

Delete entry and replace with "Individual seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Criminal Investigation Command, 5611 Columbia pike, Falls Church, VA 22041-5015.

For verification purposes, individual should provide the full name, date and place of birth, current address, and signature."

* * * * *

Record source categories:

Delete the word "informant" and replace with "source".

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

A0195-2aUSACIDC

SYSTEM NAME:

Source Register.

SYSTEM LOCATION:

Primary System is at Headquarters, U.S. Army Criminal Investigation Command (USACIDC), 5611 Columbia Pike, Falls Church, VA 22041-5015.

Segments of the system exist at subordinate elements of the U.S. Army Criminal Investigation Command which exercise local administrative and technical control of sources. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals, civilian or military, who are used as sources by the U.S. Army Criminal Investigation Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain cross indexed code numbers, name, race, military occupational specialty, sex, date and place of birth, home of record, educational level, area of utilization, civilian employment, handler, letters, vouchers, personal history, performance, citizenship, marital status, physical description, criminal history, expertise, talents, actions taken, and other related personal data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013.

PURPOSE(S):

To monitor performance and reliability; to check utilization of sources; to maintain an accounting of expenditures connected with the sources; to answer Congressional inquiries concerning misuse or mistreatment of sources or those who allege they are not sources; to document fear-of-life transfers for military sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to foreign countries under the provisions of Status of Forces Agreements or Treaties.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, computer/magnetic tapes, disks, and paper printouts.

RETRIEVABILITY:

By individual's name, code number, or Military Occupational Specialty (MOS).

SAFEGUARDS:

All information is stored in locked containers within secured buildings; information is accessible only by designated officials having need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Records concerning Level I Drug Suppression Team sources are maintained for 10 years after termination of source's service. At Headquarters, U.S. Army Criminal Investigation Command, information concerning other sources is retained for 10 years after termination of source's service. At other locations of U.S. Army Criminal Investigation Command, source files and cross-index cards are retained for 3 years after termination of source's service; master source cards are retained until no longer needed to control or facilitate work. Destruction is by shredding. Retention period for automated records varies according to Headquarters, U.S. Army Criminal Investigation Command and field element, but total retention does not exceed 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, U.S. Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041-5015.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Criminal Investigation command, 5611 Columbia Pike, Falls Church, VA 22041-5015

For verification purposes, individual should provide the full name, date of birth, current address, and signature.

RECORD ACCESS PROCEDURES:

Individual seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041-5015.

For verification purposes, individual should provide the full name, date and place of birth, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and

appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the military personnel records if the source is military, or the civilian personnel records if source is a civilian employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0195–2bUSACIDC

System name:

Criminal Investigation and Crime Laboratory Files (50 FR 22157, May 29, 1985).

Changes:

* * * * *

System location:

Delete entry and replace with "Headquarters, U.S. Army Criminal Investigation Command (USACIDC), 5611 Columbia Pike, Falls Church, VA 22041–5015.

Segments exist at subordinate USACIDC elements; the addresses may be obtained from the system manager.

An automated index of cases is maintained at the U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099 and at the Defense Investigative Service, P.O. Box 1211, Baltimore, MD 21203–2111."

* * * * *

Storage:

At the end of the sentence, add "computer magnetic tapes, disks, and printouts; microfiche."

Retention and disposal:

At the beginning of the first sentence add "At U.s. Army Criminal Investigation Command,"; after "40 years" add "after final action,"; change "3 years" to "5 years".

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature."

Record access procedures:

Delete entry and replace with "Individual seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature."

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

A0195–2bUSACIDC

SYSTEM NAME:

Criminal Investigation and Crime Laboratory Files.

SYSTEM LOCATION:

Headquarters, U.S. Army Criminal Investigation Command (USACIDC), 5611 Columbia Pike, Falls Church, VA 22041–5015.

Segments exist at subordinate USACIDC elements; the addresses may be obtained from the system manager.

An automated index of cases is maintained at the U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099 and at the Defense Investigative Service, P.O. Box 1211, Baltimore, MD 21203–2111.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, civilian or military, involved in or suspected of being involved in or reporting possible criminal activity affecting the interests, property, and/or personnel of the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, rank, date and place of birth, chronology of events; reports of investigation containing statements of witnesses, subject and agents; laboratory reports, documentary evidence, physical evidence, summary and administrative data pertaining to preparation and distribution of the report; basis for allegations; Serious or Sensitive Incident Reports, modus operandi and other investigative information from Federal, State, and local investigative agencies and departments; similar relevant documents. Indices contain codes for the type of crime, location of investigation, year and date of offense, names and personal identifiers of persons who have been subjects of electronic surveillance, suspects, subjects and victims of crimes. report number which allows access to records noted above; agencies, firms, Army and Defense Department organizations which were the subjects or victims of criminal investigations; and disposition and suspense of offenders listed in criminal investigative case files, witness identification data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013(g).

PURPOSE(S):

To conduct criminal investigations and crime prevention activities; to accomplish management studies involving the analysis, compilation of statistics, quality control, etc., to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information concerning criminal or possible criminal activity is disclosed to Federal, State, local and/or foreign law enforcement agencies in accomplishing and enforcing criminal laws; analyzing modus operandi, and detecting organized criminal activity. Information may also be disclosed to foreign countries under the provisions of the Status of Forces Agreements, or Treaties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; card files and indices; automated indices; computer magnetic tapes, disks, and printouts;

RETRIEVABILITY:

By name or other identifier of individual.

SAFEGUARDS:

Access is limited to designated authorized individuals having official need for the information in the performance of their duties. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

At Headquarters, U.S. Army Criminal Investigation Command, criminal investigative case files are retained for 40 years after final action, except that at USACIDC subordinate elements, such files are retained from 1 to 5 years depending on the level of such unit and the data involved. Laboratory reports at the USACIDC laboratory are destroyed after 5 years. Destruction is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041-5015.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222-4099.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature.

RECORD ACCESS PROCEDURES:

Individual seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222-4099.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature.

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Suspects, witnesses, victims, USACIDC special agents and other personnel, informants; various Department of Defense, federal, state, and local investigative agencies; departments or agencies of foreign governments; and any other individual or organization which may supply pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0195-4USACIDC

System name:

U.S. Army Criminal Investigation Fund Vouchers (50 FR 22155, May 29, 1985).

Changes:

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System location:

After "Command" add "(USACIDC)". Change ZIP to "22041-5015".

Categories of individuals covered by the system:

Delete 015 and replace with ".0015". At the end of the sentence add "Contingency Funds of the Secretary of the Army".

* * * * *

Purpose:

Delete 015 and replace with ".0015".

* * * * *

Storage:

Delete entry and replace with "Paper records in file folders, computer magnetic tapes, and hard copy printouts."

Retrievability:

Add the following sentence "Automated data is retrieved through routine and specially created programs to meet various management requirements."

Retention and disposal:

Delete entry and replace with "Individual voucher, voucher register, subvoucher and supporting documents maintained at Headquarters, USACIDC are destroyed 1 year after inspection and clearance by Secretary of the Army; at other USACIDC subordinate elements, 1 year after inspection and clearance by Comptroller, USACIDC. Automated data are erased after a hard copy of the register is produced. Disposal of manual records is by shredding or burning."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command. ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222-4099.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature."

Record access procedures:

Delete entry and replace with "Individual seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222-4099.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature."

* * * * *

Record source categories:

Delete "informant" and replace with "source".

* * * * *

A0195—4USACIDC

SYSTEM LOCATION:

U.S. Army Criminal Investigation Fund Vouchers.

SYSTEM NAME:

Headquarters, U.S. Army Criminal Investigation Command (USACIDC), 5611 Columbia Pike, Falls Church, VA 22041-5015.

Segments of the system are located at USACIDC subordinate elements; addresses for these may be obtained from the Commander, USACIDC, at the above address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special agents of USACIDC or military police investigator of U.S. Army who have made expenditures or have requested reimbursement from USACIDC limitation .0015 contingency funds authorized by Army Regulation 37-47, Contingency Funds of the Secretary of the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, grade, reason for such expenditure, receipts (or certificates when receipts are unavailable), relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013(g).

PURPOSE(S):

To maintain proper accounting of the USACIDC .0015 contingency funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer magnetic tapes, and hard copy printouts.

RETRIEVABILITY:

By individual's name at USACIDC subordinate elements; by voucher number at Headquarters, USACIDC. Automated data is retrieved through routine and specially created programs to meet various management requirements.

SAFEGUARDS:

Access is limited to designated authorized individuals having official need for the information in the performance of their duties. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Individual voucher, voucher register, subvoucher and supporting documents maintained at Headquarters, USACIDC are destroyed 1 year after inspection and clearance by Secretary of the Army; at other USACIDC subordinate elements, 1 year after inspection and clearance by Comptroller, USACIDC. Automated data are erased after a hard copy of the register is produced. Disposal of manual records is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041–5015.

NOTIFICATION PPOCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature.

RECORD ACCESS PROCEDURES:

Individual seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, source, or the statement of third parties pertaining to the expenditure.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0195–6USACIDC

System name:

Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files (52 FR 18804, May 19, 1987).

Changes:

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System location:

In the first sentence change ZIP to "22041–5015h". In the second sentence change ZIP to "21222–4099".

* * * * *

Categories of individuals covered by the system:

First subparagraph, after "pertaining to assignment capability" add "or limitation,"; after "credential number," add polygraph certificate number,". Second subparagraph after "Crime Records Center" add "(CRC)".

Authority for maintenance of the system:

Add at the end "Executive Order 9397".

Purpose(s):

Delete "his/her" and at the end of the sentence add the following: "and to manage and evaluate polygraph examination performance.".

Retention and disposal:

At the end of the first sentence add "or burning". At the end of the paragraph add "Polygraph examination report information is retained for 3 years following closure or completion of the pertinent investigative report. Records of approved polygraph examiner certifications are retained at the CRC for 10 years after the examiner retires or is released from active duty, then destroyed by shredding or burning. Records of disapproved polygraph examiner certification are retained at the CRC for 1 year, then destroyed by shredding or burning."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099.

For verification purposes, individual should provide the full name, Social Security Number, date and place of birth, current address, telephone numbers, date of application to the program, sufficient details to locate the record, and signature."

Record access procedures:

Delete entry and replace with "Individual seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099.

For verification purposes, individual should provide the full name, Social Security Number, date and place of birth, current address, telephone numbers, date of application to the program, sufficient details to locate the record, and signature."

* * * * *

Record source categories:

Delete "his/her" and replace with "individual's".

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under 5 U.S.C. 552a(k)(2), (5), or (7) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

A0195-6USACIDC

SYSTEM NAME:

Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files.

SYSTEM LOCATION:

Headquarters, U.S. Army Criminal Investigation Command (USACIDC), 5611 Columbia Pike, Falls Church, VA 22041-5015. Information concerning polygraph examiners is located at the Crime Records Center, USACIDC, 2301 Chesapeake Avenue, Baltimore, MD 21222-4099 and subsequently at the Washington National Records Center, GSA, Suitland, MD 20746.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for entry into the USACIDC program as an apprentice special agent, a polygraph examiner, for supervisory credentials, for the USACIDC officer specialty program or warrant officer appointments; or for laboratory technician credentials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application, statement of personal history, personal identifiers, photographs, fingerprint cards, qualifications record, biography, information pertaining to assignment capability or limitation, letters of recommendation, educational institutional documents, character investigation data, reclassification actions, reassignment orders, commander's inquiry data, reports of investigation, reasons for withdrawal from program, reason for denying application, date of acceptance into program, date appointed, date of accreditation, badge number, credential number, polygraph certificate number, agent sequence number, assignment, date assigned, marital status, and other data pertinent to the accreditation function, physical profile, date of last physical, assignment preference, transfer restrictions, job title, security clearance data, date of last background investigation, foreign language proficiency, special qualifications, service agreement, spouse's place of birth and citizenship, agent's place of birth, private licenses, hobbies, and last 10 assignments.

Polygraph examiner performance and evaluation data maintained at the Crime Records Center (CRC) include individual's name, personal history statement, certificate number, polygraph examination history, year of polygraph report, report of investigation or CRC cross reference number, type of examination, and monitor's comments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013(g) and Executive Order 9397.

PURPOSE(S):

To determine applicant's acceptance into or rejection from the USACIDC program; continuing eligibility, placement or standing therein; and to manage and evaluate polygraph examination performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, cards, magnetic tapes, disks, and paper printouts.

RETRIEVABILITY:

By individual's surname, agent sequence number, Social Security Number, badge/credential number, and polygraph certificate number.

SAFEGUARDS:

All records are maintained in buildings protected by security guards or a locked wire enclosure; information is accessed only by designated individuals having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records of accepted applicants are retained until the individual retires, is released from active duty, or is removed from the USACIDC program; at that time, files are places in inactive storage at HQ USACIDC for 2 additional years and then stored at the Washington National Records Center for an additional 8 years before being destroyed by shredding. Records of rejected applicants are retained at HQ USACIDC for 1 year, then destroyed by shredding or burning. Information on Criminal Investigation Program Data Cards is maintained permanently. Information in automated media is retained for 90 days following termination of investigator's active status. Polygraph examination report information is retained for 3 years following closure or completion of the pertinent investigative report. Records of approved polygraph examiner certifications are retained at the CRC for 10 years after the examiner retires or is released from active duty, then destroyed by shredding or burning. Records of disapproved polygraph examiner certifications are retained at the CRC for 1 year, then destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041-5015.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222-4099.

For verification purposes, individual should provide the full name, Social Security Number, date and place of birth, current address, telephone numbers, date of application to the program, sufficient details to locate the record, and signature.

RECORD ACCESS PROCEDURE:

Individual seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222-4099.

For verification purposes, individual should provide the full name, Social Security Number, date and place of birth, current address, telephone numbers date of application to the program, sufficient details to locate the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, individual's previous or present employers, financial institutions, relatives and former spouses, educational institutions, trade or fraternal organizations, neighbors past and present, work associates, social acquaintances, churches, public records, law enforcement and investigative agencies, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(2), (5), or (7) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0351HSC

System name:

Practical Nurse Course Files (52 FR 18804, May 19, 1987).

Changes:

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Authority for maintenance of the system:

Add at the end "Executive Order 9397."

Notification procedures:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Practical Nurse Course, Fitzsimmons Army Medical Center, Aurora, CO 80045–5001.

For verification purposes, individual should provide the full name, Social Security Number, rank at time of attendance, military service number or student number, if applicable, course title and class number, or description of type of training received and dates of course attendance."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

For verification purposes, individual should provide the full name, Social Security Number, rank at time of attendance, military service number or student number, if applicable, course title and class number, or description of type of training received and dates of course attendance."

* * * * *

A0351HSC

SYSTEM NAME:

Practical Nurse Course Files.

SYSTEM LOCATION:

Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These files relate to student personnel who attend formal course of instruction at the Practical Nurse Course.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual Academic Record Files consisting of courses attended by Army members, length of each, extent of each, completion and results, aptitudes and personal qualities, grade and rating attained and related data for each individual. Faculty Board Files pertaining to the class standing, rating, classification, and proficiency of students; Class Academic Record indicating progress and attendance of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

To confirm eligibility for attendance, monitor student progress, determine successful completion of academic requirements and prepare transcripts. Records reflect accomplishment of courses which may be prerequisites for attendance at other formal courses of instruction, or taking of State Board, Licensed Practical Nursing examinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, card files; magnetic disks and tapes.

RETRIEVABILITY:

By name and/or assigned class number.

SAFEGUARDS:

Building housing records has limited access; information is released only to authorized personnel.

RETENTION AND DISPOSAL:

Individual Academic Records and Class Academic records are destroyed after 40 years; collateral individual training records are destroyed after 1 year; Faculty Board files are destroyed after 1 year.

SYSTEM MANAGER(S) AND ADDRESS.

Commander, Health Services Command, Fort Sam Houston, TX 78234–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

For verification purposes, individual should provide the full name, Social Security Number, rank at time of attendance, military service number or student number, if applicable, course title and class number, or description of type of training received and dates of course attendance.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

For verification purposes, individual should provide the full name, Social Security Number, rank at time of attendance, military service number or student number, if applicable, course title and class number, or description of type of training received and dates of course attendance.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the concerned individual are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the school staff and faculty responsible for presentation of instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351HSC–AHS

System name:

Academy of Health Sciences: Academic and Supporting Records (52 FR 18804, May 19, 1987).

Changes:

* * * * *

Purpose(s):

Add at the end "licensure, certification, and employment"

* * * * *

System manager(s) and address:

Delete "Superintendent" and replace with "Registrar".

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if

information about themselves is contained in this record system should address written inquiries to the Registrar, Academy of Health Sciences, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to record about themselves contained in this record system should address written inquiries to the Registrar, Academy of Health Sciences, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature."

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A0351HSC–AHS

SYSTEM NAME:

Academy of Health Sciences: Academic and Supporting Records.

SYSTEM LOCATION:

Academy of Health Sciences, Fort Sam Houston, TX 78234–6000 and Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident and correspondence students enrolled in courses at the Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student's name, Social Security Number, grade/rank, academic qualifications, progress reports, academic grades, ratings attained, aptitudes and personal qualities, including corporate fitness results; faculty board records pertaining to class standing/rating/classification/proficiency of students; class academic records maintained by instructors indicating attendance and progress of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

To determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses which may be prerequisite for other formal courses of instruction, licensure, certification, and employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to colleges or universities or medical institutions which accredit the Academy's instruction.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche, cards, magnetic tape and/or disc, and computer printouts.

RETRIEVABILITY:

By individual's name, Social Security Number, assigned passwords.

RETENTION AND DISPOSAL:

Academic records are maintained 40 years at the Academy of Health Sciences. Except for the master file, automated data are erased after the fourth updating cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Academy of Health Sciences, Fort Sam Houston, TX 78234–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Registrar, Academy of Health Sciences, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Registrar, Academy of Health Sciences, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Academy of Health Sciences' staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0360–5SALL

System name:

Biographies: Members of Congress (50 FR 22144, May 29, 1985).

Changes:

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Retrievability:

Delete entry and replace with "By Member of Congress' last name".

Retention and disposal:

Delete entry and replace with "Records are retained only for the Member of Congress' tenure".

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310–1600.

For verification purposes, individual should provide the full name, Social Security Number, and should identify the Member of Congress' full name and state the Member represents".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310–1600.

For verification purposes, individual should provide the full name, Social Security Number, and should identify the Member of Congress' full name and state the Member represents".

* * * * *

A0360–5SALL

SYSTEM NAME:

Biographies: Members of Congress.

SYSTEM LOCATION:

Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310–1600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current members of the U.S. Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information on members of the Congress, their voting trends, and committee memberships.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1034.

PURPOSE(S):

To provide background information on Members of Congress before whom Army representatives may be testifying or for whom escorts may be provided to familiarize them with the members' attitudes and relationships with the Department of Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in loose leaf binders.

RETRIEVABILITY:

By Member of Congress' last name.

SAFEGURARDS:

Records are maintained in secured areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained only for the Member of Congress' tenure.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310–1600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310–1600.

For verification purposes, individual should provide the full name, Social Security Number, and should identify the Member of Congress' full name and state the Member represents.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief of Legislative Liaison, Office of the Secretary of the Army, The Pentagon, Washington, DC 20310–1600.

For verification purposes, individual should provide the full name, Social Security Number, and should identify the Member of Congress' full name and state the Member represents.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official public records such as the Congressional Record, Congressional Quarterly Weekly Report, official transcripts of unclassified committee hearings, and the Congressional Staff Directory.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0570–4DARP

System name:

Human Resources Information System (HRIS) (53 FR 34570, Sep 7, 1988).

Changes:

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Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–RMS, 9700 Page Boulevard, St Louis, MO 63132–5200.

For verification purposes, individual should provide the full name, Social Security Number, organization to which assigned, and dates of assignment."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–RMS, 9700 Page Boulevard, St Louis, MO 63132–5200.

For verification purposes, individual should provide the full name, Social Security Number, organization to which assigned, and dates of assignment."

* * * * *

A0570–4DARP

SYSTEM NAME:

Human Resources Information System (HRIS).

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center (ARPERCEN), 9700 Page Boulevard, St Louis, MO 63132–5200

CATEGORIES OF RECORDS IN THE SYSTEM:

All ARPERCEN employees, both military and civilian.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of man-hours utilization, production, and backlog records reported by individuals daily and maintained by operating officials to track data in the above categories. The documents include, but are not limited to, information on individuals relating to name, grade, Social Security Number, TDA paragraph and line number, employment category, job title, work center, and distribution of work hours among direct productive, indirect productive, and unavailable categories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; and Executive Order 9397.

PURPOSE(S):

To document man-hours utilization, workload, and backlogs to analyze, program, and review manpower requirements in ARPERCEN; provide a decision basis for approval or disapproval of requests for additional employees, overtime requests, and awards nominations; measure productivity of units and individual employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used to justify manpower requirements with the U.S. Army Manpower Requirements and Documentation Agency.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Personal computer diskettes and computer tapes.

RETRIEVABILITY:

By name, Social Security Number, and TDA paragraph and line number.

SAFEGUARDS:

Computer tapes are stored in locked cabinets. Diskettes are stored in areas accessible only to authorized personnel of ARPERCEN. After hours, the building

and security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Diskettes and tapes are retained for 5 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-RMS, 9700 Page Boulevard, St Louis, MO 63132-5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquires to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-RMS, 9700 Page Boulevard, St Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, organization to which assigned, and dates of assignment.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Reserve Personnel Center, ATTN: DARP-RMS, 9700 Page Boulevard, St Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, organization to which assigned, and dates of assignment.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the record subjects by means of DARP Form 222-1-R, Individual Daily Record, and DARP Form 222-3-R, Individual Daily—Executive Level.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600DARP

System name:

Career Management Files of Dual Component Personnel (50 FR 22194, May 29, 1985).

Changes:

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Categories of individuals covered by the system:

Delete entry and replace with "Any reserve or warrant officer on active duty as a Regular Army enlisted man; any reserve officer on active duty as a Regular Army warrant officer."

* * * * *

Retention and disposal:

Delete entry and replace with "Records on this system are combined with Army personnel records. Dual Component officer and enlisted Official Military Personnel Files are retained at the U.S. Army Enlisted Records and Evaluation Center, if serving as an enlisted person and the U.S. Total Army Personnel Command, if a warrant officer. Officer Military Personnel Records Jackets are to be maintained at the dual component individual's current unit of assignment Dual Component's Career Management Individual Files are maintained at the U.S. Army Reserve Personnel Center, ATTN: DARP-PAT-SD."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-PAT-SD; 9700 Page Boulevard, St Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, current address and telephone number, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-PAT-SD, 9700 Page Boulevard, St Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, current address and telephone number, and signature."

* * * * *

A0600DARP

SYSTEM NAME:

Career Management Files of Dual Component Personnel.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132-5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any reserve or warrant officer on active duty as a Regular Army enlisted man; any reserve officer on active duty as a Regular Army warrant officer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, Social Security Number, basic pay entry date, promotion eligibility date, mandatory removal date, military education, copies of officer evaluation reports, academic reports, qualification records, letters of appreciation and commendation, general orders, concerning awards; and similar documents, records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 275 and Executive Order 9397.

PURPOSE(S):

To advise reserve officers when they will be considered for promotion, military education that needs to be completed for eligibility; to determine if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer or enlisted person; to apprise individuals of changes in the reserve program affecting them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tape/disc.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

All records are restricted to officially designated individuals having need therefor in assigned duties. Records are maintained in secured buildings; automated data are stored in vaults.

RETENTION AND DISPOSAL:

Records on this system are combined with Army personnel records. Dual Component officer and enlisted Official Military Personnel Files are retained at the U.S. Army Enlisted Records and Evaluation Center, if serving as an enlisted person and the U.S. Total Army

Personnel Command, if a warrant officer. Officer Military Personnel Records Jackets are to be maintained at the dual component individual's current unit of assignment. Dual Component's Career Management Individual Files are maintained at the U.S. Army Reserve Personnel Center, ATTN: DARP-PAT-SD.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132-5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-PAT-SD, 9700 Page Boulevard, St Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, current address and telephone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-PAT-SD, 9700 Page Boulevard, St Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, current address and telephone number and signature.

CONTESTING RECORD PROCEDURES:

The Army's rule for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600-8DARP

System name:

Individual Ready, Standby, and Retired Reserve Personnel Information Systems (50 FR 22200, May 29, 1985).

Changes:

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Authority for maintenance of the system:

Add at the end "Executive Order 9397".

System location:

Delete entry and replace with "U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132-5200."

* * * * *

System manager(s) and address:

Delete entry and replace with "Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132-5200."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-IM, 9700 Page Boulevard, St Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, current address and telephone number and signature."

Record access procedure:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-IM, 9700 Page Boulevard, St Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, current address and telephone number and signature."

* * * * *

A0600-8DARP

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132-5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army Reserve and assigned to a Reserve unit and not serving on extended active duty in an entitled reserve status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and military status and qualifications data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 275 and Executive Order 9397.

PURPOSE(S):

To maintain personnel data on members assigned to individual ready, standby, and retired Army Reserves; to select and order individuals to military active duty training, to identify personnel for promotion; to determine those not qualified for retention in the reserve forces; to issue annual statement of retirement credits; to select qualified members for potential assignment to active Army units and reserve component units in the event of mobilization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and discs.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Records are located in secured building; access requires an ID badge and is limited to individuals having official need therefor.

RETENTION AND DISPOSAL:

Records are maintained for 7 months after individual completes statutory or contractual reserve commitment.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132-5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-IM, 9700 Page Boulevard, St Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN:

DARP-IM, 9700 Page Boulevard, St. Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, Social Security Number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the Official Military Personnel File and the Military Personnel Records Jacket.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600-20NGB

System name:

Equal Opportunity Investigative Files (52 FR 18801, May 19, 1987).

Changes:

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System location:

Delete "5600 Columbia Pike" and replace with "5109 Leesburg Pike".

* * * * *

System manager(s) and address:

Delete "5600 Columbia Pike" and replace with "5109 Leesburg Pike".

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Office of Human Resources (Field Operating Activity) HRA-FOA, 5109 Leesburg Pike, Falls Church, VA 22041-5125.

For verification purposes, individual should provide the full name, current address and telephone number, sufficient details concerning the complaint to facilitate locating the record, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Office of Human Resources (Field Operating Activity) HRA-FOA, 5109 Leesburg Pike, Falls Church, VA 22041-5125.

For verification purposes, individual should provide the full name, current address and telephone number, sufficient details concerning the complaint to facilitate locating the record, and signature."

* * * * *

A0600-20NGB

SYSTEM NAME:

Equal Opportunity Investigative Files.

SYSTEM LOCATION:

Office of Human Resources (Field Operating Activity) HRA-FOA, 5109 Leesburg Pike, Falls Church, VA 22041-1525.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Guard technicians and military members who file complaints of discrimination or who are involved in such complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal complaints of discrimination; counselors' reports; notification letters to the complainant; affidavits from complainant and/or witnesses; investigative reports; hearings transcript; examiner's findings, recommendations; decisional documents; and similar relevant records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI, Civil Rights Act 1964 and Pub. L. 92-261.

PURPOSE(S):

To investigate and resolve complaints of discrimination, provide facts to the Adjutant General of a State for issuing a proposed disposition to a complainant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Equal Employment Opportunity Commission, Washington, DC (see EEOC/GOVT-1 system of records notice).

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name of complainant.

SAFEGUARDS:

Records are maintained in secured rooms/cabinets accessible only to designated officials have a need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are permanent. They are retained in active file until the case is closed, then forwarded to the Washington National Records Center, Suitland, MD.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources (Field Operating Activity) HRA-FOA, 5109 Leesburg Pike, Falls Church, VA 22041-5125.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Office of Human Resources (Field Operating Activity) HRA-FOA, 5109 Leesburg Pike, Falls Church, VA 22041-5125.

For verification purposes, individual should provide the full name, current address and telephone number, sufficient details concerning the complaint to facilitate locating the record, and signature.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Office of Human Resources (Field Operating Activity) HRA-FOA, 5109 Leesburg Pike, Falls Church, VA 22041-5125.

For verification purposes, individual should provide the full name, current address and telephone number, sufficient details concerning the complaint to facilitate locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations by the individual concerned are published in AR 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, investigative reports, witness statements, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0608-18DASG

System name:

Family Advocacy Case Management Files (53 FR 21509, Jun 8, 1988).

Changes:

* * * * *

System location:

Delete entry and replace with "Commander, U.S. Army Patient Administration Systems and Biostatistics Activity, ATTN: HSHI-QPD, Fort Sam Houston, TX 78234-6000.

Office of the Surgeon General, Headquarters, Department of the Army, ATTN: DASG-AOR, 5109 Leesburg Pike, Falls Church, VA 22041-3258.

U.S. Army medical treatment facility and/or office on post, camp, or station where file was initiated or, in some cases, subsequently transferred upon reassignment of military member."

* * * * *

Authority for maintenance of the system:

Add at the end "Executive Order 9397."

* * * * *

Retention and disposal:

Delete "(DA Form 4461-R)" and replace with "(DA Form 2486)".

* * * * *

System manager:

Delete entry and replace with "The Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041-3258."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center or hospital where treatment was received, or the Central Registry at the U.S. Army Patient Administration Systems and Biostatistics Activity, ATTN: HSHI-QPD, Fort Sam Houston, TX 78234-6000.

For verification purposes, individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center or hospital where treatment was received, or the Central Registry at the U.S. Army Patient Administration Systems and Biostatistics Activity, ATTN: HSHI-QPD, Fort Sam Houston, TX 78234-6000.

For verification purposes, individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself".

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under 5 U.S.C. 552a(k) (2) and (5) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

A0608-18DASG

SYSTEM NAME:

Family Advocacy Case Management Files.

SYSTEM LOCATION:

Commander, U.S. Army Patient Administration Systems and Biostatistics Activity, ATTN: HSHI-QPD, Fort Sam Houston, TX 78234-6070.

Office of the Surgeon General, Headquarters, Department of the Army, ATTN: SGPS-CP, 5109 Leesburg Pike, Falls Church, VA 22041-3258.

U.S. Army medical treatment facility and/or office on post, camp, or station where file was initiated or, in some cases, subsequently transferred upon reassignment of military member.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All family members entitled to care at Army medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities and all persons suspected of abusing or neglecting such family members.

All family members of Department of the Army civilians who receive care in an Army operated or Army regulated activity.

All persons suspected of abusing or neglecting family members described in above items to include contractors that work in Army operated or Army regulated activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and Family Advocacy Case Management Team records of suspected or established cases of child abuse or neglect and cases of spouse abuse to include child abuse occurring in Army operated or regulated activities, extracts of law enforcement investigative reports, correspondence, family advocacy case management team reports, follow-up and evaluative reports, and other supportive data relevant to individual family advocacy case management files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Child Abuse Prevention and Treatment and Child Abuse Prevention and Treatment and Adoption Program Reform Acts, 42 U.S.C. 5101, et seq; 5 U.S.C. 301, and 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

To provide child abuse and neglect treatment services for abused and abusive spouses. Services include mental health, education, counseling, health care, protection, foster care, safe shelter, legal and referral for members and former members of the uniformed services, civilians, and dependents receiving care under Army auspices or in an Army regulated or operated facility; to determine qualifications and suitability of Department of the Army civilians and contractors for duty assignments and fitness of continued military services, to perform research studies and compile statistical data concerning uniformed services personnel, civilians, and dependents receiving medical care under Army auspices, or services through an Army operated or regulated activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Departments and agencies of the Executive Branch of government in performance of their official duties relating to coordination of family advocacy programs, medical care and research concerning child abuse and neglect, and spouse abuse.

The Attorney General of the United States or his authorized representatives in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

Federal, state, or local governmental agencies when it is deemed appropriate to use civilian resources in counseling and treating individuals or families involved in child abuse or neglect or spouse abuse; or when appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement; or when a state, county, or municipal child protective service agency inquires about a prior record of substantiated abuse for the purpose of investigating a suspected case of abuse.

National Academy of Sciences, private organizations and individuals for health research in the interest of the Federal government and the public and authorized surveying bodies for professional certification and

accreditation such as Joint Commission on the Accreditation of Health Care Organizations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, magnetic tape or disc, punched cards, machine listings, and other computerized or machine readable media.

RETRIEVABILITY:

By name of the suspected abused child or the abused or abusive spouse, parent, or care taker and the name and/or Social Security Number, of the military member. (Information is never indexed by the name or Social Security Number, of any other person not an Army employee or member.)

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and have an official need to know. Computer terminals are located in supervised areas with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are retained in decentralized office files for 5 years after the end of the year in which the case is closed and are then destroyed. Statistical data from DD Form 2486 in the central registry at the primary location are retained until the child is age 23 after which information is erased/destroyed; information on adults is retained for 5 years after the end of the year in which the case was closed and is then erased.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the medical center or hospital where treatment was received, or the Central Registry at the U.S. Army Patient Administration Systems and Biostatistics Activity, ATTN: HSHI–QPD, Fort Sam Houston, TX 78234–6070.

For verification purposes, individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, details that will assist in locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the medical center or hospital where treatment was received, or the Central Registry at the U.S. Army Patient Administration Systems and Biostatistics Activity, ATTN: HSHI–QPD, Fort Sam Houston, TX 78234–6070.

For verification purposes, individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, details that will assist in locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the concerned individual are published in the Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, medical institutions, police and investigating officers, state and local government agencies, witnesses, and records and reports prepared on behalf of the Army by boards, committees, panels, auditors, etc. Information may also derive from interviews, personal history statements, and observations of behavior by professional persons (i.e., social workers, physicians, including psychiatrists and pediatricians, psychologists, nurses, and lawyers).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k) (2) and (5) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager."

A0608–25CFSC

System name:

Army Retirement Services Program Files (54 FR 11790, May 22, 1989).

Changes:

* * * * *

System location:

Delete "Office of The Adjutant General, Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria, VA 22331" and replace with "Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521".

* * * * *

System manager(s) and address:

Delete entry and replace with "Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521".

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521.

Individuals should provide the full name, Social Security Number, current address and telephone number, and sufficient details to locate the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521.

Individuals should provide the full name, Social Security Number, current address and telephone number, and sufficient details to locate the record".

* * * * *

A0608–25CFSC

SYSTEM NAME:

Army Retirement Services Program Files.

SYSTEM LOCATION:

Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521. Segments of this system exist at Headquarters, U.S. Army Forces Command, Fort McPherson, GA; U.S. Army Training and Doctrine Command, Fort Monroe, VA; Headquarters, Military District of Washington; and installations operating retiree councils and/or service activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All retired Army personnel and eligible members of their families; active

and retired members of other uniformed services and their eligible family members in geographical areas where their present organization does not offer services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Retiree's name, grade, retirement class/date/code, Social Security Number, branch of service, date of birth, component, years of service, percentage of disability, sex, and home address; biographical sketch of retirees seeking appointment to the Army Chief of Staff Retiree Councils comprising much of the above information and supplemented by description of involvement in military and civic affairs since retirement, statement of willingness to serve pursuant to Army Regulation 608-25, correspondence between Army and applicant regarding acceptance/nonselection, active duty training orders; and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C. 1588 and 3966.

PURPOSE(S):

To inform retirees and eligible members of their families of their rights, benefits, and privileges; pending legislation and policies affecting them; to provide the Army insight into problems and needs of the retirees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes and printouts; microfiche.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessed only by individuals having official need therefore, within buildings protected by security guards during non-duty hours.

RETENTION AND DISPOSAL:

Magnetic tapes containing names and addresses of retirees are updated periodically to reflect current information; information is retained until no longer needed. Correspondence and documents related to the Army Chief of Staff Retiree Councils are retained 5 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521.

Individuals should provide the full name, Social Security Number, current address and telephone number, and sufficient details to locate the record.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0521.

Individuals should provide the full name, Social Security Number, current address and telephone number, and sufficient details to locate the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

A0640DARP

System name:

Personnel Management/Action Officer Files (52 FR 18803, May 19, 1987).

Changes:

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Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARPT–IMG–F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name, and current address and telephone number.

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–IMG–F, 9700 Page Boulevard, St. Louis, MO 63131–5200.

For verification purposes, individual should provide the full name, and current address and telephone number.

* * * * *

A0640DARP

SYSTEM NAME:

Personnel Management/Action Officer Files.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Individual Ready Reserve (IRR), Standby Reserve, Retired Reserve, unit personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence; orders; pay vouchers; efficiency reports; assignment instructions; medical evaluations; request for waiver of disqualifications; grade determinations; flagging actions which preclude completion of favorable personnel actions; transcripts; requests for transfer to another Branch, status, or service; claims for pay; assignment instructions for Active Duty or Active Duty for Training; applications for delay or exemption from Active Duty/Active Duty for Training; nominations for decorations or awards; notification of removal from active Reserve status for physical disqualification, non-participation, being passed over twice for promotion, or elimination action; application for waiver of disqualifications for enlistment in U.S. Army Reserves; request for discharge or voiding of enlistments; requests for transfer to or from the Ready Reserve, Standby Reserve, or Retired Reserve; claims for pay not received while on active duty; request for assignment/attachment to Army National Guard units, mobilization designation positions or detachments, reinforcement training units, and U.S. Army Reserve school student detachments; applications for participation in Army Reserve Logistics Career Program and Foreign Area Officer Program; decisions pertaining to the career management of officers and senior enlisted personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 275.

PURPOSE(S):

To respond to inquiries from an individual or other government agencies concerning reserve status of Army personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets; card files.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are maintained for a period of 6 months to 3 years depending on the type of action involved, after which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–IMG–F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name, and current and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–IMG–F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10DARP

System name:

Philippine Army Files (50 FR 22191, May 29, 1985).

Changes:

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Categories of records in the system:

Delete "Individual military personnel file" and replace with "World War II claim folders which".

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–PAS–EAP, 9700 Page Boulevard, St. Louis, MO 62123–5200.

For verification purposes, individual should provide the full name, service number, VA claims number, if applicable, and name and/or number of the unit to which assigned during the period of service."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP–PAS–EAP, 9700 Page Boulevard, St. Louis, MO 62132–5200.

For verification purposes, individual should provide the full name, service number, VA claim number, if applicable, and name and/or number of the unit to which assigned during the period of service."

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A0640–10DARP

SYSTEM NAME:

Philippine Army Files.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Philippine Commonwealth Army who were inducted for service with the U.S. Armed Forces Far East under the Military Order of the President of the United States dated July 26, 1941; Philippines who served in Guerrilla units officially recognized and listed in the Recognized Philippine Guerrilla Rosters.

CATEGORIES OF RECORDS IN THE SYSTEM:

World War II claim folders which contain enlistment papers, orders inducting individual into U.S. Armed Forces Far East service, soldier's qualification card, unit orders of assignment, efficiency rating sheets, pay vouchers or receipts, affidavits and certificates, service records, determination of status under the Missing Persons Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 490–77, dated May 7, 1942.

PURPOSE(S):

To answer inquiries regarding individuals who served, or allegedly served, with the Philippine Commonwealth Army including recognized Guerrilla Forces, during World War II, in the Philippines.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Veterans Administration to verify or certify service with the U.S. Armed Forces Far East or recognized guerrilla units; provide available medical records or other documents to assist in determining benefits.

To the Department of Justice to certify or verify service regarding application of individual for citizenship.

To the Department of Health and Human Services to verify type of service that is used to assist in determining eligibility for benefits.

To the Department of State to provide statement of service or verification of type of service performed.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name, service number, VA claim number, units assigned to during period of service in question, names of parents, birth date and place, name of spouse and children if applicable. (Due to similarity of names complete file must be screened to determine proper individual.)

SAFEGUARDS:

Records are maintained in area accessible only to designated personnel having official need therefor.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132-5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-PAS-EAP, 9700 Page Boulevard, St. Louis, MO 62132-5200.

For verification purposes, individual should provide the full name, service number, VA claim number, if applicable, and name and/or number of the unit to which assigned during the period of service.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: DARP-PAS-EAP, 9700 Page Boulevard, St. Louis, MO 62132-5200.

For verification purposes, individual should provide the full name, service number, VA claim number, if applicable, and name and/or number of the unit to which assigned during the period of service.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From records of military service compiled during period of individual's service with the Phillippine Commonwealth Army and/or the U.S. Armed Forces Far East prior to December 7, 1941 up to August 1945.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640-10aNGB

System name:

Standard Installation/Division Personnel System-Army National Guard (50 FR 22180, May 29, 1985).

Changes:

System identification number:

Delete "A0640-10aNGB" and replace with "A0600-8NGB".

System name:

Add at the end "(SIDPERS-ARNG)".

System location:

Delete entry and replace with "The system operates at two levels. Each state ARNG headquarters has primary responsibility for editing and updating the database. The National Guard Bureau (NGB) centrally collects and controls data flows to/from the states thereby creating the database for reports preparation to Headquarters, Department of the Army, Department of Defense, and other agencies. Addresses for each state headquarters may be obtained from the Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450."

* * * * *

Categories of records in the system:

Delete entry and replace with "Soldier's name, Social Security Number, grade/rank, sex, race, ethnic group, current military assignment, military qualifications, dates relevant to military service, civilian occupation, and other similar relevant data."

Authority for maintenance of the system:

Add at the end "Executive Order 9397".

Purpose(s):

Delete entry and replace with "The principal purposes are to: report accessions and losses to ARNG strength; provide information for personnel management; support automated interfaces with authorized information systems for pay, mobilization, etc.".

System manager(s) and address:

Delete entry and replace with "Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, Army National Guard Personnel Center, ATTN: Chief, Army National Guard, 4501 Ford Avenue, Alexandria, VA 22302-1450.

For verification purposes, individual should provide the full name, service identification number, present address and telephone number, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, Army National Guard Personnel Center, ATTN: Chief, Army National Guard, 4501 Ford Avenue, Alexandria, VA 22302-1450.

For verification purposes, individual should provide the full name, service identification number, present address and telephone number, and signature."

Record source categories:

Delete "his/her" and replace with "individual's".

* * * * *

A0600-8NGB

SYSTEM NAME:

Standard Installation/Division Personnel System—Army National Guard (SIDPERS-ARNG).

SYSTEM LOCATION:

The system operates at two levels. Each state ARNG headquarters has primary responsibility for editing and updating the database; the National Guard Bureau (NGB) centrally collects and controls data flows to/from the states thereby creating the database for reports preparation to Headquarters, Department of the Army, Department Of Defense, and other agencies. Addresses for each state headquarters may be obtained from the Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army National Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Soldier's name, Social Security Number, grade/rank, sex, race, ethnic group, current military assignment, military qualifications, dates relevant to military service, civilian occupation, and other similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 275 and Executive Order 9397.

PURPOSE(S):

The principal purposes are to: report accessions and losses to ARNG strength; provide information for personnel management; support automated interfaces with authorized information systems for pay, mobilization, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/discs.

RETRIEVABILITY:

By name and SSN.

SAFEGUARDS:

Access to data storage area and distribution of printouts is controlled. Approval of functional manager must be obtained before data may be retrieved or distributed.

RETENTION AND DISPOSAL:

Data on enlisted personnel are destroyed 1 month after individual is separated from the Army National Guard, for commissioned officers and warrant officers, data are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302–1450.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302–1450.

For verification purposes, individual should provide the full name, service identification number, present address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, Army National Guard Personnel Center, ATTN: Chief, Army National Guard, 4501 Ford Avenue, Alexandria, VA 22302–1450.

For verification purposes, individual should provide the full name, service identification number, present address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in AR 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, individual's personnel and pay files, other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10bNGB

System name:

Military Personnel Records Jacket (NGB) (50 FR 22180, May 29, 1985).

Changes:

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System location:

Delete entry and replace with "The custodian of the Military Personnel Record will either be the State Personnel Service Center (PSC) located in conjunction with the Office of the Adjutant General or each National Guard Armory in those non PSC states: Guam, Puerto Rico, the Virgin Islands, and the District of Columbia."

* * * * *

Categories of records in the system:

Delete entry and replace with "Categories of records are outlined in AR 640–10. Examples of the type of documents included in the Military Personnel Records Jacket (DA Form 201) are the individual's service agreement, record of emergency data, certificates of release or discharge from active duty (DD Form 214) and other service computation documents, active duty orders, military occupational specialty orders, Servicemen's group life insurance election, security questionnaire and clearance, transfer requests and orders, promotions, reductions, personnel qualification record (DA Form 2–1), oath of extensions of enlistment, selective reserve incentive program agreements, notice of basic eligibility (NOBE) for GI Bill, and discharge documents and orders.

Authority for maintenance of the system:

Add at the end "Executive Order 9397".

* * * * *

Retention and disposal:

Delete entry and replace with: "Military personnel records are retained until updated or service of individual is terminated. Following separation, the disposition of the records is to the U.S. Army Reserve Personnel Center or to the National Personnel Records Center in accordance with AR 640–10."

System manager(s) and address:

Delete entry and replace with "Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302–1450."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned: For separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; for discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name, service identification number, current military status, and current address."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned: for separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 631–5200; for discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name, service

identification number, current military status, and current address.

For personal visits, the requester should provide acceptable identification, i.e., military identification card or other identification normally acceptable in the transaction of business."

* * * * *

A0640-10bNGB

SYSTEM NAME:

Military Personnel Records Jacket (NGB).

SYSTEM LOCATION:

The custodian of the Military Personnel Record will either be the State Personnel Service Center (PSC) located in conjunction with the Office of the Adjutant General or each National Guard Armory in those non-PSC states: Guam, Puerto Rico, the Virgin Islands, and the District of Columbia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the Army National Guard not on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records are outlined in AR 640-10. Examples of the type of document included in the Military Personnel Records Jacket (DA Form 201) are the individual's service agreement, record of emergency data, certificates of release or discharge from active duty (DD Form 214) and other service computation documents, active duty orders, military occupational specialty orders, Servicemen's Group Life Insurance election, security questionnaire and clearance, transfer requests and orders, promotions, reductions, personnel qualification record (DD Form 2-1), oath of extensions of enlistment, selective reserve incentive program agreements, notice of basic eligibility (NOBE) for GI Bill, and discharge documents and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 275 and 3013; and Executive Order 9397.

PURPOSE(S):

These records are created and maintained to: Manage the member's National Guard Service effectively; Historically document the member's military service; and Safeguard the rights of members and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Central Intelligence Agency; Department of Agriculture; Department of Commerce; Department of Health and Human Services; Department of Education; Department of Labor; Department of State; Department of the Treasury; Department of Transportation; Federal Aviation Agency; National Transportation Safety Board; American Battle Monuments Commission; Veterans Administration; Federal Communications Commission; U.S. Postal Service; Office of Personnel Management; Selective Service System; Social Security Administration; state, county and city welfare organizations when information is required to consider applications for benefits; penal institutions when the individual is a patient or an inmate; state, county and city law enforcement authorities.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-3 and 290ee-3. These statutes take precedence over the Privacy Act of 1974, as amended, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket Routine Uses do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records maintained in areas accessible only to authorized personnel having need therefor in the performance of official business. The Military Personnel Records Jacket is transferred from station to station in the personal possession of the individual whose record it is, or by U.S. Postal Service.

RETENTION AND DISPOSAL:

Military personnel records are retained until updated or service of individual is terminated. Following separation, the disposition of the records is to the U.S. Army Reserve Personnel Center or to the National Personnel Records Center in accordance with 640-10.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned: For separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132-5200; for discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, service identification number, current military status, and current address.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned: For separated personnel, information may be obtained from the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132-5200; for discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132-5200.

For verification purposes, individual should provide the full name, service identification number, current military status, and current address.

For personal visits, the requester should provide acceptable identification, i.e., military identification card or other identification normally acceptable in the transaction of business.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided

by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640-10cNGB

System name:

Official Military Personnel File (Army National Guard) (50 FR 22183, May 29, 1985).

Changes:

* * * * *

System location:

Delete entry and replace with "Army National Guard Personnel Center, ATTN: NGB-ARP-CA, 4501 Ford Avenue, Alexandria, VA 22302-1450."

Categories of records in the system:

Delete the words "Military Occupational Specialty Report", "qualification record", "questionnaire and", and "photographs".

* * * * *

Authority for maintenance of the system:

Add at the end "Executive Order 9397".

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete "Veterans Administration" and replace with "Department of Veterans Affairs".

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Delete entry and replace with "Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media."

Retention and disposal:

Delete entry and replace with "Microfiche and paper records are permanent; retained in active file until termination of service, following which they are retired to the custody of the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132-5200."

System manager(s) and address:

Delete entry and replace with "Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450.

For verification purposes, individual should provide the full name, service identification number, current or former military status, current home address, and signature."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450.

For verification purposes, individual should provide the full name, service identification number, current or former military status, current home address, and signature."

* * * * *

A0640-10cNGB

SYSTEM NAME:

Official Military Personnel File (Army National Guard).

SYSTEM LOCATION:

Army National Guard Personnel Center, ATTN: NGB-ARP-CA, 4501 Ford Avenue, Alexandria VA 22302-1450.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each commissioned or warrant officer in the Army National Guard not on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract, physical evaluation board proceedings; statement of service; group life insurance election; emergency data form; application for appointment; qualification/evaluation report; oath of office; medical examination; security clearance; application for retired pay; application for correction of military records; application for active duty; transfer or discharge; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks; consent/declaration of parent/guardian; award recommendations; academic reports; casualty reports; field medical card; retirement points; deferment; pre-induction processing and commissioning data; transcripts of military records; survivor benefit plans; efficiency reports; records of proceedings, 10 U.S.C. 815 and appellate actions; determination of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; retired benefits; application for review by physical evaluation board; birth certificate; citizenship statements and status; educational transcripts; flight status board reviews; efficiency appeals; promotion/reduction/recommendations approvals/declinations announcements/notifications and reconsiderations; notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and orders relating to military service including information pertaining to dependents, inter or intraservice details, determinations, reliefs; pay entitlements, releases, transfers; and other relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 275 and 3013; and Executive Order 9397.

PURPOSE(S):

These records are created and maintained to manage the member's Army National Guard service effectively; document the member's military service history; and, safeguard the rights of the member and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Justice to file fingerprint cards; to perform intelligence function.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical and health functions authorized by 10 U.S.C. 1074-1079.

To the Atomic Energy Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and complete

service functions including blood donor programs and emergency investigative support and notifications.

To the Federal Aviation Agency to obtain flight certification and licenses.

To the General Services Administration for records storage, archival services, and for printing of directories and related material requiring personal data.

To the U.S. Postal Service to accomplish postal service authorization.

To the Department of Veterans Affairs to provide information relating to benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with statutes relating to in-service alien registration, and annual residence information.

To the Office of the President of the United States of America: To exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, made, and harbor master for duty as Transportation Corps warrant officer.

To each state and U.S. possession to support state bonus applications; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard Affairs.

To civilian educational, and training institutions to accomplish student registration, tuition support, Graduate Record Examination tests requirement, and related school requirements incident to in-service education programs in compliance with 10 U.S.C., Chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Account Numbers; to transmit Federal Insurance Compensation Act deductions made from in-service members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard and Army National Guard when service members perform duty with the U.S. Coast Guard elements or training activities.

To Civil Authorities for Compliance with 10 U.S.C. 814.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-3 and 290ee-3. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket Routine Uses do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized personnel; automated media protected by authorized password system for access terminals, controlled access to operation rooms, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent: retained in active file until termination of service following which they are retired to the custody of the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132-5200.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450.

For verification purposes, individual should provide the full name, service identification number, current or former military status, current home address, and signature.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, Army National Guard Personnel Center, 4501 Ford Avenue, Alexandria, VA 22302-1450.

For verification purposes, individual should provide the full name, service identification number, current or former military status, current home address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in AR 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the Service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0710-2aDALO

System name:

Property Officer Designation Files (50 FR 22246, May 29, 1985).

Changes:

* * * * *

System location:

Add at the end "Official mailing addresses are published as an appendix to the Army's complilation of record systems notices."

* * * * *

Retention and disposal:

Delete "burning or shredding 2 years after termination of appointment".

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the office designating the individual as Property Officer.

For verification purposes, individual should provide full name, unit where assigned as Property Officer, and time period involved."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written

inquiries to the office designating the individual as Property Officer.

For verification purposes, individual should provide full name, unit where assigned as Property Officer, and time period involved."

* * * * *

A0710-2aDALO

SYSTEM NAME:

Property Officer Designation Files.

SYSTEM LOCATION:

Maintained at unit level of the Army. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with formal responsibility for U.S. Government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Document appointing or relieving individuals as property officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013.

PURPOSE(S):

To verify an individual's authority to assume responsibility for U.S. Government property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanked Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Paper records in file folders.

RETRIEVABILITY:

By appointee's surname.

SAFEGUARDS:

Records are maintained in locked cabinets accessible only to designated authorized personnel.

RETENTION AND DISPOSAL:

Records are destroyed 2 years following individual's termination of appointment.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Logistics, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310-0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the office designating the individual as Property Officer.

For verification purposes, individual should provide full name, unit where assigned as Property Officer, and time period involved.

RECORD ACCESS PROCEDURES:

Indivduals seeking access to records about themselves contained in this record system should address written inquiries to the office designating the individual as Property Officer.

For verification purposes, individual should provide full name, unit where assigned as Property Officer, and time period involved.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her commander, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0710-2cDALO

System name:

Personal Property Accounting Files (50 FR 22247, May 29, 1985).

Changes:

* * * * *

System location:

Delete entry and replace with "Maintained Army-wide in orderly rooms of troop units. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices."

Categories of individuals covered by the system:

Delete: "sick in medical facilities" and replace with "because of illness and confined to medical facilities".

* * * * *

Authority for maintenance of the system:

Add at the end "and Executive Order 9397."

* * * * *

System manager(s) and address:

Add "-0500" to the ZIP code.

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the troop commanders.

For verification purposes, individual should provide full name, Social Security Number, current address, telephone number, and dates and circumstances of the absence".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to or visit designated representatives of troop commanders holding the records.

For verification purposes, individual should provide full name, Social Security Number, current address, telephone number, and dates and circumstances of the absence".

* * * * *

A0710-2cDALO

SYSTEM NAME:

Personal Property Accounting Files.

SYSTEM LOCATION:

Maintained Army-wide in orderly rooms of troop units. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military individuals absent without leave or absent because of illness and confined to medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting items of personal property of individuals listed in the preceding paragraph.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and Executive Order 9397.

PURPOSE(S):

To identify and protect property belonging to soldiers who are absent without leave or absent because of illness and confined to medical facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By last name of individual owning the property.

SAFEGUARDS:

Records are maintained in locked cabinets accessible to authorized individuals having official need therefor.

RETENTION AND DISPOSAL:

Records are maintained during an individual's absence and destroyed 2 years after his/her return.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Logistics, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the troop commanders.

For verification purposes, individual should provide full name, Social Security Number, current address, telephone number, and dates and circumstances of the absence.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to or visit designated representatives of troop commanders holding the records.

For verification purposes, individual should provide full name, Social Security Number, current address, telephone number, and dates and circumstances of the absence.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From inventories and other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–22954 Filed 9–24–91; 8:45 am]

BILLING CODE 3810–01–M

Endangered Species Committee

Notice of Exemption Application

AGENCY: Endangered Species Committee.

ACTION: Notice of exemption application.

SUMMARY: The Bureau of Land Management has filed an application with the Secretary of the Interior seeking an exemption from section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in its 1991 timber sales program in Oregon.

DATES: The Secretary of the Interior must make threshold determinations concerning the application pursuant to 16 U.S.C. 1536(g) and 50 CFR 452.03 by October 1, 1991, unless the applicant and the Secretary agree to an extension of the deadline.

If the Secretary determines that the application qualifies for consideration by the Endangered Species Committee, the Committee must act by March 20, 1992, unless an extension is agreed to with the applicant.

ADDRESSES: Correspondence to the Secretary or the Committee should be addressed to the Executive Secretariat, U.S. Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the exemption application may be inspected and reproduced for a fee at the Natural Resources Library, 1st Floor, Department of the Interior, 1849 C. St. NW., Washington, DC 20240. In addition, as soon as arrangements can be made, a location in Portland, Oregon for inspection and reproduction of the exemption application will be established. Questions concerning the exemption process may be addressed to Mr. Jon H. Goldstein, (202) 208–4077.

SUPPLEMENTARY INFORMATION: On June 17, 1991, the U.S. Fish and Wildlife Service issued biological opinions to the Bureau of Land Management concerning timber sales on 44 tracts remaining in its 1991 timber sales program in Oregon. The Service concluded that these sales are likely to jeopardize the continued existence of the spotted owl, a species listed as threatened under the Act. On September 11, 1991, the Director of the Bureau of Land Management submitted an application to the Committee seeking an exemption.

The exemption application describes the location of the 44 tracts and the method by which the timber would be harvested, and states that all legal requirements for conducting the proposed actions have been satisfied. The applicant also discusses certain alternatives to the proposed action that it considered, and provides other information intended to fulfill the requirements of 50 CFR 451.02(e).

John E. Schrote,

Assistant Secretary—Policy, Management and Budget and Staff to the Chairman, Endangered Species Committee.

[FR Doc. 91–23224 Filed 9–24–91; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SD)EU)–64, for the transfer from Belgium to Switzerland of 1.98 grams of plutonium contained in irradiated samples for destructive post-irradiation examination at Wurenlinger, Switzerland.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on September 20, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–23123 Filed 9–24–91; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the post-irradiation examined of irradiated mixed uranium-plutonium oxide samples at the Swiss Institute for Reactor Research (EIR), Wurenlingen, Switzerland. The subsequent arrangement records the joint determination of the Government of the United States of America and the Government of Switzerland that safeguards may be effectively applied at the EIR facility in Switzerland for the said samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on September 20, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91-23124 Filed 9-24-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TM92-2-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 18, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 13, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective July 1, 1991

Sub 3 Rev. Sheet No. 41
Sub 3 Rev. Sheet No. 42

Proposed to be effective August 1, 1991

4 Rev. Sheet No. 41
Sub 4 Rev. Sheet No. 42

Proposed to be effective October 1, 1991

5 Rev. Sheet No. 41
5 Rev. Sheet No. 42

Algonquin states that the revised tariff sheets are being filed to flow through changes in the rates underlying its Rate Schedules STB and SS-III. Algonquin also states that the October 1 tariff sheets are being filed to bring forward the rates to include the new Annual Charge Adjustment for Fiscal Year 1991.

Algoquin states that the July 1, 1991 tariff sheets decrease the STB & SS-III demand charges by $0.43 per MMBtu, increase the injection and withdrawal charges by $0.0070 per MMBtu, and increase the SS-III Non-FDDQ Withdrawal rate by $0.0069 per MMBtu. The August 1, 1991 tariff sheets decrease the SS-III Non-FDDQ withdrawal rate by $0.0105 per MMBtu and the October 1, 1991 tariff sheets increase the ACA adjustment for third party gas injections for STB and SS-III by $0.0002.

Algoquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23006 Filed 9-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-136-003]

Centra Pipelines Minnesota Inc.; Motion to Make Rates Effective

September 18, 1991.

Take notice that on September 16, 1991, Centra Pipelines Minnesota Inc., 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing First Revised Sheet No. 4 of Second Revised Volume No. 2 of its FERC Gas Tariff.

Centra states that the revised tariff is filed pursuant to § 154.67 of the Commission's Regulations to make effective its rates suspended by Commission Order dated May 15, 1991. Centra proposes the sheet to become effective October 16, 1991.

Centra states that copies of the filing have been mailed to its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before September 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23004 Filed 9-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM92-1-25-001]

Mississippi River Transmission Corp.; Rate Change Filing

September 18, 1991.

Take notice that on September 16, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing Substitute Sixty-Fifth Revised Sheet No. 4, and Substitute Twenty-Fourth Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective October 1, 1991.

MRT states that on August 30, 1991, MRT submitted revised tariff sheets to adjust the currently effective ACA charge to the new fiscal 1992 FERC approved surcharge of $.0024 per Mcf effective October 1, 1991. MRT states that since the time of such filing MRT has refiled its Quarterly and Interim PGA's to include Account No. 858 expenses in the average commodity cost of gas pursuant to the Transportation Cost Recovery Mechanism set forth in Article V of the Stipulation and Agreement in Docket No. RP89-248.

MRT states that the Substitute Sixty-Fifth Revised Sheet No. 4, and Substitute Twenty-Fourth Sheet No. 4.1 are being submitted to reflect revised cumulative adjustments to conform to its revised quarterly PGA (Docket No. TQ91-6-25-000) and Interim PGA (TF91-11-25-000) filed September 9, 1991.

MRT requests that Sheet Nos. 4 and 4.1 originally submitted on August 30,

1991 be replaced by Substitute Sixty-Fifth Revised Sheet No. 4, and Substitute Twenty-Fourth Sheet No. 4.1 filed on September 16, 1991.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

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 September 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23010 Filed 9-24-91-8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-203-007 AND RP88-203-006 (Not consolidated)]

Panhandle Eastern Pipe Line Co.; Proposal of Panhandle Eastern Pipe Line Company for Authority to Institute a Direct Billing Procedure for Order Nos. 94 et seq. and 473 Payments

September 18, 1991.

Take notice that on September 16, 1991, Panhandle Eastern Pipe Line Company ("Panhandle") filed a Proposal For Authority to Institute a Direct Billing Procedure for Order Nos. 94 *et seq.* and 473 Payments. Panhandle's proposal will revise the method originally approved by the Commission for recovering certain production-related costs which have been paid by Panhandle to its production-suppliers pursuant to Order Nos. 94 *et seq.* and 473 to comply with the instructions on remand of the Court of Appeals in *Columbia Gas Transmission Corp.* v. *FERC;* 831 F.2d 1135 (D.C. Cir. 1987), *reh'g denied* 844 F.2d 879 (D.C. Cir. 1988) and *Columbia Gas Transmission Corp.* v. *FERC* 895 F.2d 791 (D.C. Cir. 1990), *cert denied, sub nom. Panhandle Eastern Pipeline Co.* v. *Columbia Gas Transmission Corp.* 111 S.Ct. 278 (1990). As is more fully explained in the filing, Panhandle proposes to reallocate a portion of such costs to Michigan Consolidated Gas Company ("Mich Con") and Michigan Gas Utilities ("MGU") based upon the ratio of their annual Contract Demand Quantities in effect on September 23, 1985, for the Order No. 94 *et seq.* costs and for the Order No. 473 costs on June 30, 1988, the dates on which Panhandle filed for the recovery of these production-related costs from Mich Con and MGU in Docket Nos. RP85-202-000 and RP88-203-000, to the sum of all of Panhandle's buyers annual Contract Demand Quantities (adjusted to reflect the annual load factor for Panhandle's Rate Schedule SG customers) in effect on those dates. Mich Con's proportional responsibility for such costs would be $4,657,390.36, MGU's proportional responsibility for such costs would be $1,181,125.47.

Panhandle requests any waiver of the Commission Regulations and the terms of its tariff necessary to effect the proposed direct billing procedure.

Panhandle states that it has served a copy of the Proposal on its affected customers, the interested State commission and parties in the above-referenced proceedings.

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 October 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23008 Filed 9-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-7-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 18, 1991.

Take notice that on September 16, 1991, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff:

Ninth Revised Sheet No. 4B.01
Ninth Revised Sheet No. 4B.02
Ninth Revised Sheet No. 4B.03

Southern states that the proposed tariff sheets are being filed to flow through to Southern's firm jurisdictional sales customers the buy-out and buy-down charges allocated to Southern by United Gas Pipe Line Company pursuant to its Order No. 500 filing in RP91-198-000.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (§§ 385.211 and 385.214). All such motions or protests should be filed on or before September 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23010 Filed 9-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-205-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 18, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 16, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Sub Second Revised Sheet No. 410

Sub First Revised Sheet No. 410A

Texas Eastern states that in an order issued August 30, 1991 in Docket No. RP91-205-000 the Commission accepted tariff sheets filed by Texas Eastern on August 1, 1991 subject to Texas Eastern refiling the tariff sheets to comply with certain conditions discussed in such order. Texas Eastern states that these tariff sheets are being filed solely to comply with the conditions in the August 30, 1991, Order.

The proposed effective date of the tariff sheets listed above is September 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers as and interested state commissions. Texas Eastern also states that copies of the filing have also been mailed to all Rate Schedule FT-1 and IT-1 Shippers.

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 procedures, 18 CFR 385.211. All such protests should be filed on or before September 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23007 Filed 9-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-202-006]

Trunkline Gas Co.; Compliance Filing for Resolution of Remaining Contested Issues

September 18, 1991.

Take notice that on September 16, 1991, Trunkline Gas Company ("Trunkline") filed a Proposal For Resolution of Remaining Contested Issues in Docket No. RP85-202-000 in compliance with the Commission's "Order Approving Settlement" of August 1, 1991 in that docket directing Trunkline to make such a filing.

Trunkline states that the proposal will revise the method originally approved by the Commission for recovering certain production-related costs which have been paid by Trunkline to its production-suppliers pursuant to Order No. 94 *et seq.* to comply with the instructions on remand of the Court of Appeals in *Columbia Gas Transmission Corp.* versus *FERC*, 831 F.2d 1135 (D.C. Cir. 1987), *reh'g denied* 844 F.2d 879 (D.C. Cir. 1988) and *Columbia Gas Transmission Corp.* versus *FERC* 895 F.2d 791 (D.C. Cir. 1990), *cert denied, sub nom. Panhandle Eastern Pipeline Co.* versus *Columbia Gas Transmission Corp.* 111 S.Ct. 278 (1990)

Trunkline further states that it proposes to reallocate a portion of such costs to Michigan Gas Utilities ("MGU") based upon the ratio of MGU's annual Contract Demand Quantities in effect on September 23, 1985, the date on which Trunkline filed for the recovery of these production-related costs from MGU in Docket No. RP85-202-000, to the sum of all of Trunkline's Buyers annual Contract Demand Quantities (adjusted to reflect the annual load factor for Trunkline's Rate Schedule SG customers) in effect on that date.

Trunkline requests any waiver of the Commission Regulations and the terms of its tariff necessary to effect the proposed direct billing procedure.

Trunkline states that it has served a copy of the filing on its affected customers, interested state commissions and parties to the proceeding in the above-referenced docket number

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 October 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23009 Filed 9-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-2-82-000 and TM92-2-82-000]

Viking Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 18, 1991.

Take notice that on September 12, 1991, Viking Gas Transmission Company (Viking) filed the following revised tariff sheets to Original Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff:

To be effective November 1, 1991

Original Volume No. 1

Substitute Sixteenth Revised Sheet No. 6
Substitute Sixth Revised Sheet No. 11
Substitute Third Revised Sheet No. 66
Substitute Third Revised Sheet No. 74

Original Volume No. 2

Substitute Fourth Revised Sheet No. 55
Substitute Third Revised Sheet No. 72
Substitute Second Revised Sheet No. 114

Viking states that the filing reflects the refiling of tariff sheets (redesignated as "Substitute") which were previously filed in Docket Nos. TA92-1-82-000 and TM92-2-82-000 and which were rejected by the Commission by letter order dated September 10, 1991.

Viking states that the purpose of the revisions on Substitute Sixteenth Revised Sheet No. 6 is to institute the Annual PGA pursuant to Article XVII, and the Annual Charge Adjustment pursuant to Article XX, of the General Terms and Conditions of Viking's Tariff.

Viking states that the purpose of the revisions on Substitute Sixth Revised Sheet No. 11, Substitute Third Revised Sheet No. 66 and Substitute Third Revised Sheet No. 74 of Original Volume No. 1 and Substitute Fourth Revised Sheet No. 55, Substitute Third Revised Sheet No. 72, and Substitute Second Revised Sheet No. 1114 of Original Volume No. 2 is to reflect the changes in the fuel and use retention percentages applicable to sales and transportation services.

Viking states that the Current Purchased Gas Cost Rate Adjustments reflected on Substitute Sixteenth Revised Sheet No. 6 consist of a ($1.0694) per dekatherm adjustment to the gas rate, a $.4775 per dekatherm adjustment to the Rate Schedule SR-1 commodity rate, and a $5.81 per dekatherm adjustment to the demand rates.

Viking states that the revisions also reflect a $.2697 per dekatherm surcharge adjustment to the gas rates and a $1.25 per dekatherm adjustment to the demand rates for amortizing the Unrecovered Gas Cost Account.

Viking also states that the redetermined Annual Charge Adjustment is $.0024 per dekatherm.

Viking also requests that the Commission grant Viking a waiver of § 154.305(b)(3) of the Commission's regulations. Viking states that a waiver is warranted because the policy underlying that regulation—the need to ensure that Canadian gas and domestic gas compete on an equal basis—is inapplicable to Viking whose customers purchase only Canadian gas. Viking states that the application of that regulation to Viking has the unintended effect of distorting the competition between sales and transportation of Canadian gas on its system. Viking states that waiver of the regulation is necessary to allow Viking to flowthrough the costs of its purchases from TransCanada PipeLines, Ltd. on an as-billed basis so that it can compete on a fair basis against spot gas sales.

Viking also requests that the Commission give its approval, to the extent necessary, to allow Viking to fully recover its purchased gas costs despite the fact that Viking did not satisfy the past performance assessment test. Viking states that, with respect to the first test interval, the assessment test should not apply to prevent the recovery of purchased gas costs when Viking actually overrecovered its gas costs during the test interval and that, in any event, Viking's failure to satisfy the

assessment test is justified. Viking states that its failure to meet the assessment test during the third test interval is likewise justified.

Viking also requests that the Commission grant Viking a waiver of § 154.305(a) of the Commission's regulations to allow the tariff sheets to become effective November 1, 1991. Viking states that no customer or affected state commission party should be prejudiced by granting the requested waiver since all such persons were timely sent copies of Viking's prior filing which, in all relevant respects, is identical to the instant filing.

Viking also requests that the Commission reapply the filing fee paid in Docket Nos. TA92-1-82-000 and TM92-1-82-000 to the instant filing.

Viking states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., 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 October 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23012 Filed 9-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-183-033]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 18, 1991.

Take notice that Williams Natural Gas Company (WNG) on September 16, 1991, tendered for filing First Revised Sheet Nos. 105, 202, 218, 221, and 310 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective January 1, 1991.

WNG states that the tariff sheets are being filed pursuant to WNG's agreement set forth in the Prepared Additional Direct Testimony of Thomas H. Lawson, filed February 25, 1991, and in the Prepared Additional Rebuttal Testimony of Thomas H. Lawson, filed September 9, 1991. WNG notes that the sheets reflect the removal of conjunctive billing language from Rate Schedule RP(B) (Sheet Nos. 105 and 310), the elimination of the words "for sales" in the quality specification (Sheet No. 202), reinstatement of 100 Dth minimum for unauthorized overrun penalties (Sheet No. 218), and reinstatement of limitation on term of service agreements (Sheet No. 221).

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commissions rules of practice and procedure 18 CFR 385.211. All such protests should be filed on or before September 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23005 Filed 9-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-76-001]

Wyoming Interstate Co., Ltd.; Filing

September 18, 1991.

Take note that on September 13, 1991, Wyoming Interstate Company, Ltd. (WIC) submitted for filing Substitute First Revised Sheet Nos. 4 and 5 in its FERC Gas Tariff Original Volume No. 2 reflecting the balancing penalty change in Docket No. RP91-177 that was filed on August 5, 1991 and is pending Commission approval.

WIC has requested that the proposed tariff sheets be made effective October 1, 1991.

WIC notes that copies of its filing are being served on all jurisdictional customers.

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 September 25, 1991. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23012 Filed 9-24-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of July 1 Through 5, 1991

During the week of July 1 through July 5, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearing and Appeals of the Department of Energy. The following summary also contains a list of submission that were dismissed by the Office of Hearings and Appeals.

Appeal

Sacramento Area Electrical Apprenticeship, 7/1/91, LFA-0131

The Sacramento Area Electrical Apprenticeship filed an Appeal from a partial denial by the Department of Energy's (DOE) Western Area Power Administration of a Request for Information which it submitted under the Freedom of Information Act (the FOIA). In considering the appeal, the DOE found that the names, addresses, and social security numbers of contractor employees are properly withheld under Exemption 6. Important issues that were considered in this Decision and Order were: (i) Whether privacy interests exist in names, addresses, and social security numbers; (ii) whether the public interest would be served by disclosure of names, addresses and social security numbers of contractor employees; and (iii) the effects of recent court decisions on the proper interpretation of the public's interest in disclosure of government information under the FOIA.

Request for Exception

Ray Marchand Oil Co., Inc., 7/3/91, Lee-0024

Ray Marchand Oil Co., Inc., filed an Application for Exception which, if granted, would have relieved Marchand

of the requirement to prepare and file DOE Form EIA-782B. On July 3, 1991, the Department of Energy issued a final Decision and Order which determined that the exception request be denied on the grounds that Marchand had not shown that the filing requirement caused it to experience a serious hardship or gross inequity.

Refund Applications

Refund Richfield Company/Van Der Aa Bros. Bus Lines, RF304-11057, Van Der Aa Bros. Arch, 7/1/91, RF304-11058

The DOE issued a Decision and Order in the ARCO special refund proceeding concerning two Applications for Refund filed by Van Der Aa Bros., a firm consisting of two entities: A bus transportation company that is an end-user of ARCO products and a service station that is a retailer/reseller of ARCO products. As an end-user, the bus line division would be entitled to a full volumetric refund based on 3,008,457 gallons of ARCO products. As a reseller, the service station would be considered under the small claims presumption of injury and would receive a full volumetric refund for documented purchases of 4,427,794 gallons of ARCO products. The DOE determined, however, that the two entities constitute a single firm whose combined refund would exceed the $5,000 small claims limitation. In order for the Van Der Aa Bros. to receive more than $5,000, a demonstration of injury would have to be made on the part of the reseller entity. The company chose not to prove injury. Thus, Van Der AA Bros. received a refund of $7,353, representing $5,000 in principal plus $2,353 in interest.

Bi-Co Pavers, Et al., 7/5/91 RF272-69408, Et al. RD272-69546

The DOE issued a Decision and Order granting refunds of $38,485 from the crude oil overcharge funds to eight applicants. The DOE also denied a Motion for Discovery submitted in connection with one of the applications by a group of States and Territories of the United States.

CF&I Steel Corporation, 7/5/91, RF272-8753

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to CF&I Steel Corporation based on its purchases of refined petroleum products between August 19, 1973 through January 27, 1981. The applicant was an end-user of the refined petroleum products and based its claim on a presumption of injury for end-users. A group of 28 States and two territories (the States) filed a Statement of Objection with respect to CF&I's application. The DOE found that the States' filing was insufficient to rebut the presumption of injury. Therefore, CF&I's Application for Refund was granted. The refund granted to CF&I was $49,674.

Murphy Oil Corporation/Lemmen Oil Company, 7/5/91, RF309-523

The DOE issued a Decision and Order denying an Application for Refund in the Murphy Oil Corporation (Murphy) special refund proceeding. Lemmen Oil Company (Lemmen) was preliminarily identified as a spot purchaser of motor gasoline and distillate fuels from Murphy, due to its sporadic purchase pattern for these petroleum products. Lemmen argued that it should be treated as a regular distillate fuel purchaser despite its infrequent purchases during the period in which distillate fuels were regulated because it consistently purchased them after they were decontrolled. The DOE found this argument unconvincing. Since Lemmen Oil Company did not show that it was a regular purchase of Murphy petroleum products or attempt to rebut the spot purchaser presumption of non-injury, its application was denied.

Standard Oil Co., (Indiana)/State of Indiana, 7/5/91, RM251-244

The Office of Hearings and Appeals issued a Decision and Order approving the motion for modification filed by the State of Indiana in the Standard Oil Co. (Indiana) special refund proceeding. Indiana requested permission to reallocate $247,500 of the Standard Oil Co. (Indiana) monies it had received to the fuel van saver program. This program would provide Indiana's motorists with a 42-point vehicle inspection which would indicate adjustments to make their vehicles more fuel efficient. The OHA found that, when considered as part of Indiana's overall oil overcharge restitution program, Indiana's plan is sufficiently balanced to warrant approval.

State of Indiana, 7/2/91, RF272-67187

The DOE issued a Decision and Order concerning an Application for Refund filed by the State of Indiana in the Subpart V crude oil refund proceeding. The applicant's claim was based on purchases of refined petroleum products used in the operation of the Indiana state government. The total volume approved in the Decision and Order is 188,623,518 gallons of refined petroleum products and the total refund granted is $150,899.

Texaco Inc./Sister Bay Oil Company, 7/1/91, RF321-15740

The DOE issued a Supplemental Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding by Norman Larson and Wesley Staver on behalf of Sister Bay Oil Co. (SBOC), a reseller of Texaco products during the refund period. In Texaco Inc./Anaheim Hills Texaco, Case Nos. RF321-1510 *et al.* (October 26, 1990), Messrs. Larson and Staver were granted a refund of $3,067 based on purchases that they made as the owners of SBOC from March 1973 to December 1975. However, the DOE subsequently found that Messrs. Larson and Staver sold all the stock of SBOC in 1975, thereby relinquishing their right to the refund. Accordingly, the DOE directed Messrs. Larson and Staver to remit the entire refund amount.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Adams Construction Company.	RF272-28135	07/05/91
Adams Construction Company.	RD272-28135	
Alpha Construction Company.	RF272-43910	07/05/91
Alpha Construction Company.	RD272-43910	
Archer City Ind. Sch District Et al.	RF272-84003	07/05/91
Atlantic Richfield Co./Bell Telephone Co. of Pennsylvania.	RF304-11908	07/02/91
Atlantic Richfield Co./Buckingham Arco Et al.	RF304-3945	07/03/91
Atlantic Richfield Co./Capital Gas Co. Et al.	RF304-12121	07/05/91
Atlantic Richfield Co./James B. Carson Et al.	RF304-4446	07/03/91
Atlantic Richfield Co./Larry Thomas Arco.	RF304-12289	07/02/91
Circle High School #1 Et al.	RF272-80001	07/02/91
Dosch-King Co., Inc.....	RF272-16291	07/03/91
Dosch-King Co., Inc.....	RD272-16291	
Frank Wihitcomb Constructioncorp.	RF272-20945	
Frank Wihitcomb Constructioncorp.	RD272-20945	
E.W. Moran Drilling Company.	RF272-25623	07/05/91
E.W. Moran Drilling Company.	RD272-25623	

Name	Case No.	Date
Empire Gas Corporation/ Ronald B. Lewis Et al.	RF335-17	07/03/91
Gulf Oil Corporation/ Atlanta Dairies Inc.	RF300-11419	07/03/91
Gulf Oil Corporation/ Hobcaw Gulf Et al.	RF300-11923	07/01/91
Gulf Oil Corporation/ Mallory's LP Products, Inc.	RF300-11100	07/05/91
John R. Adams/ Tauber Oil Company.	RF338-3	07/05/91
Mack Trucks, Inc.	RF272-11984	07/05/91
Mack Trucks, Inc.	RD272-11984	
Mack Trucks, Inc.	RF272-25002	
Mack Trucks, Inc.	RD272-25002	
Mapleton School District	RC272-125	07/05/91
Morris School District	RF272-78776	07/05/91
Oak Grove Sch. District 68 Et al.	RF272-83634	07/05/91
Offshore Logistics, Inc.	RF272-27810	07/01/91
Offshore Logistics, Inc.	RD272-27810	
Petroleum Helicopters, Inc.	RF272-43779	
Petroleum Helicopters, Inc.	RD272-43779	
Panther Creek Cons ISD Et al.	RF272-80401	07/02/91
Philadelphia Gas Works.	RF272-19520	07/05/91
Sandstone School District.	RF272-78740	07/01/91
Texaco Inc./Beard Brothers Tecaco Et al.	RF321-3142	07/03/91
Texaco Inc./Bolivar County Et al.	RF321-7701	07/01/91
Texaco Inc./Kitchen Oil Co., Inc. Et al.	RF321-7281	07/05/91
Texaco Inc./Meehan Oil Co., Inc.	RF321-7463	07/03/91
Love Oil Corp., Inc.	RF321-7464	
Texaco Inc./R. C. McKinney Inc. Et al.	RF321-7212	07/05/91
Texaco Inc./Tom's Texaco Et al.	RF321-8409	07/01/91
Texaco Inc./ Wineland's Texaco Et al.	RF321-2906	07/01/91
West Saint Paul School District.	RF272-78779	07/01/91
Western Atlas International, Inc.	RD272-72078	07/05/91
Western Atlas International, Inc.	RD272-72078	

Dismissals

Name	Case No.
The following submissions were dismissed:	
Bill's Gulf Service	RF300-13649
Boces Area Center	RF321-15650
Brad Ragan, Inc.	RF321-15557
Brake King	RF321-9001
C.O. Thompson Petroleum Co.	RF300-11498
D.J. Gorra	RF321-6610
Dom's Arco	RF304-12201
Emco Elevators, Inc.	RF321-6179
Glynn Avenue Gulf	RF300-16849
Gorden Roberts	RF300-16779
Hershel Burdette	RF300-16772
Hi-way Grill & Service Station	321-1571
John E. Pizzino	RF300-16952
Lord's Texaco	RF321-4948
Modern Gas Co., Inc.	RF321-9569
Mrs. Montess Robinson	RF300-16950
Ottawa Gulf Park	RF300-16776
Quay County	RF272-86439
Ri-Bon	RF300-16778
Sully's Service	RF300-16053
The McCarty Corporation	RF321-15659
US Oil Co., Inc.	RF326-242
Williams Gulf Service	RF300-13277

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 19, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-23125 Filed 9-24-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of July 15 Through July 19, 1991

During the week of July 15 through July 19, 1991, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Motion for Discovery

Compton Petroleum Corporation/ Economic Regulatory Administration, 7/19/91, KRD-0033, KRH-0033, KRZ-0088, LRZ-0016, LRZ-0017

The Economic Regulatory Administration (ERA) filed a Motion to Amend a Proposed Remedial Order that it issued to the Compton Corporation (Compton) and the Gratex Corporation (Gratex) on April 27, 1984. The amendments would dismiss Gratex as a party to the PRO and extensively revise the layering and permissible average markup (PAM) violations alleged against Compton. The DOE found that good cause existed for the amendments requested by the ERA and that Compton would not be unduly prejudiced by them. The DOE also found that it was permissible for the ERA to amend the PRO to add new allegations of layering and PAM violations for the period covered by the PRO and, contrary to Compton's allegation, that the PRO had been issued to the proper corporation entity. Accordingly, the DOE granted the ERA's Motion to Amend the PRO and gave Compton thirty days to submit supplemental objections to issues raised by the amendments. The DOE next determined that Compton's discovery requests for all ERA audit records and workpapers should be denied. It found that the PRO, as amended, established a prima facie case of regulatory violation and that these alleged violations were extensively documented by the ERA. However, it did require the ERA to provide Compton with more readable copies of certain exhibits. The DOE also denied Compton's request for an evidentiary hearing, finding that the firm had not identified specific issues for which oral testimony was required. Finally, the DOE granted two motions by the ERA to strike certain material submitted by Compton which related to confidential settlement negotiations between Compton and the ERA. In the interest of fairness, it also struck from the record the ERA's characterization of Compton's comments concerning these negotiations.

Implementation of Special Refund Procedures

Reinauer Petroleum Corp., 7/17/91, KEF-0110

On April 26, 1988, the DOE issued a Decision and Order implementing procedures for the disbursement, pursuant to subpart V, of $305,000, plus accrued interest, obtained under the terms of a Consent Order entered into with the Reinauer Petroleum Co. (Reinauer). The DOE determined that all of the consent order fund should be set aside for refunds to customers that purchased refined products from Reinauer during the consent order period April 1, 1979, through September 30, 1979. If any funds remain after meritorious claims are paid, the monies will be used for Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07. Purchasers of regulated petroleum products from Reinauer during the consent order period may file Applications for Refund from the Reinauer consent order fund. Applications for Refund must be postmarked by January 31, 1992. Instructions for the completion of refund applications are set forth in the Decision.

Seneca Oil Company, West Texas Market Corp., Grace Petroleum Corp., Thums Long Beach Company, 7/17/91, LEF-0025, LEF-0026, LEF-0027, LEF-0028

The DOE issued a Decision and Order implementing procedures for the distribution of $8,907,350.36, plus interest, in alleged crude oil overcharge funds obtained from Seneca Oil Company, West Texas Marketing Corporation, Grace Petroleum Corporation, and Thums Long Beach Company. The DOE determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the funds is to be divided equally between the State and the federal government and 20 percent of the funds is to be reserved for direct restitution to injured parties submitting claims to the Office of Hearings and Appeals under 10 CFR part 205, subpart V. The specific information to be included in the Applications for Refunds, which must be submitted by June 30, 1992, is included in the Decision. However, Applications should not be filed by applicants who have previously filed refund claims in the Crude Oil Subpart V refund proceeding.

Refund Applications

Great Lakes Carbon Corp., 7/19/91, RR272-65

The DOE considered a Motion for Reconsideration filed by Great Lakes Carbon Corporation (GLCC). GLCC requested reconsideration of a prior determination denying its claim for a crude oil overcharge refund based on purchases of petroleum coke. GLCC argued that the DOE had arbitrarily applied its stated standard for granting these refunds. Specifically, the DOE had stated previously that any product covered by the Emergency Petroleum Allocation Act (EPAA) would be eligible for a crude oil refund and that any product that had been regulated during the relevant period would be considered presumptively covered by the Act. GLCC contended that petroleum coke was covered by regulations issued by the DOE's predecessor, the Cost of Living Council, and that this product is therefore presumptively entitled to be considered for a crude oil overcharge refund. In rejecting GLCC's claim, the DOE found that the regulations under which petroleum coke was covered were issued pursuant to the authority of the Economic Stabilization Act and not the EPAA. The DOE also analyzed the EPAA, finding that petroleum coke was not covered by that Act, nor by any regulations issued pursuant to that Act. Accordingly, GLCC's Motion for Reconsideration was denied.

Murphy Oil Corporation/Marine Fueling Division, Marine Fueling Division, Manuel Family, 7/18/91, RF309-1371

The DOE issued a Decision and Order granting an Application for Refund and denying another Application for Refund in the Murphy Oil Corporation special refund proceeding. One Application was filed by the former owners of Marine Fueling Division, while the second was filed by the purchaser of the Marine Fueling Division's assets. The DOE determined that the right to a refund based on Marine Fueling Division's purchases was conveyed to the buyer of the Company's assets in a 1975 sale of the company. Therefore, the buyer's Application was granted, and the former owners' Application was denied. The total volume approved in this Decision was 56,320,027 gallons, and the total refund granted was $25,473 ($18,405 in principal and $7,068 in interest).

Standard Oil Co. (Indiana)/Alabama, 7/19/91, RM251-243

The DOE issued a Decision and Order granting a request by the State of Alabama to use $12,173 in Amoco II monies to fund the Indian Supplemental Home Energy Assistance Program, an energy conservation project for indirect restitution to injured Alabama Indians.

Standard Oil Co. (Indiana)/Michigan, Vickers Energy Corporation/Michigan, Coline Gasoline Corporation/Michigan, and National Helium Corporation/Michigan and Perry Gas Process, Inc./Michigan, 7/18/91, RM21-244, RM251-245, RM1-246, RM2-247, RM3-248, RM183-249

The DOE issued a Decision and Order approving Motions for Modification filed by the State of Michigan in the Standard Oil Co. (Indiana), National Helium Corporation, Vickers Energy Corporation, Coline Gasoline Corporation, and Perry Gas Processors, Inc., special refund proceedings. Michigan request permission to reallocate $1,602,760 of the funds that it had received in these proceedings to three road transportation programs. The DOE found that, when considered as part of Michigan's overall oil overcharge program, Michigan's plans are sufficiently restitutionary to warrant approval.

Standard Oil Co. (Indiana)/Washington, National Helium Corporation/Washington, 7/17/91, RM21-253, RM3-254

The DOE issued a Decision and Order approving Motions for Modification filed by the State of Washington in the Standard Oil Co. (Indiana) and National Helium Corporation special refund proceeding. Washington requested permission to reallocate $129,434 of the Standard Oil (Indiana) and National Helium Corporation monies it had received to the Energy Information Service Program. This program would provide Washington's citizens with objective, accurate energy conservation and renewable resource information. The DOE found that the program is restitutionary when considered as part of Washington's overall oil overcharge program.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Alexandria Township School Dist. *Et al.*	RF272-83807	07/18/91
Arcadia Local School District *Et al.*.	RF272-80817	07/18/91
Associated Marjon, Inc. *Et al.*	RF272-65742	07/18/91
Atlantic Richfield Co./Beck Suppliers, Inc.	RF304-11910	07/16/91
Atlantic Richfield Co./Bill's *Et al.*	RF304-11264	07/16/91
Atlantic Richfield Co./Chala Enterprises *Et al.*	RF304-9938	07/16/91
Atlantic Richfield Co./Complete Auto Service Center, Inc. *Et al.*	RF304-3371	07/17/91
Atlantic Richfield Co./Estate of Alex J. Barto.	RF304-1286	07/17/91
Atlantic Richfield Co./J & L Oil Company.	RF304-12197	07/17/91
J & L Oil Co	RF304-12198	
G.R.B., Inc	RF304-12202	
Paul's Arco	RF304-12205	
Atlantic Richfield Co./Triangle Service *Et al.*	RF304-3962	07/16/91
Beacon Oil Company/Valley Oil Distributing Co.	RF238-55	07/16/91
Belview School District *et al.*	RF272-78707	07/16/91
Burton Independent School District *Et al.*	RF272-80639	07/17/91
Carolina Telephone and Telegraph Company.	RF272-15005	07/18/91
Chickasha School District *Et al.*	RF272-82002	07/17/91

Name	Case No.	Date
Citronelle-Mobile Gathering/ Philadelphia Electric Co.	RF336-15	07/18/91
D.H. Ranch	RC272-122	07/16/91
Empire Gas Corporation/ Southern Heights Christian Church *Et al.*	RF335-15	07/17/91
Exxon Corporation/ Ward Pavements, Inc.	RF307-10185	07/16/91
Macmillan Bloedel, Limited.	RF272-1942	07/16/91
Macmillan Bloedel, Limited.	RF272-1942	
New York State Thruway Authority.	RF272-68934	07/18/91
Pacific Bell	RF272-59164	07/17/91
Pulaski Academy & Central School *Et al.*	RF272-83407	07/16/91
Southern Intermodal Logistics *Et al.*	RF272-72572	07/17/91
Texaco Inc./Albert's Texaco *Et al.*	RF321-742	07/18/91
Texaco Inc./Bill's Texaco Service.	RF321-16259	07/19/91
Texaco Inc./Bobby G. Davis *Et al.*	RF321-2301	07/17/91
Texaco Inc./Dan's Texaco *Et al.*	RF321-4616	07/17/91
Texaco Inc./Darling & Co.	RF321-16227	07/17/91
Texaco Inc./ Kensington Texaco Service *Et al.*	RF321-7020	07/16/91
Texaco Inc./Parham Oil Co.	RF321-16251	07/18/91
Richardson Oil Co., Inc.	RF321-16252	
Southern Oil Co.	RF321-16253	

Dismissals

The following submissions were dismissed:

Name	Case No.
Boyden-Hull Community School	RF272-79532
City of Salem, VA	RF272-87719
Clarence W. Heidenescher	RF300-16454
Cut Bank HS #15	RF272-87161
D'Addario Industries	RF272-78406
Davidson Instrument Panel/Textron.	RF272-64146
Dawson County, MT	RF272-86192
Edison Elementary	RF272-87182
Florence County, SC	RF272-86158
Horry County School District	RF272-84623
Independent School District #294	RF272-77919
Independent School District #318	RF272-87650
Jarrell's Gulf	RF300-11431
Kemp's Texaco #2	RF321-11026
Lincoln-Sudbury School District	RF272-79748
Manilla Community School District	RF272-86856
McCall's Texaco	RF321-6922
McDowell Texaco	RF321-682
Mr. James Swab	LFA-0136
Pete's Texaco	RF321-4523
Porto's Texaco	RF321-5228
Saliba's Texaco	RF321-3313
Sanford Red Star Oil Co.	RF321-5591
Sid Brooks Texaco	RF321-6461
The Western Company	RF321-5724
The Western Company	RF321-10219
Thrifty Arco	RF304-7949
Village of Evergreen Park	RF272-86834
Wabash Co. Ambulance Service	RF272-64433
Widing Transportation Co.	RF272-36219
Winsted Independent School District.	RF272-78737

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 19, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-23126 Filed 9-24-91; 845 am]

BILLING CODE 6450-01-M

Western Area Power Administration

California-Oregon Transmission Project Supplement Analysis

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of availability of a Supplement Analysis for the California-Oregon Transmission Project.

BACKGROUND: On May 18, 1988, the Department of Energy (DOE), Western Area Power Administration (Western) published in the **Federal Register** a Record of Decision (ROD) under the National Environmental Policy Act (NEPA) for the California-Oregon Transmission Project (COTP) (53 FR 17749). The ROD presented the basis on which the decision to site the project was made and stated that all practicable means to avoid or mitigate impacts were adopted.

Since that time, adjustments were made to the alignment of the COTP in Contra Costa County, California, in response to the requests of landowners and in accordance with the January 30, 1991, Report On Alignment of the Harold T. (Bizz) Johnson California-Pacific Northwest Intertie in Contra Costa County, California. The report was submitted to the U.S. House of Representatives Committee on Interior and Insular Affairs and the U.S. Senate Committee on Energy and Natural Resources in compliance with the Solar, Wind, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575). Western studied the environment surrounding the realignments to determine whether any new environmental issues were raised and prepared a Supplement Analysis in accordance with the DOE NEPA Guidelines (52 FR 47662). The DOE has reviewed this Supplement Analysis and determined that the potential environmental impacts of the routing realignment are adequately evaluated in the environmental impact statement (EIS) (DOE/EIS-0128, January 1988) and that a supplement to the EIS would not be required.

ADDITIONAL INFORMATION: For additional information or a copy of the Supplement Analysis contact: James C. Feider, Deputy Area Manager, Western Area Power Administration, 1825 Bell Street, Sacramento, CA 95825, (916) 649-4416.

SUPPLEMENTARY INFORMATION: Public Laws 98-360 and 99-88 authorized the construction of the Harold T. (Bizz) Johnson California-Pacific Northwest Intertie Line. The project in California is known as the COTP. The purpose of the Supplement Analysis is to document, in accordance with section C.2 of the DOE NEPA Guidelines, the determination that changes proposed to the COTP in Contra Costa County would not result in significant changes to the environmental impacts analyzed in the EIS for the project. The proposed changes would not cause significant, reasonably foreseeable environmental impacts that were not considered in the EIS. Based on the Supplement Analysis and the EIS, DOE concluded that a supplement to the EIS is not required for these changes.

The COTP involves the construction of a 346-mile long, 500-kilovolt (kV) transmission line from the California-Oregon border to the Tesla Substation near Tracy, California. Portions of the line, including the portion in Contra Costa County, will be new construction, while 170 miles of the project will utilize an existing 230-kV transmission line owned by Western. Western served as the lead Federal agency under NEPA, jointly with the Transmission Agency of Northern California, the lead agency for the State under the California Environmental Quality Act, in the preparation of an EIS/Environmental Impact Report (EIR). The environmental process was initiated in 1985 with scoping meetings, corridor workshops, routing workshops, and environmental studies. A draft EIS/EIR was issued in November 1986, and comments were accepted until March of 1987. As a result of comments on the draft EIS/EIR, a supplement to the draft was issued in July 1987, which addressed several additional alternative routes, including

one in the Contra Costa County area. The alternative routes studied were 1,500-feet wide, from within which a 200-foot-wide right-of-way would be selected for new construction. The final EIS/EIR addressed comments on the draft and supplemental documents and was issued February 1988. Western issued a ROD for the project on April 22, 1988.

Section 6 of the Public Law 101-575, the Solar, Wind, and Geothermal Power Production Incentives Act of 1990, has resulted in Western taking another look at the routing and mitigation for the San Joaquin River-Tracy section of the COTP in Contra Costa County. The legislation rejected the proposed alignment of the COTP in Contra Costa County, and required that Western submit a proposed realignment of the Intertie to Congress by January 30, 1991, which is consistent, to the extent practicable, with the needs of the landowners, East Bay Regional Park District, the environment, and system security and reliability.

The issue behind this legislation is that landowners and interested citizens have expressed concern over a proliferation of transmission lines in an area that is proposed for development. While these concerns were addressed during the environmental process for the project, the development potential is more imminent, since the County has prepared a specific plan for the area and approved two subdivisions in the past year. Opponents of the COTP alignment in Contra Costa County believe that adding a new line 2,000 feet away from three existing transmission lines would aesthetically impact the area and the future development, as well as potentially create a strip of unusable land between the new line and the existing lines. The COTP participants and other interested utilities, on the other hand, believe strongly that placing a third 500-kV transmission line immediately adjacent to the existing two 500-kV lines would seriously compromise the transmission system reliability and security of the Western United States. The Park District is concerned because they would like to acquire land for a park on Jersey Island to serve this developing area, and because of this, would like to see the COTP placed as close as possible to the existing lines.

Concerned citizens also raised the issue of waterfowl and wetlands conflicts with the line. Because the Delta is a waterfowl concentration area, there is concern that waterfowl will collide with the line, and that the value of waterfowl habitat in the area will be diminished. These issues were addressed in the draft and final EIS/EIR as unavoidable impacts which would be mitigated by (1) conducting an avian mortality study to determine the extent of impacts, and (2) if mortality were shown to be a problem, improving habitat or providing other enhancements elsewhere.

As required in the legislation, Western prepared a report that was submitted by the Secretary of Energy to Congress on February 4, 1991, entitled "Report on Alignment of the Harold T. (Bizz) Johnson California-Pacific Northwest Intertie in Contra Costa County, California." In this report, Western proposed some changes to the alignment of the COTP through this area and some additional mitigation. These changes are being implemented in order to further reduce impacts of the COTP which were identified in the EIS/EIR.

The plan of action in the report to Congress includes removing the existing Western 230-kV transmission line for about 10 miles between the Sacramento River crossing and Delta Road, proceeding with the waterfowl habitat mitigation work proposed in the EIS/EIR prior to obtaining the results of the avian mortality study, levee maintenance assistance for Reclamation Districts in the Delta, and double-circuiting of two single-circuit 230-kV lines where they parallel the alignment of the COTP for about 2 miles in the area south of Clifton Court Forebay.

Western has worked with landowners regarding their specific alignment suggestions. Changes to the alignment were made with consideration of these suggestions. A discussion of the environmental impacts associated with these alignment changes is contained in the Supplement Analysis.

Based on the information in the Supplement Analysis and the analyses contained in the EIS, it is clear that the areas crossed by the new alignment are environmentally similar to those crossed by the original route. While the proposed action has been modified slightly from that described in the ROD, no new impacts would occur that were not identified and fully evaluated in the EIS/EIR. The impact of the diagonal crossing of cultivated agricultural lands would be lessened. The removal of the existing 230-kV transmission line will help mitigate land use and visual impacts. The consolidation of the 230-kV lines near Tracy will also help to mitigate land use and visual impacts. Most of the alignment changes are within the 1,500-foot wide routes studied for the COTP EIS. The entire alignment is still within the study area for the EIS, and all of the alignment revisions are located no further than 1 mile from the centerline of the original preferred route identified in the EIS. The alignment changes will make the line more compatible with land use impacts from future development plans which have been proposed since the EIS was finalized. There are no substantial changes in the proposed realignment that are relevant to the environmental concerns, and there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Therefore, DOE concluded that a supplemental EIS is not required.

Issued at Golden, Colorado, September 11, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91-23127 Filed 9-24-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34020; FRL-3943-6]

Availability of Pesticide Reregistration Eligibility Document for Potassium Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for public comment.

SUMMARY: This Notice announces the availability of the final Reregistration Eligibility Document (RED) for Potassium Bromide and the establishment of a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base for Potassium Bromide and presents the Agency's determination regarding which uses of Potassium Bromide are eligible for reregistration.

DATES: Written comments on the Potassium Bromide RED must be submitted by November 25, 1991.

ADDRESSES: Three copies of comments identified with the docket number "OPP-34020" should be submitted to: By mail: 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 Highway, Arlington, VA. To request a copy of the RED or a RED Fact Sheet for Potassium Bromide, contact the Public

Response and Program Resources Branch in rm. 1128 at the address given above (703)557-2805. Requests should be submitted in time to allow sufficient time for receipt before the close of the comment period.

Information submitted as a comment in response to 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 docket. Information not marked as confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Don Mackey for technical questions concerning the RED at (703)308-8059.

SUPPLEMENTARY INFORMATION: EPA has issued a final Reregistration Eligibility Document for Potassium Bromide. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards. Potassium Bromide has a substantially complete data base and the Agency has determined that the registered uses do not cause unreasonable adverse effects to people or the environment. All registered uses of Potassium Bromide are eligible for reregistration. All registrants of Potassium Bromide have been sent the RED and must respond to the product specific data and labeling requirements within 8 months of receipt. The 60-day public comment period does not affect the registrant's response due date.

EPA's rationale for issuing the Potassium Bromide RED as a final document with a 60-day comment period is based on the Agency's experience with Registration Standards and comments received from the public at a reregistration workshop sponsored by the Agency in September 1990. Most of the participants at the September 1990 workshop, which included several hundred registrants, state and federal agency representatives and public interest groups, expressed a desire to have an opportunity to comment on a draft RED prior to the Agency issuing the final document. Most comments were from affected registrants and involved clarification of data requirements and/or questions about the appropriateness of certain data and or labeling changes; public comments on Registration Standards were limited. The Agency believes registrants will have ample opportunity to raise issues prior to the due date of their response or in their response. Although the Agency is issuing the Potassium Bromide RED in final, it believes that the establishment of a 60-day comment period will provide sufficient opportunity for public input and allow a mechanism for any subsequent necessary amendments to the RED. The Agency believes this approach is necessary to reduce the time required to complete the regulatory assessment and issue RED's for all affected pesticides and meet the congressionally mandated time frames for completion of the reregistration program.

Dated: September 10, 1991.

Allan S. Abramson,

Acting Director, Special Review and Registration Division, Office of Pesticide Programs.

[FR Doc. 91-22571 Filed 9-24-91 8:45 am]

BILLING CODE 6560-50-F

[OPTS-44576; FRL 3945-7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data for isopropanol (CAS No. 67-63-0) submitted pursuant to a test rule. Test data were also received for methyl tertiary butyl ether (MTBE) (CAS No. 1634-04-4) and C.I. disperse blue 79:1 (CAS No. 3618-72-2), submitted pursuant to a consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 260-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for isopropanol were submitted by the Chemical Manufacturers Association Isopropanol Panel pursuant to a test rule at 40 CFR 799.2325. They were received by EPA on August 27, 1991. The submission describes the developmental neurotoxicity evaluation of isopropanol administered by gavage to timed-mated CD rats on gestational day 6 through postnatal day 21. Health effects testing is required by this test rule. This chemical is used as a solvent in consumer products and industrial products and procedures.

Test data for MTBE were submitted by the MTBE Health Effects Testing Task Force on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on August 16, 1991. The submission contains the inhalation, reproduction and fertility effects study titled: "A two-generation reproduction study of inhaled MTBE in CDR (sprague-dawley) rats". Health effects testing is required by this consent order. This chemical is used almost exclusively as a blending component in high octane gasoline.

Test data for C.I. disperse blue 79:1 were submitted by the U.S. Operating Committee of the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on August 26, 1991. The submission describes the early life stage toxicity of C.I. disperse blue 79:1 purified presscake to rainbow trout (*Oncorhynchus mykiss*) in a flow-through system. Health effects testing is required by this consent order. This chemical is used for dyeing or printing polyester fibers.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44576). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal

holidays, in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: September 13, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91–23105 Filed 9–24–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jacksonsville Port Authority, et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200568.

Title: Jacksonville Port Authority/Puerto Rico Maritime Shipping Authority Marine terminal Agreement.

Parties: Jacksonville Port Authority ("JPA") Puerto Rico Maritime Shipping Authority.

Filing Party: Carl L. Timmer, General Traffic Manager, Jacksonville Port Authority, 2831 Talleyrand Avenue, Jacksonville, Florida 32206.

Synopsis: The Agreement filed, September 13, 1991, provides the discount charges for dockage for Puerto Rico Maritime Shipping Authority. The Agreement replaces Agreement No. 224–200401, which expires September 30, 1991.

By Order of the Federal Maritime Commission.

Dated: September 20, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–23026 Filed 9–24–91; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Port of Oakland, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003914–005.

Title: Port of Oakland/Sea-Land Service, Inc., Terminal Agreement.

Parties: City of Oakland ("Port"), Sea-Land Service, Inc. ("Sea-Land").

Synopsis: The Agreement, filed September 13, 1991, allows Sea-Land to modify the terminal facilities it leases from the Port by improving yard lighting and by replacing the existing fire hydrant protection system. The Port will reimburse Sea-Land for a portion of the lighting improvements and for all of the fire protection system.

Agreement No.: 203–011271–004.

Title: U.S./Peru Discussion Agreement.

Parties: Crowley Caribbean Transport, Inc., Empresa Naviera Santa, Lykes Bros. Steamship Co., Inc., Compania Chilena de Navegacion, Interoceanica (CCNI), Empremar, S.A.

Synopsis: The proposed amendment would add Nedlloyd Lines as a party to the Agreement. The parties have requested a shortened review period.

Dated: September 20, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–23025 Filed 9–24–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 17, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Illinois Banc One Corporation, Evanston, Illinois; to acquire 100 percent of the voting shares of First Illinois Corporation, Evanston, Illinois, and thereby indirectly acquire First Illinois Bank of Evanston, N.A., Evanston, Illinois; First Illinois Bank of Wilmette, Wilmette, Illinois; First Illinois Bank & Trust, LaGrange, Illinois; and First Illinois Valley Bank & Trust, South Elgin, Illinois.

2. CSB Bancorp, Inc., Millersburg, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Commercial & Savings Bank of Millersburg, Ohio, Millersburg, Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. United Bank Corporation, Barnesville, Georgia; to acquire 100 percent of the voting shares of United Bank of Griffin, Griffin, Georgia, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Beardstown Bancorp, Inc., Beardstown, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Beardstown, Beardstown, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Community Financial of Kentucky, Inc., Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Security Bancshares of Marion County, Inc., Springfield, Kentucky, and thereby indirectly acquire Peoples Bank, Lebanon, Kentucky.

2. First Cecilian Bancorp, Inc., Cecilia, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Cecilian Bank, Cecilia, Kentucky.

3. MSB Shares, Inc., Monette, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of MidSouth Bank, Monette, Arkansas.

Board of Governors of the Federal Reserve System, September 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23020 Filed 9-24-91; 8:45 am]

BILLING CODE 6210-01-F

Chemical Banking Corporation, CBC Sub Corporation and Manufacturers Hanover Corporation; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have 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 companies have also applied under § 225.23(a) of Regulation Y (12 CFR 225.23(a)) 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 companies engaged in nonbanking activities that are listed in § 225.25 of Regulation Y and that are not listed in Regulation Y but have previously been approved by Board Order 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 applications are available for immediate inspection at the Federal Reserve Bank located in New York as well as the offices of the Board of Governors in Washington, DC. Interested persons may express their views in writing on the application including the factors set forth in section 3(c) of the Bank Holding Company Act (12 U.S.C. 1842(c)) and in section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), including 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 comment on an application that requests a hearing 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 this application must be received not later than October 22, 1991, and should be addressed to the attention of Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, D.C. 20551.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Chemical Banking Corporation, New York, New York, or its wholly owned subsidiary, CBC Sub Corporation, New York, New York (collectively, "Chemical"); to merge with Manufacturers Hanover Corporation, New York, New York ("MHC"), and thereby indirectly acquire Manufacturers Hanover Trust Company, New York, New York ("MHTC"); and MHC Holdings (Delaware) Inc., Wilmington, Delaware, and thereby indirectly acquire Manufacturers Hanover Bank (Delaware), Wilmington, Delaware. CBC Sub Corporation has also applied to acquire Chemical Bank, New York, New York, a subsidiary of Chemical Banking Corporation. Chemical Bank also proposes to merge with MHTC, pursuant to section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), with Chemical Bank as the surviving entity.

Home Mortgage Disclosure Statements of subsidiary banks of CBC and MHC will be available to the public for review pursuant to Regulation C of the Federal Reserve Board on September 23, 1991. Interested parties may contact the Community Reinvestment Act Offices ("CRA Offices") at CBC (212/310-7931) or MHC (212/270-1151) for further information regarding these Statements. Copies of the statements also may be purchased by contacting the CRA Offices at the above telephone numbers.

Chemical has also applied to retain an option to buy up to 19.9 percent of the voting shares of MHC.

MHC has also applied to retain an option to buy up to 19.9 percent of the voting shares of Chemical.

In connection with the proposed merger, Chemical has also applied to acquire all of the voting shares of the following nonbank subsidiaries of MHC:

(a) Manufacturers Hanover Securities Corporation, New York, New York ("MHSC"), and thereby engage in:

(1) underwriting and dealing in government obligations and money market instruments;

(2) underwriting and dealing in, to a limited extent, certain municipal revenue bonds, 1-4 family mortgage-related securities, commercial paper and consumer-receivable-related securities;

(3) providing investment advisory and brokerage services separately and on a combined basis to institutional customers; and

(4) acting as agent in the private placement of all types of securities and acting as riskless principal in buying and selling securities.

The activities of MHSC are authorized by §§ 225.25(b)(4), (15) and (16) of the Board's Regulation Y and by Board Orders. (*Manufacturers Hanover Corporation*, 76 Federal Reserve Bulletin 674 (1990); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 731 (1987); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 620 (1987); and *Manufacturers Hanover Corporation*, 70 Federal Reserve Bulletin 661 (1984)). Chemical proposes to merge MHSC into Chemical's subsidiary, Chemical Securities, Inc., New York, New York, which is authorized to engage in all of the activities approved for MHSC, including underwriting and dealing in, to a limited extent, certain municipal revenue bonds, 1-4 family mortgage-related securities, commercial paper and consumer-receivable-related securities. These activities will be conducted subject to all of the

commitments and limitations in the Board's Orders;

(b) Manufacturers Hanover Futures & Options Inc., Chicago, Illinois, and thereby engage, on a worldwide basis, in brokerage and investment advisory activities for certain futures (including certain options on futures) and options contracts traded on major commodities and securities exchanges, pursuant to §§ 225.25(b)(18) and (19) of the Board's Regulation Y and *Manufacturers Hanover Corporation*, 76 Federal Reserve Bulletin 774 (1990); *Manufacturers Hanover Corporation*, 72 Federal Reserve Bulletin 144 (1986); and *Manufacturers Hanover Corporation*, 70 Federal Reserve Bulletin 369 (1984);

(c) MHT Holding (Delaware) Inc., Wilmington, Delaware, and thereby indirectly acquire Manufacturers Hanover Trust Company of California, Los Angeles, California, and Manufacturers Hanover Trust Company of Florida, Miami, Florida, and thereby engage in trust company functions, pursuant to § 225.25(b)(3) of the Board's Regulation Y;

(d) Manufacturers Hanover Educational Services Corporation, Hicksville, New York ("MHES"), and thereby make installment loans to individuals; service student loans; and offer a tuition budget plan under which MHES receives periodic payments from parents of students and subsequently disburses the funds to designated educational institutions as tuition bills come due, pursuant to § 225.25(b)(1) of the Board's Regulation Y and *Manufacturers Hanover Corporation*, 70 Federal Reserve Bulletin 452 (1984);

(e) Manufacturers Hanover Real Estate, Inc., New York, New York, and thereby engage in real estate investment advisory services; real estate appraising; arranging commercial real estate equity financing; and mortgage financing, pursuant to §§ 225.25(b)(1), (4), (13) and (14) of the Board's Regulation Y;

(f) Manufacturers Hanover Wheelease, Inc., Hicksville, New York, and thereby engage in the direct leasing of motor vehicles to the public, pursuant to § 225.25(b)(5) of the Board's Regulation Y;

(g) Manufacturers Hanover New Jersey Corporation, Livingston, New Jersey, and thereby engage in making, servicing, and brokering loans for its own account and the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y; and

(h) Manufacturers Hanover Capital Corporation, New York, New York, and thereby engage in purchasing and selling agricultural and rural housing loans in connection with programs sponsored by the Federal Agricultural Mortgage Corporation, pursuant to § 225.25(b)(1) of the Board's Regulation Y;

(i) Manufacturers Hanover Servicing, Inc., Deerfield Beach, Florida, and thereby acquire certain assets of Centrust Mortgage Company, Deerfield Beach, Florida, and engage in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Chemical has also proposed to acquire shares of the following companies, which are presently owned by MHC:

(a) 12.6 percent, for a total of 25.2 percent, of the outstanding voting shares of The New York Switch Corporation, Fort Lee, New Jersey, and thereby engage in data processing and related activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y and *Barclays Bank PLC and Barclays Bank International Limited, et. al.*, 71 Federal Reserve Bulletin 113 (1985);

(b) 4.7 percent of the outstanding (Class A) voting shares of Liberty Brokerage, Inc., New York, New York (which are presently held by Manufacturers Hanover Securities Holdings, Inc., and MH Broker Holdings, Inc.), and thereby acquire shares of a U.S. government and federal agency securities broker-dealer through a joint venture, pursuant to §§ 225.25(b)(15) and (16) of the Board's Regulation Y and *BankAmerica Corporation, et al.*, 73 Federal Reserve Bulletin 362 (1987); and

(c) 40 percent of the outstanding voting shares of The CIT Group Holdings, Inc., Livingston, New Jersey ("CIT") (which are presently held by MHC Holding (Delaware) Inc.), and thereby engage in commercial finance; factoring; sales finance; credit servicing; community development; data processing; the sale of credit-related life, accident and health and disability insurance, and credit related property and casualty insurance; management consulting to depository institutions; the leasing of personal and real property, and acting as agent, broker, or adviser in leasing such property, including leases of personal property in which CIT may rely for its compensation on an estimated residual value of the leased property at the expiration of the initial lease term of up to 100 percent of the acquisition cost of the property; brokering of loans and providing advice with respect thereto, and operating a collection agency, pursuant to §§ 225.25(b)(1), (5), (6), (7), (11), (23), and (8)(i) and (iv) (Exemptions A and D of section 4(c)(8) of the BHC Act) of the Board's Regulation Y; and *Dai-Ichi Kangyo Bank, Limited/Manufacturers Hanover Corporation*, 76 Federal Reserve Bulletin 960 (1990); *Dai-Ichi Kangyo Bank, Limited*, 76 Federal Reserve Bulletin 75 (1990); *Manufacturers Hanover Corporation*, 70 Federal Reserve Bulletin 452 (1984); and financial advisory activities, including providing advice with respect to mergers, acquisitions, and other corporate transactions; providing feasibility studies; providing valuation services; rendering fairness opinions; and providing advice in connection with loan and interest rate transactions, in accordance with *The Fuji Bank, Limited*, 75 Federal Reserve Bulletin 577 (1989). CIT would engage in these activities on a worldwide basis.

All of the proposed activities will be conducted subject to all of the commitments and limitations in the Board's Regulations and Orders governing conduct of these activites by MHC.

As a result of MHTC merging into Chemical Bank, Chemical Bank would acquire Manufacturers Hanover International Finance Corporation, New York, New York, and Manufacturers Hanover International Banking Corporation, Miami, Florida, which are corporations chartered pursuant to section 25(a) of the Federal Reserve Act. In addition, Chemical Bank would acquire, pursuant to section 25 of the Federal Reserve Act, Manufacturers Hanover Bank A.S., Istanbul, Turkey, a direct foreign bank subsidiary of MHTC.

MHTC also has branches in the following countries in which neither Chemical nor any of its affiliates have branches: Argentina, Chile, Egypt, France, Italy, Romania and Taiwan. Chemical Bank is filing a notice to establish branches in these locations pursuant to § 211.3(a)(3) of the Board's Regulation K. MHTC also has branches in the Bahamas, Bahrain, the Channel Islands (Guernsey), Germany, Hong Kong, Korea, Japan, Philippines, Singapore, Spain and the United Kingdom, which Chemical Bank will acquire. Manufacturers Hanover Bank (Delaware) also has a branch in the Cayman Islands.

Chemical also proposes to acquire, pursuant to § 211.5(c) of the Board's Regulation K, Manufacturers Hanover Leasing International Corporation, New York, New York, a subsidiary of MHC that is engaged in leasing transactions outside the United States (primarily in Brazil), pursuant to section 4(c)(13) of the BHC Act. Chemical also proposes to acquire, pursuant to § 211.5(f) of the Board's Regulation K, 29 percent of the voting shares of Massuh S.A., Buenos Aires, Argentina, a paper company acquired through a debt-equity conversion.

Board of Governors of the Federal Reserve System, September 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23021 Filed 9-24-91; 8:45 am]

BILLING CODE 6210-01-F

Mary Lustfeldt, 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 October 17, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mary Lustfeldt, Onarga, Illinois; to acquire an additional 1.3 percent of the voting shares of Buckley Bancorp, Inc., Buckley, Illinois, for a total of 10.02 percent, and thereby indirectly acquire Buckley State Bank, Buckley, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Joe D. Tipton, Cortez, Colorado; to acquire an additional 18.24 percent of the voting shares of Val-Cor Bancorporation, Inc., for a total of 23.02 percent.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Earl D. Bellamy, Paris, Texas; to acquire an additional 5.84 percent of the voting shares of Executive Bancshares, Inc., Paris, Texas, for a total of 30 percent, and thereby indirectly acquire First National Bank of Paris, Paris, Texas.

2. Jim Paul Meadows, Houston, Texas; to acquire an additional 15.75 percent of the voting shares of Houston Bancorporation, Inc., Houston, Texas, for a total of 35.02 percnet, and thereby indirectly acquire Citizens National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, September 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23022 Filed 9-24-91; 8:45 am]

BILLING CODE 6210-01-F

Manufacturers Hanover Corporation, et al.; Notice of 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 October 17, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Manufacturers Hanover Corporation, New York, New York; to engage in permissible collection agency activities through The CIT Group Holdings, Inc. pursuant to § 225.25(b)(23) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marine Corporation, Springfield, Illinois; to acquire 100 percent of MT Interim Federal Savings and Loan Association, Taylorville, Illinois, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Marine will form MT so that it can effectuate a merger between MT and the Taylorville, Illinois branch of Champion Federal Savings and Loan. MT will then be merged into Marine's subsidiary bank, Marine Bank of Springfield, Springfield, Illinois. These activities will be conducted in the State of Illinois.

Board of Governors of the Federal Reserve System, September 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23023 Filed 9-24-91; 8:45 am]

BILLING CODE 6210-01-F

People's Savings Financial Corp.; 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 October 17, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. People's Savings Financial Corp., New Britain, Connecticut; to retain 9.3 percent of Federal Savings Bank, F.S.B., New Britain, Connecticut, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-23024 Filed 9-24-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 090391 AND 091391

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Mr. Jan Tonnby, ASEA AB, ABB Trading (US) Inc	91-1339	09/04/91
Mr. Jan Tonnby, BBC Brown Boveri Ltd., ABB Trading (US) Inc.,	91-1340	09/04/91
Sea Containers Ltd., Equitable Life Assurance Society of the United States, Equitable Life Assurance Society of the United States	91-1368	09/04/91
Ernest L. Samuel, Dofasco Inc., Dofasco Steel (U.S.) Inc	91-1369	09/04/91
Storage Technology Corporation, XL/Datacomp, Inc., XL/Datacomp, Inc	91-1373	09/04/91
Thomas M. Owens, Storage Technology Corporation, Storage Technology Corporation	91-1374	09/04/91
Thermo Electron Corporation, Michael Mintz, International Technidyne Corporation	91-1394	09/04/91
Odyssey Partners, L.P., AST General Corp., AppleTree Markets Inc	91-1277	09/05/91
PepsiCo. Inc., OPCO Holding, Inc., OPCO Holding, Inc	91-1296	09/05/91
Victoria Co., Ltd., The Leslie Fay Companies, Inc., The Leslie Fay Companies, Inc	91-1338	09/05/91
PepsiCo. Inc., Semoran Management Corporation, Semoran Management Corporation	91-1376	09/05/91
Froedtert Enterprises, Inc., U.S. Prime Property Inc., U.S. Prime Property Inc	91-1378	09/05/91
Froedtert Memorial Lutheran Hospital Trust, U.S. Prime Property Inc., U.S. Prime Property Inc	91-1379	09/05/91
Household International, Inc., CoreState Financial Corp., CoreState Bank of Delaware	91-1383	09/05/91
Hyperion Partners L.P., CoreStates Financial Corp., CoreStates Bank of Delaware	91-1384	09/05/91
Consolidated Electrical Distributors, Inc., Raybro Electric Supplies, Inc., Raybro Electric Supplies, Inc	91-1389	09/05/91
Brierley Investments Limited, Everest & Jennings International Ltd., Everest & Jennings International Ltd	91-1341	09/06/91
Ryder System, Inc., USAIR Group, Inc., USAIR, Inc. and Pacific Southwest Airmotive	91-0879	09/09/91
Warburg, Pincus Investors, L.P., Larry Van Tuyl, certain assets of Larry Van Tuyl	91-1297	09/09/91
Warburg, Pincus Investors, L.P., Cecil Van Tuyl, certain assets of Cecil Van Tuyl	91-1298	09/09/91
American General Corporation, Henry L. Hillman, Green Hills Associates Joint Venture	91-1333	09/09/91
Mutual of Omaha Insurance Company, Aetna Life and Casualty Company, Aetna Life Insurance and Annuity Company and	91-1359	09/09/91
Timothy P. Horne, Henry Pratt Company, Henry Pratt Company	91-1385	09/09/91
Ford Motor Company, The Chase Manhattan Corporation, Chase Manhattan Leasing Company (Michigan), Inc	91-1391	09/09/91
Grand Metropolitan Public Limited Company, Larry Joel, O.D., Ophthalmic Research Group International Corp	91-1400	09/09/91
Noble Affiliates, Inc., Chevron Corporation, Chevron U.S.A. Inc	91-1402	09/09/91
Emerson Electric Co., Leatherneck Acquisition II Corporation, Leatherneck Acquisition II Corporation	91-1403	09/09/91
Westhinghouse Electric Corporation, Roadmaster Industries, Inc., Roadmaster Industries, Inc	91-1419	09/09/91
The Chas. Levy Company, United News Company, United News Company	91-1421	09/09/91
Henry Crown and Company (Not Incorporated), GTE Corporation, GTE Mobilnet Incorporated	91-1423	09/09/91
The Walt Disney Company, Manufacturers Hanover Corporation, Discover Publications, Inc	91-1429	09/09/91
Acadia Partners, L.P., John P. Flavin, Flapco, Inc. and certain assets of Wrapit Corporation	91-1393	09/10/91
Kenneth R. Thomson, Maxwell Communication Corporation plc, Macmillan (Delaware), Inc	91-1417	09/10/91
Firmenich International S. A., Borden, Inc., MCP Foods Inc	91-1367	09/11/91
Kelso Investment Associates IV, L.P., Kelso ASI Holdings I, L.P., American Standard, Inc	91-1424	09/11/91
Waste Management, Inc., Thomas W. Wright, AmeriQuest, Inc. and T.W. Air, Inc	91-1321	09/12/91
Ziff Investors Partnership, L.P., Thyssen-Bornemisza Continuity Trust, Predicasts, Inc. and Predicasts International, Inc	91-1323	09/12/91
N.V. AMEV, Samuel F. Fortunato, The Mutual Benefit Life Insurance Company	91-1395	09/12/91
Compagnie Financiere et de Reassurance du Groupe AG, Samuel F. Fortunato, The Mutual Benefit Life Insurance company	91-1396	09/12/91
Mellon Bank Corporation, Patrick D. Broe, Deerfield Finance Group, Inc	91-1420	09/12/91
TDK Corporation, Rockwell International Corporation, Allen-Bradley/TDK Magnetics (Partnership)	91-1428	09/12/91
TDK Corporation, TDK Corporation, Allen-Bradley/TDK Magnetics (Partnership)	91-1440	09/12/91
James M. Moran, Chemical Banking Corporation, ChemLease Worldwide, Inc	91-1362	09/13/91
Landmark Communications, Inc., H&C Communications, Inc., H&C Communications, Inc	91-1442	09/13/91
Fuji Photo Film Co., Ltd., Fuji Photo Film Co., Ltd., Tru Color Foto Co., L.P	91-1443	09/13/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-23077 Filed 9-24-91; 8:45 am]

BILLING CODE 6750-01-M

[File Nos. 902 3269 and 902 3298]

Body Glove International and Onax, Inc.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, and of the Textile Fiber Products Identification Act (TFPIA), the two consent agreements, accepted subject to final Commission approval, would require, among other things, two California-based companies to label or otherwise identify the constituent fiber content, percentages of fiber content, manufacturer's name, and country of origin for their textile fiber products, as required by the TFPIA.

DATES: Comments must be received on or before November 25, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market Street suite 570, San Francisco, CA 94103, (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following two consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

[Docket No. 902-3269]

Agreement Containing Consent Order To Cease And Desist

In the matter of Dive N' Surf, Inc., a corporation, also trading and doing business as Body Glove International.

The Federal Trade Commission having initiated an investigation of Dive N' Surf, Inc., a corporation, also trading and doing business as Body Glove International ("respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Dive N' Surf, Inc., by its duly authorized officer and counsel for the Federal Trade Commission that:

1. Proposed respondent Dive N' Surf, Inc., is a corporation organized, existing, and doing business under the laws of the State of California. Its office and principal place of business is 530 6th Street, Hermosa Beach, California, 90254.

2. Proposed respondent admits all the jurisdiction facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that it has violated the law as alleged in the draft of complaint here attached or have engaged in any other unlawful conduct.

6. This agreement contemplates that, if it is accepted by the Commission and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) mark information public in respect thereto. When so entered, the order to case and desist shall have the same force and effect and my be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final

Order

I

It is ordered, that respondent Dive N' Surf, Inc., a corporation, trading and doing business under that name or as Body Glove International or by any other name, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of any textile fiber product, as that term is defined by the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, do forthwith cease and desist from:

Offering for sale or selling any such textile fiber product without the product being

stamped, tagged, labeled, or otherwise identified as required by § 4(b) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under that Act.

It is further ordered, that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect the compliance obligations that arise out of this order.

It is further ordered, that respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, that respondent shall, within sixty (60) days after service on it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

[Docket No. 902-3298]

Agreement Containing Consent Order To Cease and Desist

In the matter of O'Neill, Incorporated, a corporation, also trading and doing business as Onax, Inc.

The Federal Trade Commission having initiated an investigation of O'Neill, Incorporated, a corporation, also trading and doing business as Onax, Inc. ("respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed, by and between O'Neill, Incorporated, by its duly authorized officer and counsel for the Federal Trade Commission that:

1. Proposed respondent O'Neill, Incorporated, is a corporation organized, existing, and doing business under the laws of the State of California. Its office and principal place of business is 1071 41st Avenue, Santa Cruz, California, 95062.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information is respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that it has violated the law as alleged in the draft of complaint here attached or have engaged in any other unlawful conduct.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to propsoed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery bythe U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That respondent O'Neill, Incorporated, a corporation, trading and doing business under that name or as Onax, Inc. or by any other name, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of any textile fiber product, as that term is defined by the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, do forthwith cease and desist from:

Offering for sale or selling any such textile fiber product without the product being stamped, tagged, labeled, or other wise identified as required by § 4(b) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under that Act.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect the compliance obligations that arise out of this order.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent shall, within sixty (60) days after service on it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed Consent Orders from Dive N' Surf, Inc., a corporation, also trading and doing business as Body Glove International, and O'Neill, Inc. (collectively, the proposed respondents). The proposed respondents are both incorporated in California.

The proposed Consent Orders have been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review

the agreements and the comments received and will decide whether it should withdraw from the agreements and take other appropriate action, or make final the proposed orders contained in the agreement.

These matters concern the alleged failure by the proposed respondents to label the textile fiber content of garments, such as wetsuits, constructed from a material of nonfibrous rubber sandwiched between two layers of textile fabric. The Commission's proposed Complaint alleges that the failure by the proposed respondents to label the garments violates the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.* (the Act), and the regulations promulgated thereunder, see 61 CFR 303.1 *et seq.* The Act makes it an unfair and deceptive act or practice to offer for sale a misbranded textile fiber product. See 15 U.S.C. 70a. A textile fiber product is misbranded if it is not labeled as to the constituent fiber content, the percentages of fiber content, the name of the manufacturer, and the country where the textile fiber was processed or manufactured. 15 U.S.C. 79b.

The proposed Consent Orders are designed to ensure compliance with the Act, by enjoining future violations. They would prohibit the proposed respondents from failing to label garments they manufacture as to the fabric content. The proposed Consent Orders also contain standard order provisions requiring each proposed respondent to retain records demonstrating its compliance with the Order; to distribute the Order to its managerial employees; to notify the Commission of any changes in the structure of the corporation; and to report to the Commission its compliance with the terms of the Order.

The purpose of this analysis is to facilitate public comment of the proposed Orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-23076 Filed 9-24-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9170]

New England Motor Rate Bureau, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order modifies a 1989 final order that requires the respondent to halt its collective ratemaking activities in certain states. The Commission has determined to reopen the proceeding based on changed conditions of fact and to modify the order to permit the respondent to continue its collective ratemaking operations in New Hampshire.

DATES: Final order issued August 18, 1989. Modifying order issued September 4, 1991.

FOR FURTHER INFORMATION CONTACT: Michale Antalics, FTC/S-2627, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: In the Matter of New England Motor Rate Bureau, Inc. The prohibited trade practices and/or corrective actions, as set forth at 54 FR 53187, remain unchanged.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Deborah K. Owen, Roscoe B. Stare, III, Dennis A. Yao.

Order Reopening and Modifying Order

On April 22, 1991, New England Motor Rate Bureau, Inc. ("NEMRB") filed a Request To Reopen and Set Aside ("Request") the order in Docket 9170, pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's rules of practice, 16 CFR 2.51. The Request was on the public record for thirty days, and no comments were received.

NEMRB in its Request asserts that reopening is required by changed conditions of fact, because the state of New Hampshire now actively supervises collective ratemaking. The request to reopen the order is granted, and the order is modified to permit NEMRB to engage in collective ratemaking in New Hampshire, but the request to set aside the order is denied for the reasons stated below.

Background

The 1983 complaint in this matter alleged that NEMRB violated section 5 of the Federal Trade Commission Act by collectively formulating and filing in four states motor common carrier rates for the intrastate transportation of property. NEMRB asserted in defense, *inter alia*, that its collective ratemaking activities were protected from section 5 by the State action doctrine.

Private conduct is protected from section 5 as state action if the conduct is pursuant to a "clearly articulated and affirmatively expressed" state policy to displace competition with regulation and is "actively supervised" by the State. *California Retail Liquor Dealers Association* v. *Midcal Aluminum, Inc.*, 445 U.S. 97, 106 (1980); *Parker* v. *Brown*, 317 U.S. 341, 351 (1943). The Commission in its opinion in *New England Motor Rate Bureau, Inc.*, Docket 9170, slip op. at 12-13 (August 18, 1989), found that the state of New Hampshire had clearly articulated a policy to displace competition with regulation of intrastate motor common carrier rates but concluded that the state did not actively supervise joint ratemaking. On appeal, NEMRB did not challenge the conclusions of the Commission concerning New Hampshire, which was then "engaged in establishing policies and procedures to implement the revised statutory framework." *New England Motor Rate Bureau, Inc.* v. *FTC*, 908 F.2d 1064, 1066 n.2 (1st Cir. 1990).

The Commission's order required NEMRB, among other things, to cease its collective ratemaking activities in New Hampshire. The order permitted NEMRB to engage in collective ratemaking activities in states in which the Commission found that NEMRB's joint ratemaking was pursuant to a policy clearly articulated and actively supervised by the state.[1] NEMRB now requests that the order be reopened and set aside on the ground that conditions have changed and that New Hampshire now actively supervises collective ratemaking.

Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified or set aside if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.[2] a satisfactory

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[1] The order, issued August 18, 1989, barred NEMRB's collective ratemaking in Massachusetts and New Hampshire. The Commission deleted all references to the state of Massachusetts in its Modified Order To Cease and Desist, issued November 6, 1990, pursuant to the decision of the Court of Appeals for the First Circuit in *New England Motor Rate Bureau* v. *FTC, 908 F.2d 1064, 1077 (1st Cir. 1990), holding that NEMRB had a valid state action defense in Massachusetts.*

[2] Section 5(b) provides, in part:

[T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part."

The 1980 amendment to section 5(b) did not change the standard for order reopening and

Continued

showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket C-2956, Letter to John C. Hart (June 5, 1986), at 4; S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); see Phillips Petroleum Co., Docket C-1088, 78 F.T.C. 1573, 1575 (1971) (modification not required for changes reasonably foreseeable at time of consent negotiations); *Pay Less Drugstores Northwest, Inc.*, Docket C-3039, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy); see also *United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932) ("clear showing" of changes that eliminate reasons for order or such that order causes unanticipated hardship).

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket C-2916, Letter to Joel El Hoffman, Esq. (March 24, 1983), at 2 ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket C-2916, 101 F.T.C. 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2; *see, e.g., Chevron, Corp.*, Docket C-3147, 105 F.T.C. 228 (1985) (public interest warrants modification where potential harm to respondent's ability to compete outweighs any further need for order). The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. See also *Gautreaux* v. *Pierce*, 535 F. Supp. 423, 426 (N.D. Ill. 1982) (petition must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). The legislative history also makes clear that the petitioner has the burden of showing, by means other than conclusory statements, why an order should be modified.[3] If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. See *Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974) ("sound basis for * * * [not reopening] except in the most extraordinary circumstances"); *RSR Corp.* v. *FTC*, 656 F.2d 718 721-22 (D.C. Cir. 1981) (applying *Bowman Transportation* standard to FTC order).

Changed Conditions of Fact

NEMRB in its Request relies on changed conditions of fact as the basis for reopening. NEMRB also asserts that leaving the order in effect would be contrary to the public interest, Request at 7, but the Request offers no support for this conclusion. The Commission has based its decision to reopen and modify the order on the changed conditions of fact alleged in the Request.

The order of the Commission with respect to NEMRB's activities in New Hampshire was based on a conclusion that the state did not actively supervise collective ratemaking and, therefore, the state action doctrine did not protect NEMRB's collective ratemaking in New Hampshire. See New England Motor Rate Bureau, Inc., Docket 9170, slip op. at 20-21 (Aug. 18, 1989). The changed conditions of fact alleged by NEMRB are the implementation by the state of New Hampshire of its clearly articulated policy to displace competition with regulation of motor common carrier rates. These changes in fact, if sufficient to constitute active supervision of common carrier rates, warrant reopening and modifying the order.

The active supervision requirement of the state action doctrine requires that "state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy." *Patrick* v. *Burget*, 108 S. Ct. 1658, 1663 (1988), *quoted in New England Motor Rate Bureau, Inc.* v. *FTC*, 908 F.2d at 1070. The inquiry involves two questions: whether state officials have the power to review and to disapprove proposed rates and whether they exercise that power. NEMRB has established that state officials in New Hampshire have and exercise the power to review rates and to disapprove those that do not meet the statutory requirements that rates be just and reasonable and not discriminatory.

According to the Request, a "regulatory agency has been established and funded" in New Hampshire to carry out the state's regulation of motor common carrier rates, and "state officials are positioned to discharge their regulatory duties." Request at 4, *citing* Affidavit of Douglas L. Patch, Assistant Commissioner, Department of Safety, State of New Hampshire (March 29, 1991). The state agency is charged with investigating the reasonableness of proposed rates, and it has authority to suspend rates that are unreasonable and to establish lawful rates. The agency's rate analyst is "instructed to recommended for investigation any tariffs which appear to violate" the statutory standards. Patch Affidavit at 3. Based on these statements, the state agency appears to have sufficient authority to "review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy."

The next question under *Patrick* v. *Burget* is whether the state agency exercises this authority. According to Mr. Patch's affidavit, the state agency reviews the proposed tariffs to determine whether they are consistent with the statutory requirements that rates be just and reasonable and nondiscriminatory. Also according to

modification but "codifie(d) existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

[3] The legislative history of amended section 5(b), S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), states:

Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient * * *. The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order.

Mr. Patch, rates that do not satisfy the statutory standards are not allowed to become effective. Patch Affidavit at 3. Based on these statements, we conclude that the state agency exercises its authority to review the reasonableness of the collectively established rates and to disapprove those that are not reasonable.

The Order Should be Reopened and Modified

The changed conditions of fact make the state action doctrine applicable to NEMRB's collective ratemaking in New Hampshire, and, therefore, the order should be reopened and modified to permit NEMRB to engage in this conduct in New Hampshire. Modifying the order by deleting the references to the state of New Hampshire and by deleting the requirement to withdraw tariffs previously filed in New Hampshire is appropriate and sufficient to accomplish the relief that NEMRB seeks.

As modified, the order will prohibit collective ratemaking by NEMRB in states in which the conduct is not protected by the state action doctrine. This prohibition is consistent with law and with the violation that the Commission found. In addition, NEMRB does not claim that the conduct should be permitted in states in which it is not protected by the state action doctrine.[4] Setting aside the order is unnecessary to permit NEMRB to engage in collective ratemaking in states in which the conduct is not unlawful.

Accordingly, *it is ordered* that this matter be, and it hereby is, reopened and that the Commission's order in Docket 9170 be, and it hereby is, modified by deleting "except as to the state of New Hampshire" from the proviso to Paragraph I of the order and by deleting Paragraph II of the order.

By the Commission, Commissioner Yao not participating.

Donald S. Clark,

Secretary.

[FR Doc. 91-23075 Filed 9-24-91; 8:45 am]

BILLING CODE 6750-01-M

[4] NEMRB alleges that it "does not file intrastate rates in any state" in which collective ratemaking is not protected by the state action doctrine. Request at 6. The claim that a respondent is not now engaged in unlawful conduct is not a basis for setting aside the order.

[Docket C-3343]

Taylor Woodcraft, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Malta, Ohio, furniture company from representing that any household furniture product is constructed of a solid wood, unless every exposed surface of the furniture is made of that solid wood.

DATES: Complaint and Order issued August 27, 1991.[1]

FOR FURTHER INFORMATION CONTACT: David Plottner, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520-A, Cleveland, OH 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: On Wednesday, June 19, 1991, there was published in the **Federal Register**, 56 FR 28163, a proposed consent agreement with analysis In the Matter of Taylor Woodcraft, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 91-23074 Filed 9-24-91; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20508.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-41]

Quarterly Notice of Health Assessments Completed and Health Assessments To Be Conducted in Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following: 1. A list of sites for which ATSDR has completed a health assessment, or issued an addendum to a previously completed health assessment, during the period April-June 1991. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and a non-NPL site for which ATSDR has prepared a health assessment in response to a request from the public (petitioned site). 2. A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a health assessment (petitioned health assessment). Acceptance for a request for the conduct of a health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone (404) 639-0610, FTS 236-0610.

SUPPLEMENTARY INFORMATION: A list of completed health assessments, health assessments with addenda, and petitioned health assessments which were accepted ATSDR during January-March 1991 was published in the **Federal Register** on June 24, 1991 [56 FR 28759]. The quarterly announcement is the responsibility of ATSDR under the regulation, Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of health assessments under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9604(i)) and appeared in the **Federal Register** on February 13, 1990 (55 FR 5136).

Availability

The completed health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 31, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed health assessments are now available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield,

Virginia 22161, or by telephone at (703) 487-4650. There is a charge determined by NTIS for these health assessments. The NTIS order numbers are listed in parentheses after the site name.

1. Health Assessments or Addenda Competed or Issued

Between April 1, 1991, and June 30, 1991, health assessments or addenda to health assessments were issued for the sites listed below:

NPL Sites

Connecticut
- Beacon Heights Landfill—Beacon Falls—(PB91-205666)

Georgia
- Firestone Tire and Rubber Company, Inc.—Albany (PB91-198366)
- Marzone Incorporated/Chevron Chemical Company—Tifton (PB91-198358)

Iowa
- Electro-Coatings, Inc.—Cedar Rapids (PB91-208173)

Montana
- Comet Oil Company—Billings (PB91-198374)

New Jersey
- JIS Landfill—South Brunswick Township (PB91-208181)

Pennsylvania
- Ohio River Park—Neville Island (PB91-225540)

South Carolina
- Lexington County Landfill—Lexington County (PB91-205674)

Petitioned Site

New Jersey
- Buzby Brothers Landfill—Voorhees Township (PB91-201657)

2. Petitions for Health Assessments Accepted

Between April 1, 1991, and June 30, 1991, ATSDR determined that there was a reasonable basis to conduct a health assessment for the sites or facilities listed below in response to requests from the public. As of June 30, 1991, ATSDR initiated health assessments at these sties.

California
- Space Ordnance Systems, Mint Canyon—Canyon Country

Pennsylvania
- NGK Metal/Cabot Berylco—Temple

Dated: September 18, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-23109 Filed 9-24-91; 8:45 am]

BILLING CODE 4160-70-M

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scientific Counselors, ATSDR.

Times and Dates: 3 p.m.-9 p.m., Thursday, November 14, 1991; 8:30 a.m.-12:30 p.m., Friday, November 15, 1991

Place: The Westin Peachtree Plaza Hotel, Peachtree at International Boulevard, NE, Atlanta, Georgia 30303.

Status: The entire meeting will be open to the public.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Agenda: The agenda will include an update of the ATSDR Minority Health Initiative with emphasis on the recommendations of the National Minority Health Conference and on mercury contamination; a report on the feasibility of multi-site studies; an overview of the ATSDR Multi-State Lead Study; an update on the National Exposure Registry; a discussion of the ATSDR Priority Health Conditions; a status report on the ATSDR Substance-Specific Research Program; and a presentation on the Environmental Protection Agency Health Research in Support of Superfund.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Mailstop E-28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639-0700 or FTS 236-0700.

Dated: September 18, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 91-23041 Filed 9-24-91; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Immunization Practices Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting:

Name: Immunization Practices Advisory Committee.

Times and Dates: 8:30 a.m.-5 p.m., October 22, 1991; 8:30 a.m.-12 noon, October 23, 1991.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The Committee will discuss draft recommendations for statements on smallpox/vaccinia and immunization of persons with altered immunocompetence; utilization of BCG in the context of multi-drug resistant tuberculosis; *Haemophilus influenzae* type b, acellular pertussis, and varicella vaccines; and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Claire V. Broome, M.D., Executive Secretary, CDC (1-2122), 1600 Clifton Road, NE., Mailstop D39, Atlanta, Georgia 30333, telephone 404/639-3701 or FTS 236-3701.

Dated: September 18, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-23040 Filed 9-24-91; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics: Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 8:30 a.m.-5 p.m., October 18, 1991.

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the subcommittee to discuss the proposed 1993-1994 disability survey. The subcommittee also will continue discussion of a depression measure for national surveys and services data on children and adolescents who suffer from emotional disorders.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville,

Maryland 20782, telephone number 301/436-7050 or FTS 436-7070.

Dated: September 18, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 91-23039 Filed 9-24-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90-0332]

Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities; Final Policy; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that announced its final policy on "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" (fraud policy) published in the **Federal Register** of September 10, 1991 (56 FR 46191). That notice incorrectly stated the price of paper copies of CPG 7150.09 to be $9, the same as that for a microfiche copy. The correct price for a paper copy is $12.50; the microfiche copy remains at $9.

In FR Doc. 91-21592, appearing at page 46191, the following correction is made: On page 46192, in the first column, under the heading "**ADDRESSES,**" in the seventh line, "$9 for each paper or microfiche copy" is corrected to read "$12.50 for each paper copy or $9 for each microfiche copy."

Dated: September 19, 1991

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-23047 Filed 9-24-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3318]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 12, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Purchase Order and Payment Authorization.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The National Housing Act, Public Law 479, authorizes HUD to renovate, modernize, insure or sell for cash or credit, any properties conveyed to HUD under contract of mortgage insurance. Form HUD-2542 is used and needed as a purchase order, contract award, contract certification of completion, and Government acceptance and certification for payment.

Form number: HUD-2542.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Quarterly.

Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	500		50		.5		12,500
Recordkeeping	500		1		0.084		42

Total Estimated Burden Hours: 12,542.

Status: Reinstatement.

Contact: Robert J. Day, Jr., (202) 708-2423; Jennifer Main, OMB, (202) 395-6880.

Dated: September 12, 1991.

Proposal: Section 8 Housing Assistance Payments Program for the Disposition of HUD-Owned Projects.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Section 886.311a of the Housing Assistance Program (HAP) Contract stipulates that at least 90 days before the expiration of the contract term, the owners will notify each family that they will no longer be assisted and of the increased rental they will be required to pay.

Form number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	486		1		1		486

Total Estimated Burden Hours: 486.
Status: Reinstatement.
Contact: Donald Myers, HUD, (202) 708–4280; Marc Harris, HUD, (202) 708–4280; Jennifer Main, OMB, (202) 395–6880.

Dated: September 12, 1991.

[FR Doc. 91–23083 Filed 9–24–91; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3288; FR-3094-N-02]

Supplemental Assistance for Facilities To Assist the Homeless (SAFAH); Extension of Application Deadline

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of extension of application deadline.

SUMMARY: This Notice announces an extension of the deadline for applications for SAFAH funds from October 31, 1991 to November 14, 1991.

DATES: Applications for SAFAH assistance must be received by 5:15 p.m. Eastern Time on November 14, 1991 at the address listed under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300 or, for hearing- and speech-impaired persons, (202) 708–2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: On August 30, 1991, the Department published a Notice of Funding Availability for fiscal year 1991 for the SAFAH program. The Notice stated that applications for funding must be received by October 31, 1991. Several applicants have suggested that this deadline does not allow sufficient time for preparation of applications, and have requested that more time be allowed. The Department is, therefore, extending the deadline for applications for SAFAH funding an additional two weeks. Completed applications must be received by 5:15 p.m. Eastern Time on November 14, 1991 at the following address: Department of Housing and Urban Development, Office of Community Planning and Development, Special Needs Assistance Programs, room 7262, 451 Seventh Street SW., Washington, DC 20410, Attention: James N. Forsberg. Applicants should refer to the August 30, 1991 Notice for complete instructions.

Dated: September 20, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91–23088 Filed 9–24–91; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-91-3317; FR-3160-N-01]

FHA Debenture Recall

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces a debenture recall of certain Federal Housing Administration debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, room 9138, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1591. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to Section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures with coupon rates of 8½ percent or higher, except for those debentures subject to "debenture lock agreements," that have been registered on the books of the Federal Reserve Bank of Philadelphia, and are, therefore, "outstanding" as of September 30, 1991. The date of the call is January 1, 1992. To insure timely payment, debentures should be presented to the Federal Reserve Bank of Philadelphia by December 1, 1991.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debenture will be paid with the principal at redemption. During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by a mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer or denominational exchanges of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1991. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 1992, will be made to the registered holder or assignee.

Instructions for the presentation and surrender of debentures for redemption will be provided to holders by the Department.

Dated: September 18, 1991.

Arthur J. Hill,

Assistant Secretary for Housing Federal Housing Commissioner.

[FR Doc. 91–23085 Filed 9–24–91; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Administration

[Docket No. N-91-3319]

Privacy Act of 1978; Notice of a Computer Matching Program

AGENCY: Office of the Assistant Secretary for Administration, (HUD).

ACTION: Notice of a computer matching program between HUD and the Small Business Administration (SBA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public

notice of its intent to conduct a computer matching program with the Small Business Administration (SBA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with SBA's debtor files. This match will allow prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or SBA direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the social security numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the SBA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. Authorized users place a telephone call to the system. The system provides a recorded message followed by a series of instructions, one of which is a requirement for the SSN of the loan applicant. The system then reports audibly whether the SSN is related to delinquent or defaulted Federal obligations for HUD or SBA direct or guaranteed loans. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

EFFECTIVE DATE: Computer matching is expected to begin at least 30 days from the date this computer matching notice is published, providing no comments are received which would result in a contrary determination. It will be accomplished 18 months from the beginning date.

Comments Due Date: October 25, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Council, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will *not* be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708–2084). (These are not toll-free numbers.)

FOR PRIVACY ACT INFORMATION CONTACT: Donna L. Eden, Departmental Privacy Act Officer, telephone number (202) 708–0050. (This is not a toll-free telephone number.)

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Mary Felton, Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 7th St., SW., room 2118, Washington, DC 20410, Telephone number (202) 708–1941. (This is not a toll-free number.)

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Walter Intlekofer, Chief, Operations Assistance Branch, Office of Portfolio Management, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, Telephone number (202) 205–6481. (This is not a toll-free number.)

Reporting

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report, in duplicate, are being provided to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority

The matching program may be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives to be Met by the Matching Program

The matching program will allow SBA access to a system which permits prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to SBA debtor data for prescreening purposes.

Records to be Matched

HUD will utilize its system of records entitled HUD/DEPT–2, Accounting Records. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years of title II insured or guaranteed home mortgage loans; or individuals who have defaulted on section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The SBA will provide HUD with debtor files contained in its system of records entitled Loan Case File (SBA 075). HUD is maintaining SBA's records only as a ministerial action on behalf of SBA, not as a part of HUD's HUD/DEPT-2 system of records. SBA's data contain information on individuals who have defaulted on their guaranteed loans. The SBA will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for SBA's data.

Notice Procedures

HUD and the SBA will notify individuals at the time of application (ensuring that routine use appears on

the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the SBA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

Categories of Records/Individuals Involved

The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match

Matching will begin at least 30 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination.

Issued at Washington, DC, September 20, 1991.

Jim E. Tarro,

Assistant Secretary for Administration.

[FR Doc. 91-23089 Filed 9-24-91; 8:45 am]

BILLING CODE 4210-01-M

Office of the General Counsel

[Docket No. D-91-962; FR-3056-D-01]

Redelegation of Authority Under the Multifamily Mortgage Foreclosure Act of 1981

AGENCY: Office of the General Counsel, HUD.

ACTION: Redelegation of certain responsibilities under the Multifamily Mortgage Foreclosure Act.

SUMMARY: This notice redelegates to HUD Regional Counsels and Deputy Regional Counsels or their designees the power under the Multifamily Mortgage Foreclosure Act (the "Act") to appoint a foreclosure commissioner or commissioners or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner and the power to fix compensation for the foreclosure commissioner.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: John P. Kennedy, Associate General Counsel for Program Enforcement, Office of General Counsel, room 10270, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 708-2568. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 365 of the Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3704) empowers the Secretary of Housing and Urban Development, by executing a duly acknowledged and written designation stating the name and address, to appoint a foreclosure commissioner (or substitute foreclosure commissioner to replace a previously designated foreclosure commissioner) to exercise a nonjudicial, statutory power of sale with respect to a multifamily mortgage held by the Secretary. Such mortgages may have originated under title II of the National Housing Act or section 312 of the Housing Act of 1964. Section 369C of the Act (12 U.S.C. 3711) states that foreclosure costs incurred by the foreclosure commissioner and any commission authorized by regulations issued by the Secretary shall be paid from the sale proceeds prior to satisfaction of other claims. The responsibilities under these sections have been delegated to the General Counsel of Housing and Urban Development pursuant to a delegation of authority, published in the **Federal Register** on January 31, 1989, at 54 FR 4913. The General Counsel is now redelegating those responsibilities.

Accordingly, the General Counsel redelegates to HUD's Regional counsels and Deputy Regional Counsels or their designees the following authority:

1. The power to appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, under Section 365 of the Multifamily Mortgage Foreclosure Act of 1981.

2. The power to fix compensation for the foreclosure commissioner under Section 369C of the Multifamily Mortgage Foreclosure Act of 1981.

Authority: Section 365 and 369C, Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3704 and 3711); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(D)).

Dated: September 18, 1991.

G.H. Albright, Jr.,

General Counsel (Acting).

[FR Doc. 91-23084 Filed 9-24-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-01-4760-10]

Closure of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency closure to all public entry and motorized vehicle use of the Cedar Creek Road and public land in the surrounding area in Big Horn County, Wyoming.

SUMMARY: Notice is hereby given that effective immediately, the Cedar Creek Road and surrounding area is closed to all public use and motorized vehicles, including over-the-snow vehicles. This action is being taken to protect paleontological resources.

EFFECTIVE DATE: This closure will be effective September 19, 1991 and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Duane Whitmer, Area Manager, Cody Resource Area, P.O. Box 518, 1714 Stampede Avenue, Cody, Wyoming 82414. Telephone: (307) 587-2216.

SUPPLEMENTARY INFORMATION: This emergency closure is in response to a need to protect paleontological resources from indiscriminate public and vehicle use which may harm them. The Cedar Creek area affected by this emergency closure is located northeast of Greybull, Wyoming and affects all public lands in T. 54 N., R. 91 W., sections 8, 9, 16, 17, and N½NE¼ of section 18, Sixth Principal Meridian (comprising approximately 2,200 acres). This closure applies to all public use and motorized vehicles, including over-the-snow vehicles. Exceptions to this closure are for (1) any fire, military, emergency, or law enforcement vehicle when used for emergency purposes, or any combat support vehicle when used for national defense purposes; (2) any vehicle whose use is expressly authorized by the BLM under permit, lease, license, or contract, and (3) any government vehicle on official business.

Authority for closure order is provided under 43 CFR subpart 8364. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: September 19, 1991.

Darrell Barnes,

Worland District Manager.

[FR Doc. 91-23038 Filed 9-24-91; 8:45 am]

BILLING CODE 4310-22-M

[ID-943-4214-11; IDI-3295, IDI-4467]

Order Providing for Opening of Reserved National Forest System Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the termporary segregative effect of two proposed withdrawals on 2,333.27 acres of reserved National Forest System lands included n Forest Service applications for withdrawal.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise Idaho 83706, 208-384-3166.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations continued in 43 CFR, 2310.2-1(e), the lands described in the withdrawal applications listed below will be relieved of their temporary segregative effect at 9 a.m. on October 20, 1991.

1. IDI-3295—Howell Canyon and Dollar Lake Recreation Area (Published January 28, 1970).
2. IDI-4467—Redfish Cave Geologic Area (Published October 6, 1971).
3. The withdrawal applications will continue to be processed unless they are cancelled or denied.

Dated: September 19, 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91-93112 Filed 9-24-91; 8:45 am]

BILLING CODE 431C-GG-M

[NV-930-91-4212-14; N-51532]

Realty Action; Direct Sale of Public Land in Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, proposed direct sale of public lands.

SUMMARY: The following described public land administered by the Bureau of Land Management has been examined and identified as suitable for sale to Mr. Claude E. Ferrel under the authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713) at no less than fair market value:

Mt. Diablo Meridian, Nevada

T. 26 N., R. 18 E.,
sec. 25, SE¼SW¼.
Containing 40 acres.

The described land will be offered by direct sale to Mr. Ferrel. The land has been identified in the Lahontan Resource Management Plan as being suitable for disposal for community expansion purposes. The land is not needed for any resource program and is not suitable for management by the Bureau or any Federal department or agency. The lack of public access, the surrounding land ownership pattern and the need to resolve a long-standing unauthorized use indicate that a direct sale in this case is appropriate. The sale will involve a partial estate, surface only. The mineral estate being owned by another party will not be a part of this sale. Failure to submit the purchase money within the time frame specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following reservation to the United States:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

The 40-acre parcel lies within the Flanigan Grazing Allotment. The carrying capacity of the land is rated 20 acres per animal unit month (AUM) or 2 AUMs total. The impact of applying that use to other areas on the allotment is insignificant and therefore the authorized office has determined that the total grazing preference for the allotment will therefore not be reduced. Detailed information regarding this action is available for review at the Bureau of Land Management, Carson City District Office.

Publication of this notice in the **Federal Register** will segregate the subject land from all appropriations under the public land laws. The segregation will terminate upon issuance of the patent or other document of conveyance, or upon publication in the Federal Register of a termination of segregation, or 270 days from the date of publication, whichever occurs first.

The land will be offered for sale no earlier than 60 days after date of publication of this notice in the **Federal Register**. For a period of 45 days from the date of this notice, interested parties may submit comments to the Carson City District Manager, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706. Any adverse comments will be reviewed by the District Manager, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Dated this 19th day of September, 1991.

Jo Ann Hufnagle,

Action Area Manager, Lahontan Resource Area.

[FR Doc. 91-23111 Filed 9-24-91; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Park Police Crowd Estimate at Special Events

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice U.S. Park Police Crowd Estimate at Special Events.

SUMMARY: Notice is hereby given by the United States Park Police of its methodology for estimating crowd attendance at special events and demonstrations that occur in areas of Washington, DC under the administrative jurisdiction of the National Park Service, National Capital Region.

FOR FURTHER INFORMATION CONTACT: Robert G. Stanton, Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

The United States Park Police uses the following methodology to estimate crowd attendance at special events and demonstrations in areas of Washington, DC under the administrative jurisdiction of the National Park Service, National Capital Region.

Crowd attendance at small, stable activities including small marches and picketlines (up to 1,000 persons) is determined by at least 2 officers who independently count the participants. The Commander of the Detail is provided these counts and, unless there is a great disparity in these counts, provides the number of attendees.

Crowd attendance at large marches is estimated by at least two officers stationed at different locations by which the march must pass. These officers count the number of people in at least 20 rows to arrive at an average figure for the number of marchers per row. Officers then count the number of rows in the entire march and multiply this

figure by the average number of marchers per row.

Crowd attendance at festivals and static mass demonstrations is dependent on several factors. Where crowd density is low, officers are assigned to do actual counts and the crowd attendance is based upon the sum of these periodic counts.

Where actual counts are not possible because of high crowd density, a crowd estimate can be developed by looking at the amount of space covered by the crowd and its density. Aerial photography may be used, supported by accurate maps that establish the dimensions of the area occupied by the crowd. The density is estimated by the Commander of the Detail after inspection of photographs, videotapes, and/or personal observations.

Estimates based on density occur following several steps. The first step is to accurately calculate the square footage of the demonstration site. The second step is to calculate the amount of space occupied per person (crowd density). Finally, based on the density of participants on site and the area occupied by the activity, the Commander of the Detail determines the reported crowd attendance which is identified as an "estimate."

Dated: September 4, 1991.

Robert G. Stanton,

Regional Director, National Park Service.

[FR Doc. 91-22989 Filed 9-24-91; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0048), Washington, DC 20503, telephone 202-395-7340.

Title: Permanent Program Performance Standards—Underground Mining Activities, 30 CFR part 817.

OMB approval number: 1029-0048.

Abstract: Section 515 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting underground coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting underground coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau form number: None.

Frequency: On occasion, quarterly, and annually.

Description of respondents: Underground Coal Mining Operators.

Estimated Completion Time: 26 hours.

Annual Responses: 7,839.

Annual Burden Hours: 203,067.

Bureau clearance officer: Richard L. Wolfe (202) 343-5143.

Dated: July 25, 1991.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 91-22993 Filed 9-24-91; 8:45 am]

BILLING CODE 4310-05-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0047), Washington, DC 20503, telephone 202-395-7340.

Title: Permanent Program Performance Standards—Surface Mining Activities, 30 CFR part 816.

OMB approval number: 1029-0047.

Abstract: Section 515 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting surface coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau form number: None.

Frequency: On occasion, quarterly, and annually.

Description of respondents: Surface coal mining operators.

Estimated Completion Time: 1 hour.

Annual Responses: 30,093.

Annual Burden Hours: 736,384.

Bureau clearance officer: Richard L. Wolfe 202-343-5143.

Dated: July 26, 1991.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 91-22994 Filed 9-24-91; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-308 Preliminary and 731-TA-526 Preliminary

Bulk Ibuprofen From India

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India of ibuprofen in bulk form, provided for in subheading 2916.39.15 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and sold in the United States at less than fair value (LTFV).

Background

On July 31, 1991, a petition was filed with the Commission and the Department of Commerce by Ethyl Corporation, Richmond, VA, alleging that an industry in the United States is materially injured by reason of subsidized and LTFV imports of bulk ibuprofen from India. Accordingly, effective July 31, 1991, the Commission instituted countervailing duty investigation No. 701-TA-308 (Preliminary) and antidumping investigation No. 731-TA-526 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International

[1] The record is defined in 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 7, 1991 (56 FR 37571). The conference was held in Washington, DC, on August 21, 1991, 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 September 16, 1991. The views of the Commission are contained in USITC Publication 2428 (September 1991), entitled "Bulk ibuprofen from India: Determinations of the Commission in Investigations Nos. 701–TA–308 and 731–TA–526 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 17, 1991.

[FR Doc. 91–23090 Filed 9–24–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–474 and 475 (Final)]

Crome-Plated Lug Nuts From the People's Republic of China and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from the People's Republic of China and Taiwan of chrome-plated lug nuts, provided for in subheading 7318.16.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective April 18, 1991, following preliminary determinations by the Department of Commerce that imports of chrome-plated lug nuts from the subject countries were being sold at LTFV within the meaning of section 733(a) of the act (19 U.S.C. 1673b(a)). 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 May 8, 1991 (56 FR 21390) and June 19, 1991 (56 28169). The hearing was held in Washington, DC, on August 1, 1991, 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 September 13, 1991. The views of the Commission are contained in USITC Publication 2427 (September 1991), entitled "Chrome-Plated Lug Nuts from the People's Republic of China and Taiwan: Determinations of the Commission in Investigations Nos. 731–TA–474 and 475 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 13, 1991.

[FR Doc. 91–23091 Filed 9–24–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–326]

Decision Not to Review an Initial Determination Designating the Investigation "More Complicated"

In the Matter of Certain Scanning Multiple-Beam Equalization Systems for Chest Radiography and Components Thereof.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (Order No. 24) designating the above-captioned investigation "more complicated.".

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

The subject investigation is being conducted to determine whether Oldelft Corporation of America, Delft Instruments Medical Imaging B.V., and BV Optische Industries "De Oude Delft" (collectively "respondents") have violated section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain scanning multiple-beam equalization systems for chest radiography and components thereof. The respondents are accused of direct, contributory, or induced infringement of multiple apparatus or method claims of U.S. Letters Patents 4,953,189 and 4,953,192. Complainant Hologic, Inc. is the owner or exclusive licensee of the aforesaid patents. See 56 FR 8215 (Feb. 27, 1991).

On August 20, 1991, the presiding administrative law judge ("ALJ") issued an initial determination ("ID") (Order No. 24) declaring the investigation "more complicated" in light of the complexity of the technology at issue and the need for extensive trial preparation. (See 19 CFR 210.53(c) and 210.59(a) (1991).)

On August 27, 1991, the respondents petitioned for review of the ID. On September 4, 1991, the complainant and the Commission investigative attorneys filed responses opposing the granting of the petition.

After considering the arguments of the parties,[1] the Commission determined not to review the ID.[2] By virtue of the

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[1] The record is defined in 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Rohr not participating.

[1] Copies of the ID were served on other government agencies for comment pursuant to 19 CFR 210.53(e) (1991). No agency comments were filed in response.

[2] On September 9, 1991, respondents moved to file a reply submission to rebut complainant Hologic's assertions on certain issues. See Respondents' Motion For Leave to File a Reply and Reply to Complainants' Opposition to Respondents' Petition For Review by the Commission of Order No. 24 Designating This Investigation "More Complicated" (Motion No. 326–35C). Complainant Hologic and the Commission investigative attorneys opposed the granting of this motion. Hologic also moved for Commission consideration of its rebuttal to certain assertions in respondents' proposed reply submission, in the event that the Commission determined to accept respondents' submission. See Complainant's Motion for Leave to File a Reply to Respondents' Motion for Leave to File a Reply and Reply to Complainant's Opposition to Respondents' Petition for Review by the Commission of Order No. 24 Designating This Investigation "More Complicated" (Motion No. 236–36C); Commission Investigative Staff's Opposition to Respondents' Motion for Leave to File a Reply to Complainant's Opposition to Respondents' Petition for Review of Order No. 24.

The Commission denied respondents' Motion No. 326–35C and did not consider respondents' reply submission in reaching a determination on whether to review the ID. Hologic's Motion No. 326–236C for Commission consideration its rebuttal was thus rendered moot. The Commission concluded that the merits of the assertions in respondents' reply submission and in Hologic's rebuttal were not properly before the Commission in the absence of any findings or conclusions on those issues in the ID. (The Commission applied the same reasoning to

Continued

Commission's decision not to review the ID, it has become the Commission's final determination on designating the investigation "more complicated." See 19 CFR 210.53(h) (1991)

As a result of the investigation being declared "more complicated," the ALJ's administrative deadline for issuing an ID on permanent relief has been extended to April 27, 1992. See 19 CFR 210.53(a) (1991). The Commission's statutory deadline for concluding the investigation has been extended to August 27, 1992. See 19 U.S.C. 1337(b)(1). See also 19 CFR 210.59(a).

Public Inspection

Nonconfidential copies of the following documents are available for public 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., Docket Section—Room 112, Washington, DC 20436, telephone 202–205–2000; the ID (Order No. 24); the motion addressed in the ID (Motion No. 326–28—Complainant Hologic's Motion for Stay of Proceeding, or Alternatively, for Designation of Proceeding as "More Complicated"* * *); respondents' petition for review of the ID; the responses opposing the petition for review; Orders Nos. 20, 22, and 23 (discussed in the ID, the petition, or the responses); and the motions and responses referred to in footnote 2 of this notice.

Issued: September 19, 1991.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–23093 Filed 9–24–91; 8:45 am]

BILLING CODE 7020–02–M

Determination; Silicon Metal From Argentina Investigation No. 731-TA-470 (Final)

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Argentina of silicon metal [2] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective March 27, 1991, following a preliminary determination by the Department of Commerce that imports of silicon metal from Argentina 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 final investigation 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**. The hearing was held in Washington, DC, on April 25, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 19, 1991. The views of the Commission are contained in USITC Publication 2429 (September 1991), entitled "Silicon Metal from Argentina: Determination of the Commission in Investigation No. 731–TA–470 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: September 20, 1991.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 23092 Filed 9–24–91; 8:45 am]

BILLING CODE 7020–02–M

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the factual and legal arguments on those issues in respondents' petition for review and Hologic's response to the petition.)

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation.

[Investigation No. 337-TA-330]

Certain Computer System State Save/Restore Software and Associated Backup Power Supplies for use in Power Outages of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 19, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Universal Vectors Corporation, 580 Herndon Parkway, Suite 400, Herndon, Virginia 22070. The complaint was amended on August 30, 1991 and September 12, 1991. The complaint, as amended, alleges a violation of section 337 in the importation into the United States and the sale within the United States after importation of computer system state save/restore software and associated backup power supplies for use in power outrages by reason of alleged direct, induced, and contributory infringement of at least claims 1, 3, 6, 7, 8, 9, 10, 13, 14, and 18 of U.S. Letters Patent 4,763,333 and that an industry in the United States exists or in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Linda C. Odom, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint as amended, the U.S. International Trade Commission, on September 17, 1991

Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain computer system state save/restore software and associated backup power supplies for use in power outages by reason of alleged direct, induced, or contributory infringement of claims 1, 3, 6, 7, 8, 9, 10,

13, 14 or 18 of U.S. Letters Patent 4,763,333, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served:

(a) The complainant is: Universal Vectors Corporation, 580 Herndon Parkway, Suite 400, Herndon, Virginia 22070.

(b) The respondents are the following companies alleged to be in violation of section 337, and the parties upon which the complaint is to be served:

Astec (BSR) PLC, 2nd Floor Kaiser Estate, Phase 2, 51 Man Yue Street, Hunghom, Kowloon, Hong Kong.

Emerson Electric Co., 8000 W. Florissant, P.O. Box 4100, St. Louis, Missouri 63136–8508.

(c) Linda C. Odom, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401P, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim rules of practice and procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's rules, 19 CFR § 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this Notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this Notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such respondent.

Issued: September 18, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–23094 Filed 9–24–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-353X]

The Pigeon River Railroad Co.—Abandonment Exemption—LaGrange and Noble Counties, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by The Pigeon River Railroad Company of its 5-mile stub-ended rail line between mileposts 131.8 and 136.8 in LaGrange and Noble Counties, IN, subject to environmental and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 25, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 7, 1991, petitions to stay must be filed by October 10, 1991, and petitions for reconsideration must be filed by October 21, 1991. Requests for a public use condition must be filed by October 7, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–353X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Carl M. Miller, Miller, Harper & Rorick, 2270 Lake Avenue, suite 270, Fort Wayne, IN 46805.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. TDD for hearing impaired: (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721).

Decided: September 17, 1991.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–23082 Filed 9–24–91; 8:45 am]

BILLING CODE 7035–01–M

[1] *See* Exempt of Rail Abandonment—Offers for Finan. Assist., 4 I.C.C. 2d 164 (1987).

DEPARTMENT OF JUSTICE

[AAG/A Order No. 52-91]

Privacy Act of 1974; New System of Record

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Office of the Inspector General (OIG), proposes to establish a new system of records entitled, "Office of the Inspector General Record Index (JUSTICE/OIG–001)." Information in this system related to matters for which the Inspector General has responsibility pursuant to the Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act Amendments of 1988. Responsibilities include auditing, inspecting, and investigating Departmental programs and operations with an objective to promote economy, efficiency, and effectiveness in the administration of such programs and operations and to prevent and detect fraud, waste, and abuse in such programs and operations. This system covers records relating to OIG investigations of appropriate individual and entities (identified in the system description below). A rule document promulgating exemptions for the system appears in the Proposed Rules Section of today's **Federal Register.**

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 60-period in which the review the system.

Therefore, please submit any comments by October 25, 1991. The public, OMB and Congress are invited to send written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1103, Chester Arthur Building).

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system to OMB and the Congress.

Dated: September 6, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration,

JUSTICE/OIG-001

SYSTEM NAME:

Office of the Inspector General Record Index (JUSTICE/OIG-001).

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW, Washington, DC. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, the Office of the Inspector General (OIG) will maintain records on the following categories of individuals:

a. Individuals or entities who are or have been the subject of inquiries or investigations conducted by the OIG including current and former employees of the Department of Justice, current and former consultants, contractors, and subcontractors with whom the Department has contracted and their employees, grantees to whom the Department has awarded grants and their employees, and such other individuals or entities whose association with the Department relates to alleged violation(s) of the Department's rules of conduct, the Civil Service merit system, and/or criminal or civil law, which may affect the integrity or physical facilities of the Department of Justice.

b. Individuals who are witnesses; complainants; confidential or nonconfidential informants; and parties who have been identified by the OIG or by other agencies, by constituent units of the Department of Justice, or by members of the general public as potential subjects of or parties to an investigation under the jurisdiction of the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations including:

a. Letters, memoranda, and other documents citing complaints or alleged criminal, civil, or administrative misconduct.

b. Investigative files which include: Reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying date with respect to such informats; nature of allegations made against suspects and identifying data concerning such subjects; and public source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act Amendments of 1988.

PURPOSE:

The Office of the Inspector General (OIG) for the Department of Justice will maintain this system of records in order to conduct its responsibilities pursuant to the Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act Amendments of 1988. The OIG is statutorily directed to conduct and supervise investigations relating to programs and operations of the Department of Justice, to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste, and abuse in such programs and operations. Accordingly, the records in this system are used in the course of investigating individuals and entities suspected of having committed illegal or unethical acts and in conducting related criminal prosecutions, civil proceedings, or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed as follows:

a. In the event that records indicate a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order pursuant thereto, or if records indicate a violation of potential violation of a contract, the relevant records may be disclosed to the appropriate agency, whether Federal, state, local, foreign, or international charged with the responsibility of investigating or prosecuting such violation, enforcing or implementing such statute, rule, regulation, or order, or with enforcing such contract.

b. A record may be disclosed to a Federal, State, local, foreign, or international agency, or to an individual or organization when necessary to elicit information which will assist an investigation, inspection, or audit.

c. A record may be disclosed to a Federal, State, local, foreign, or international agency maintaining civil, criminal, or other relevant information if necessary to obtain information relevant to an OIG decision concerning the assignment, hiring, or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance or revocation of a license, grant, or other benefit.

d. A record may be disclosed to a Federal, State, local, foreign, or international agency in response to its request in connection with the assignment, hiring, or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, letting of a contract, or the issuance or revocation of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. A record may be disclosed to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and the request of, the individual who is the subject of the record.

f. Relevant records may be disclosed to an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the National Labor Relations Board, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are the subject of OIG investigations and/or who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., the initiation of debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

g. A record may be disclosed to the National Archives and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets and

electronically in office automation equipment.

RETRIEVABILITY:

Entries are arranged alphabetically and are retrieved with reference to the surnames of the individuals covered by this system of records.

SAFEGUARDS:

Information is stored in safes, locked filing cabinets, and office automation equipment in secured rooms or in guarded buildings, and is used only by authorized, screened personnel. Manual records are in locked cabinets or in safes and can be accessed by key or combination formula only. Passwords are required to access the automated data.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 22.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Office of the Inspector General, Department of Justice, 10th and Constitution Avenue NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in this request the full name of the individual involved, his or her current address, date and place of birth, notarized signature, and any other identifying number or information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information. Access requests shall be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for contest is received. Requesters shall direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The subjects of investigations; individuals with whom the subjects of investigations are associated; current and former Department of Justice officers and employees; Federal, State, local and foreign law enforcement and non-law enforcement agencies; private citizens; witnesses; confidential and nonconfidential informants; and public source materials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d), and (e)(1), pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 91-22934 Filed 9-24-91; 8:45 am]

BILLING CODE 4410-01

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") on August 12, 1991, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of CFI. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction to this notice was published on April 20, 1989 (54 FR 16013). On May 17, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on June 22, 1989 (54 FR 26265). A correction to the June 22, 1989 notice was published on August 4, 1989 (54 FR 32141); a further correction was published on August 23, 1989 (54 FR 35091). On August 16, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on September 21, 1989 (54 FR 38912). CFI filed a further additional notification on November 15, 1989. The Department published a notice in response to the further additional notification on January 10, 1990 (55 FR 925). On February 15, 1990, CFI filed an additional written notification. The Department published a notice in response to the further additional notification on April 23, 1990 (55 FR 15295).

CFI filed an additional notification on May 15, 1990. The Department published a notice in response to the additional notification on June 29, 1990 (55 FR 26792). CFI filed an additional notification on August 16, 1990. The Department published a notice in response to the additional notification on September 18, 1990 (55 FR 38417). CFI filed an additional notification on October 22, 1990. The Department published a notice in response to the further additional notification on December 10, 1990 (55 FR 50786). On January 25, 1991, CFI filed an additional written notification. The Department published a notice in response to the further additional notification on March 25, 1991 (56 FR 12387). CFI filed an additional notification on April 22, 1991. The Department published a notice in response to the further additional notification on May 23, 1991 (56 FR 23722).

The purpose of this notification is to disclose certain changes in membership of CFI. The changes consist of the following: (1) The addition of Corporate Members: Sharp Research Corporation, Matsushita Electric Industries Co., Ltd., LSI Logic Corporation, Zuken, and Dazix, and Intergraph Company; (2) Compass Tech, Inc., a Corporate Member, is now listed as Compass Design Automation/VSLI; (3) Nixdorf Computer AG, a Corporate Member, is now listed as Siemens Informationssysteme AG; and (4) InterAct Corp. has not renewed its Corporate membership in CFI.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-22997 Filed 9-24-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—1991 Horizontal Well Production Logging Program Joint Research and Development Venture

Notice is hereby given that, on August 27, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et. seq.* (the "Act"), Marathon Oil Company has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a joint venture to conduct research and development in a horizontal well production logging program and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activity are given below:

Members

Marathon Oil Company, P.O. Box 269, Littleton, CO 80160–0269.
Agip SPA/TEOP, Via Europa 44, Cologno Monzese, 20093 Milano, Italy.
Computalog Wireline Products, Inc., 7449 Winscott Road, Fort Worth, TX 76126.
Elf Aquitaine, 64018 Pau, Pau Cedex, France.
Japan National Oil Corp., 2–2, Hamada 1-Chome, Chiba-hi, Chiba-Ken, 260 Japan.
Saga Petroleum a.s., P.O. Box 490, 1301 Sandvika, Norway.

The program is open to any other corporation or other entity. The venture will have a duration of approximately five months and terminate 30 days thereafter. Information regarding participation in the venture may be obtained by contacting Marathon Oil Company.

The objective of the 1991 Horizontal Well Production Logging Program is to undertake cooperative research, development, and experimentation using Marathon's production logging flow loop used to generate data useful for typical oil and gas wells, and to determine the response of a conventional logging tool to a wide variety of oil, water and gas flow conditions. The venture will engage in all necessary activities to accomplish this objective including:

1. Collecting, compiling, distributing, and sharing information and data regarding procedures and methods of logging horizontal wells using the flow loop; and

2. Conducting experiments and the design of experiments to be tested during the program.

The venture became effective May 30, 1991.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–22995 Filed 9–24–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Petroleum Environmental Research Forum

Notice is hereby given that, on August 29, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of PERF. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notifications stated that the following additional party has become a member of PERF: Oryx Energy Company, 18325 Waterview, Dallas, Texas 75252.

No other changes have been made in either the participants or the planned activities of PERF.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903). On May 6, 1986, May 27, 1986, June 23, 1986, February 3, 1989, March 21, 1989, October 31, 1989, April 19, 1990, June 25, 1990, and May 13, 1991, PERF filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on June 9, 1986 (51 FR 20897), June 19, 1986 (51 FR 22365), July 17, 1986 (51 FR 25957), March 1, 1989 (54 FR 8607), April 20, 1989 (54 FR 16014), December 8, 1989 (54 FR 50661), May 30, 1990 (55 FR 21951), July 1990 (55 FR 29432), and June 20, 1991 (FR 56 28416), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–22996 Filed 9–24–91; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated June 28, 1991, and published in the Federal Register on July 10, 1991, (56 FR 31423), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: September 12, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–23054 Filed 9–24–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances Registration; Janssen, Inc.

By notice dated June 28, 1991, and published in the **Federal Register** on July 10, 1991, (56 FR 31423), Janssen, Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 305 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substance listed above is granted.

Dated: September 12, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 91-23057 Filed 9-24-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; Johnson Matthey, Inc.

By notice dated May 16, 1991, and published in the **Federal Register** on May 28, 1991, (56 FR 24096), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 12, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-23055 Filed 9-24-91; 8:45 am]

BILLING CODE 4410-09-M#

Importer of Controlled Substances; Registration

By Notice dated June 28, 1991, and published in the **Federal Register** on July 10, 1991 (56 FR 31424), Radian Corporation, 8501 MoPac Blvd., PO Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of dextropropoxphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: September 12, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-23052 Filed 9-24-91; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated June 28, 1991, and published in the **Federal Register** on July 10, 1991, (56 FR 31425), Roberts Laboratories, Inc., Meridian Center III, 6 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration to be registered as an importer of propiram (9649), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: September 12, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-23053 Filed 9-24-91; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration

Manufacturer of Controlled Substances Refrigeration; Stepan Chemical Co.

By notice dated May 16, 1991, and published in the **Federal Register** on May 28, 1991, (56 FR 24097), Stepan Chemical Company, Natural Products, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacture of the basic classes of controlled substances listed above is granted

Dated: September 12, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 91-23058 Filed 9-24-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; Warner-Lambert Co.

By notice dated July 8, 1991, and published in the **Federal Register** on July 16, 1991, (56 FR 32447), Warner-Lambert Company, 188 Howard Avenue, Holland, Michigan 49423, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 12, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 91-23056 Filed 9-24-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-54]

Robert F. Witek, D.D.S.; Revocation of Registration

On April 23, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement

Administration (DEA), issued an Order to Show Cause to Robert F. Witek, D.D.S. (Respondent) of Mt. Prospect, Illinois. The Order to Show Cause sought to revoke Respondent's DEA Certificate of Registration, AW5065570, due to the fact that on June 30, 1986, the State of Illinois Department of Registration and Education suspended his dental license and controlled substance license.

Respondent requested a hearing on the issue raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Government counsel filed a motion for summary disposition and Respondent's counsel submitted a response to the motion. On October 5, 1987, the administrative law judge issued her opinion and recommended decision, recommending that Respondent's DEA Certificate of Registration be suspended because his State dental and controlled substance licenses had been suspended by the State of Illinois Department of Registration and Education. Judge Bittner further recommended that jurisdiction of this matter be retained pending final action of the Illinois licensing authorities, and that upon completion of state proceedings, further action be taken regarding Respondent's DEA registration as appropriate. In a final order published at Volume 52, **Federal Register**, page 47770 (1987), the then-Administrator adopted the administrative law judge's opinion and recommended ruling in its entirety, and suspended Respondent's DEA Certificate of Registration pending final action by the Illinois Department of Registration and Education regarding Respondent's authority to handle controlled substances.

On June 19, 1991, Government counsel filed a motion to reopen proceedings and a motion for summary disposition, alleging that on or about February 26, 1990, the Illinois Department of Registration and Education "indefinitely suspended Respondent's license to practice dentistry in Illinois," and that, Respondent's DEA registration should be revoked at this time. On July 10, 1991, Respondent's counsel filed a response to the Government's motions alleging that the Department of Registration and Education entered a Consent Order on December 12, 1990, rather than in February of 1990, and that Respondent's license to practice dentistry was not indefinitely suspended but was restored on probation contingent upon compliance with certain conditions. Respondent further contended that although his Illinois controlled substance license remains suspended, he may petition for restoration of that license two years after commencement of the probation of his dental license. Respondent moved that the Government's motion be denied, or, in the alternative, that Respondent's DEA registration remain suspended upon the same terms as those imposed by the Department of Registration and Education.

The administrative law judge issued her supplemental opinion and recommended decision on July 24, 1991. No exceptions were filed to Judge Bittner's opinion and on August 26, 1991, the record was transmitted to the Administrator. The Administrator has carefully reviewed the entire record and hereby enters his final order in this matter.

The administrative law judge agreed with Respondent's interpretation of the action of the Department of Registration and Education. Respondent's license to practice dentistry "shall be restored on probation upon compliance with" certain conditions. Further, Respondent's state controlled substance license "shall remain suspended for an indefinite period" and "Respondent shall not be permitted to file a Petition for the Restoration of his Controlled Substance license for a minimum of two (2) years from the effective date of the probationary period imposed upon his dental license."

Judge Bittner found that the Drug Enforcement Administration does not have the statutory authority under the Controlled Substances Act to maintain a Certificate of Registration for a practitioner unless the practitioner is authorized to dispose controlled substances by the state in which he practices. See, *Clifford E. Bigott, D.M.D.*, Docket No. 88-24, 53 FR 28711 (1988); *Emerson Emery, M.D.*, Docket No. 85-46, 51 FR 9543 (1986). Judge Bittner further found that it is settled that when no fact question is involved, or when the facts are agreed, no hearing is required, for Congress does not intend administrative agencies to perform meaningless tasks. *U.S.* v. *Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971).

Judge Bittner found that there is no evidence as to whether Respondent has complied with the conditions precedent to probationary restoration of his dental license, and as a result, no evidence as to when his probation will begin. Consequently, there is no indication when Respondent will be eligible to apply for a controlled substance license in Illinois. Judge Bittner concluded that even if Respondent had met the prerequisites for probation immediately upon entry of the consent order, he could not apply for an Illinois controlled substance license before December 1992, and Respondent is not eligible for DEA registration until his state authority to handle controlled substances is restored.

The administrative law judge concluded that given the length of time before Respondent will be eligible to apply for an Illinois controlled substance license, there is no purpose to be served by either a continuing suspension of his DEA registration or retention of jurisdiction in this proceeding. As a result, Judge Bittner recommended that Respondent's DEA Certificate of Registration be revoked and any pending applications be denied. The Administrator adopts the supplemental opinion and recommended decision of the administrative law judge in its entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AW5065570, previously issued to Robert F. Witek, D.D.S., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are denied. This order is effective upon September 25, 1991.

Dated: September 17, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-23059 Filed 9-24-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Alta Timber Co., et al.; Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the

determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of September, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Alta Timber Co. (Co)	Eugene, OR	09/09/91	08/30/91	26,287	Wood Windows.
Amerimark (Wkrs)	Gnadenhutten, OH	09/09/91	08/26/91	26,288	Aluminum and Steel Siding, trim.
Ansewn Shoe Co. (Wkrs)	Bangor, ME	09/09/91	08/21/91	26,289	Deck Shoes, Loafer and Boots.
Boggs Natural Gas Co. (Wkrs)	Spencer, WV	09/09/91	08/04/91	26,290	Oil and Gas.
Brown Shoe Co. (Wkrs)	Benton, MO	09/09/91	08/30/91	26,291	Women's Shoes.
Brown Shoe Co. (Wkrs)	Bernie, MO	09/09/91	08/30/91	26,292	Women's Shoes.
Brown Shoe Co. (Wkrs)	Fredericktown, MO	09/09/91	08/30/91	26,293	Women's Shoes.
Brown Shoe Co. (Wkrs)	Caruthersville, MO	09/09/91	08/30/91	26,294	Women's Shoes.
Brown Shoe Co. (Wkrs)	Charleston, MO	09/09/91	08/30/91	26,295	Women's Shoes.
Crantec, Inc (Co)	Mars, PA	09/09/91	08/27/91	26,296	Pipe Support and Steel Fabrication.
Edwards Forest Industries, Inc. (Wkrs)	St. Maries, ID	09/09/91	08/23/91	26,297	Lumber and Wood Products.
Flowline Division (Co)	New Castle, PA	09/09/91	08/29/91	26,298	Butt Weld Fittings, Flanges.
Flowline Division (Co)	Whiteville, NC	09/09/91	08/29/91	26,299	Butt Weld Fittings, Flanges.
G.T.E. Products Corp (Co.)	Williamsport, PA	09/09/91	08/21/91	26,300	Circuit Assembly.
Harrison Sales Co., Inc (Co.)	Duncan, SC	09/09/91	08/28/91	26,301	Industrial Sewing Machines.
Murray Motor Co (Wkrs)	Wynne, AR	09/09/91	08/14/91	26,302	Automobile Dealership.
Peterson Spring—Kalamazoo Plant (UAW)	Portage, MI	09/09/91	08/23/91	26,303	Automotive Springs.
Quad Offshore, Inc. (Wkrs)	Scott, LA	09/09/91	09/26/91	26,304	Mud Log and Mudlogging Services.
Shell Administration and E&P (Co)	Houston, TX	09/09/91	09/05/91	26,305	Oil and Gas.
Shell Chemical Company (Co)	Houston, TX	09/09/91	09/05/91	26,306	Oil and Gas.
Shell Development Company (Co)	Houston, TX	09/09/91	09/05/91	26,307	Oil and Gas.
Shell Pecten Int'l Company (Co)	Houston, TX	09/09/91	09/05/91	26,308	Oil and Gas.
Shell Products Organization (Hdqts) (Co)	Houston, TX	09/09/91	09/05/91	26,309	Oil and Gas.
Shell Western E&P, Inc. (Co)	Houston, TX	09/09/91	09/05/91	26,310	Oil and Gas.
Smith International, Inc. (Co)	Houston, TX	09/09/91	08/26/91	26,311	Drilling Products.
Swayze Folding Box Co., Inc. (Wkrs)	Little Falls, NJ	09/09/91	08/30/91	26,312	Paper Boxes.
Swayze Folding Box Co., Inc. (Wkrs)	Canton, PA	09/09/91	08/30/91	26,313	Folding Paper Boxes.
Swingline, Inc (IBT)	Long Island City, NY	09/09/91	08/23/91	26,314	Staplers and Staples.
Trent Tube—Crucible Materials USWA	East Troy, WI	09/09/91	08/26/91	26,315	Stainless Steel Tubing and Pipe.
Worthington Precision Metals (UAW)	Mentor, OH	09/09/91	08/28/91	26,316	Govern Sleaves.

[FR Doc. 91-23116 Filed 9-20-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-24,022]

Green Mountain Marble Co., Windsor, VT; Revised Determination on Reconsideration

On July 6, 1990, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Green Mountain Marble Company, Windsor, Vermont.

The Windsor plant produced marble sink tops. The plant closed in January 1990 as a result of a merger with Cemco Products of El Paso, Texas. The new company formed as a result of the merger is called the American Bath Corporation.

New findings on reconsideration show that Green Mountain Marble's customers increased their import purchases of marble sinks from an affiliate plant of American Bath in Juarez, Mexico. Workers at American Bath in Horizon City, Texas were certified for trade adjustment assistance on November 5, 1990 TA-W-24, 793.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the marble sinks produced at Green Mountain Marble Company, Windsor, Vermont contributed importantly to the decline in sales or production and to the total or partial separation of workers at Green Mountain Marble Company, Windsor, Vermont. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Green Mountain Marble Company, Windsor, Vermont who became totally or partially separated from employment on or after February 7, 1989 and before February 15, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of September 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-23117 Filed 9-24-91; 8:45 am]

BILLING CODE 4510-13-M

[TA-W-25,844]

Johnson Controls, Inc., Automotive Systems Group, Hoover Universal Shop, Adrian, MI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Johnson Controls, Inc., Automotive Systems Group, Hoover Universal Shop, Adrian, MI. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,844; Johnson Controls, Inc., Automotive Systems Group, Hoover Universal Shop, Adrian, MI, (August 30, 1991).

Signed at Washington, DC this 19th day of September, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-23118 Filed 9-24-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,751]

Maxwell House Coffee Co., Hoboken, NJ; Negative Determination on Reconsideration

On August 6, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Maxwell House Coffee Company, Hoboken, New Jersey. This notice was published in the **Federal Register** on June 28, 1991 (56 FR 29717).

Local #56 of the United Food & Commercial Workers Union claimed that the Department only investigated ground coffee and did not look at imports of instant and decaffeinated coffee.

Investigation findings show that workers at Hoboken produce mainly ground coffee. Decaffeinated and instant coffee were also produced at Hoboken but only until mid-1991. Workers were not separately identifiable by product.

The Department's denial was based on the fact that production from the Hoboken plant is being transferred to other domestic corporate plants. The findings also show that Maxwell House Coffee's corporate-wide sales of ground coffee increased in 1990 compared to 1989 and in the first quarter of 1991 compared to the same quarter in 1990.

New findings on reconsideration show that decaffeinated and instant coffee did not account for a substantial portion of Hoboken's production in either 1989 and 1990. Further, new technology prompted Maxwell House to transfer all instant and decaffeinated coffee production from Hoboken to a plant in Texas by mid-1991. Neither a domestic transfer of production nor a technological change would provide a basis for a worker group certification.

Other findings on reconsideration show that U.S. imports of decaffeinated coffee decreased, in quantity and in value, in the first nine months of 1990 compared to the same period in 1989.

Other factors affecting coffee production at Hoboken include the decline in coffee consumption and Maxwell House's overcapacity.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to worker and former workers of the Maxwell House Coffee Company in Hoboken, New Jersey.

Signed at Washington, DC, this 12th day of September 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-23119 Filed 9-24-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,888]

Vancouver Extrusion Co., Inc., Vancouver, WA; Negative Determination Regarding Application for Reconsideration

By an application dated September 3, 1991, the Washington State Labor Council, AFL-CIO requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice for petition TA-W-25,888 was signed on August 6, 1991 and published in the **Federal Register** on August 27, 1991 (56 FR 42361).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Vancouver Extrusion Company produced aluminum extrusions and fabrications. The plant closed on July 1, 1991.

The Department's denial is based on the fact that the "contributed importantly" test of the Group eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the customers of the workers' firm. The Department's survey showed that most respondents did not purchase imported aluminum extrusions or fabrications. The few who imported either had increased purchases from the subject firm or their import purchases were not important during the relevant periods.

The State Labor Council submitted additional material including a customer list and import data from the U.S. Department of Commerce. Investigation findings show that the names of all the customers submitted by the State Labor Council were included in the Department's survey. Also, the import data submitted by the State Labor Council was included in the Department's aggregate import test.

In order for workers of a firm to be certified eligible to apply for adjustment assistance, they must meet all the criteria of the Group eligibility Requirements of the Trade Act—(1) A significant decrease in employment, (2) an absolute decline in sales or production at the workers' firm and (3) increases of imports of articles that are like or directly competitive with those of the workers' firm and which "contributed importantly" to such declines in total or partial separations and to declines in sales or production.

Accordingly, (1) A list of firms in the industry which have closed; (2) potential customers purchasing imports; (3) a solicitation letter by a foreign producer gaining market share; and (4) the sale of capital equipment would not, in themselves or collectively, provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or

misinterpretation of the facts or of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC this 17th day of September 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-23120 Filed 9-24-91; 8:45 am]

BILLING CODE 4510-30-M

York International Corp., et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,987; York International Corp., Madisonville, KY

TA-W-26,105; Gerber Textiles, Inc., Marlboro, NY

TA-W-26,032; Formitex, Inc., Columbus, OH

TA-W-26,055; Waterbury Companies, Inc., Biddeford Div., Biddeford, ME

TA-W-26,029; Esselte Letraset Manufacturing, Moonachie, NJ

TA-W-26,050; Timesaver, Minneapolis, MN

TA-W-26,004; Robertshaw Controls Co., Youngwood, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,042; Outut Technology Corp., Spokane, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,084; Unocal Corp., Oil Shale Project, Parachute, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,015; Warner Electric, Roscoe, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,212; Exquisite Form Industries, Inc., Pelham Manor, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,959; Superior Fluids, Inc., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,065; International Boiler Works Co., East Stroudsburg, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,072; Occidental Chemical Corp., Columbia, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,049; Sunbeam/Oster Houseware Co., Milwaukee, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,064; Hi-Tech Manufacturing, Inc., Longmont, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,983; Walbro Automotive Corp., Caro, MI

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-26,043; Prophecy Corp., Directors Row, Dallas, TX

A certification was issued covering all workers separated on or after June 23, 1990.

TA-W-26,027; Prophecy Corp., Showroom, Stemmons Freeway, Dallas, TX

A certification was issued covering all workers separated on or after June 23, 1990.

TA-W-25,983A; Walbro Engine Management Corp., Cass City, MI

A certification was issued covering all workers separated on or after June 13, 1990.

TA-W-25,957; Beloit Corp., Beloit, WI

A certification was issued covering all workers separated on or after June 10, 1990.

TA-W-25,958; Beloit Corp., South Beloit, WI

A certification was issued covering all workers separated on or after June 10, 1990.

I hereby certify that the aforementioned determinations were issued during the months of September, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: September 16, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-23121 Filed 9-24-91; 8:45 am]

BILLING CODE 4510-30-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 two notices of information collections that will affect the public. Interested persons are invited to submit comments by October 10, 1991. 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. and 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: Quick Response Survey of Undergraduate Instruction in Engineering.

Affected Public: Non-Profit Institutions.

Response/Burden Hours: 484 responses—1 burden hour each.

Abstract: Panel surveys are responsive to a variety of policy issues. Topics are not predetermined and survey instruments are designed specifically for each survey. This and other surveys provide information for program management, survey research objectives and satisfy general information needs not met through existing information sources.

Dated: September 19, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-23016 Filed 9-24-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp. Jersey Central Power & Light Co.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the specific technical requirements of 10 CFR 50.62(c)(3) related to the diversity requirements for the Alternate Rod Injection System to GPU Nuclear Corporation, et al. (the licensee) for the Oyster Creek Nuclear Generating Station, located at the licensee's site in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The licensee is requesting exemption from requirements of 10 CFR 50.62(c)(3) related to the diversity requirements for the Alternate Rod Injection System at Oyster Creek. The licensee's request and bases for exemption are contained in a letter dated June 28, 1991.

Need for the Proposed Action

The exemption is needed because additional modifications to achieve compliance with the regulations represent an unwarranted burden on the licensee since the cost for modifications at Oyster Creek are significantly in excess of costs incurred by other boiling water reactor plants. The compliance with full diversity would result in undue hardship.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption from the diversity requirements of 10 CFR 50.62(c)(3) for the Alternate Rod Injection System (ARI) at Oyster Creek.

Based in its review, the Commission has concluded that the requested exemption is valid and should be granted. Therefore, the proposed exemption does not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational exposure. Accordingly, the Commission concludes that the proposed exemption would result in no significant radiological environmental impact.

With regard to nonradiological impacts, the proposed exemption from the requirements of 10 CFR 50.62(c)(3) involves a compent in the reactor plant which is located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

This Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed action, see the licensee's letter dated June 28, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated At Rockville, Maryland this 18th day of September, 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director Project Directorate I-4 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-23102 Filed 9-24-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445 and 50-446]

TU Electric Co.; Comanche Peak Steam Electric Station, Units 1 and 2; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Ms. Betty Brink, (the Petitioner) dated April 5, 1991, on behalf of Citizens for Fair Utility Regulation (CFUR) regarding the Comanche Peak Steam Electric Station.

The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) take action regarding the TU Electric Company's (TU Electric or licensee) Comanche Peak Steam Electric Station, Units 1 and 2. CFUR requested that a supplemental environmental impact statement be prepared in accordance with 10 CFR 51.20(a) and that the Commission take action against the licensee for violation of 10 CFR 50.9. Briefly summarized, the bases set forth for the Petition were that (1) since 1974, Brown & Root, Inc., the principal contractor for the Comanche Peak Steam Electric Station, and several subcontractors maintained at least 15 and possibly 20 unlicensed waste dumps containing at least 157 types of toxic chemicals and construction waste, some of which are classified as Class I hazardous waste; (2) fires or explosions could occur with the current mixture of wastes and methane gas in the waste dumps; (3) the waste sites are unlined and three of them are at the edge of or in Squaw Creek Reservoir, which supplies cooling water to the licensee's nuclear plant and which mixes with surface water used by the public; (4) the licensee has reported to the Texas Water Commission (TWC) that groundwater samples recently taken from a monitoring well near the Squaw Creek Reservoir were found to contain carcinogens and other contaminants

above reportable drinking water levels; (5) toxic or hazardous materials could enter the plant's safety systems or could corrode vital components of the plant's cooling system; (6) the NRC decision to rely on the TWC to monitor the waste dumps was based on incomplete and inaccurate information supplied by the licensee to the NRC concerning the number and location of dumps and the types and amounts of hazardous material, and moreover, the TWC is not qualified to determine the safety significance of hazardous waste to a nuclear plant; (7) the closure plan submitted by the licensee to TWC violates 40 CFR 265.111 because no removal or decontamination has been proposed; (8) the licensee violated the National Pollutants Discharge Elimination System (NPDES) permit issued by the U.S. Environmental Protection Agency for the cooling water intake structure because the licensee located unauthorized and unreported hazardous waste dumps near the cooling water intake system; (9) the licensee violated the Resource Conservation and Recovery Act land ban disposal restrictions; (10) the licensee violated the Texas Administrative Code, section 335.43, by failing to provide proper information regarding the waste dumps; (11) the presence of the waste dumps reflects new information which, in accordance with 10 CFR 51.53(a), the licensee was required to report to the NRC before the February 1990 issuance of an operating license for Comanche Peak Unit No. 1; and (12) the licensee did not reveal environmental and safety-related information that was material to the licensing of the Comanche Peak plant regarding the presence of unauthorized hazardous waste dumps, thus violating 10 CFR 50.9.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206," (DD-91-04) 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 Comanche Peak Steam Electric Station, at the University of Texas at Arlington Library, Government Publication/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within the time.

Dated at Rockville, Maryland, the 18th day of September 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-23103 Filed 9-14-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would revise Technical Specification Sections 4.2.A. and 4.2.C.1 to delete restriction that the refueling outage interval is not to exceed 20 months. This revision would accommodate implementation of a 21 month operating cycle with a three month refueling outage. The specification relates to control rod scram time testing.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 25, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written 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 local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. 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 hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide reference 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.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: 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 Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 29, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 18th day of September 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-23099 Filed 9-24-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York, James A. FitzPatrick Nuclear Power Plant, Exemption

I

The Power Authority of the State of New York (PASNY/licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (The Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new appendix R to 10 CFR part 50 regarding fire protection features of Nuclear Power Plants (45 FR 76602. The revised § 50.48 and appendix R became effective on February 17, 1981.

Section III.G.3 appendix R to 10 CFR part 50 requires fire detection and a fixed fire suppression system in an area, room, or zone where electrical circuits associated with alternative or dedicated shutdown could prevent operation of equipment required for hot shutdown.

By letter dated July 31, 1991, and supplemented by letter dated August 6, 1991, the licensee requested an exemption from the requirements of section III.G.3 of appendix R to 10 CFR part 5. Specifically, the requested exemption pertains to the requirement to have fire detection in the Turbine Building (Fire Area 1E).

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) Authorized by law and will not endanger life or property or common defense and security and are otherwise in the public interest, and (2) present special circumstances. Section 50.12(a)(2)(ii) of 10 CFR part 50 indicates that special circumstances exist when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III

The proposed exemption is needed as a result of the licensee's investigation of deficiencies identified during a review of the FitzPatrick fire protection program. A recent engineering evaluation performed by the licensee determined that if power to the ventilation fans in the east and west electric bays is lost, temperatures could exceed 150 degrees Fahrenheit (assuming "worst case" conditions). The ability of all equipment in the electric bays to operate at these temperatures cannot be assured. Equipment in these bays is required to shut down the plant in the event of a fire.

A fire in either the control room or turbine building could damage electrical cables "associated" with the electric bay fans. In the event of a fire in Fire Area VII (control room, relay room, or cable spreading room), a short circuit in the annuicator and light circuit for fans 67FN-16A1, 16A2, 16B1, and 16B2 could blow the control power fuses and cause the fans to be inoperable. A fire in the turbine building (Fire Area 1E) could dame two local control panels (67HV-2A, and 67HV-2B), which could result in electric bay fans 67FN-16A1, 16A2, 16B1, and 16B2 being inoperable. In either fire scenario, the temperature in the electric bays will increase and may cause equipment in the bays to potentially overheat and fail.

To assure that the fans will function in the event of fire in either the control room or turbine building, the licensee performed a modification (M1-91-179) to eliminate all control of electric bay ventilation fans 67FN-16B1 and 16B2 from the control room, and 67FN-16A1 and 16A2 from the local area in the turbine building. In other words, with the installation of this modification, ventilation for the east electric bay (Fans 67FN-16B1 and 16B2) can be controlled from local panels in the turbine building, and ventilation for the west electric bay (Fans 67FN-16A1 and

16A2) can be controlled from the Control Room.

Prior to the modification of the electric bay ventilation system circuitry, the licensee relied upon circuit separation. With the installation of this modification, the licensee must comply with the provisions of 10 CFR part 50, appendix R, section III.G.3, based on the premise that the electric bay ventilation is required to be operable to ensure safe shutdown capability. However, the turbine building area (Fire Area 1E) which houses the local control panels (67HV–2A and 2B) for the east electric bay ventilation fans (67FN–16B1 and 16B2) has no fire detection system. Therefore, the licensee has requested exemption from the requirements of 10 CFR part 50, appendix R, section III.G.3, to the extent that a fire detection system is required for the turbine building Fire Area 1E.

The immediate area of the turbine building which houses the local control panels for the east electric bay ventilation fans contains minimal quantities of exposed combustible material. Therefore, the probability of damage due to a fire either starting in or spreading to this location is considered highly unlikely. This area is without fire detection or suppression capabilities. However, adjacent areas on the same elevation (272'–0"), which can present an exposure fire hazard to the location of concern, are protected by automatic sprinklers.

Potential fire scenarios involving exposed combustible materials in these adjacent locations would result in suppression system actuation, and an alarm in the main control room. The fire brigade would immediately be dispatched to the area. Furthermore, the suppression system actuation would control and/or extinguish the fire prior to arrival of the fire brigade. Due to the lack of combustibles in the immediate area of the panels and given the available sprinkler protection, there is reasonable assurance that a fire in the turbine building will not adversely affect the panels. Even if fire damage should occur in the area under consideration, there will be no impact on safe shutdown capability since the alternate shutdown capability is provided independent of the fire area of concern

Based on the above evaluation, the staff concludes that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of appendix R to 10 CFR part 50. The current level of fire protection and detection in Turbine Building Fire Area 1E provides an equivalent level of fire safety as that required by 10 CFR part 50, appendix R, section III.G.3, and does not adversely plant safety.

Therefore, an exemption to the requirements of section III.G.3 of appendix R to 10 CFR part 50 in relation to fire detection in the turbine building should be granted.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) the exemption as described in section III is authorized by law and will not endanger life or property or common defense and is otherwise in the public interest, and (2) in this case, special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of 10 CFR part 50, appendix R.

Accordingly, the Commission hereby grants the exemption from the requirements of section IIIG.3 of appendix R to 10 CFR part 50 regarding fire detection in the turbine building.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption would have no significant effect on the quality of the human environment (56 FR 42364, August 27, 1991).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of September.

For The Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–23100 Filed 9–24–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York, James A. FitzPatrick Nuclear Power Plant; Exemption

I

The Power Authority of the State of New York (PASNY/licensee) is the holder of Facility Operating License No. DPR–59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

On November 19, 1980, the Commission published a revised Section 50.48 and a new appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and appendix R became effective on February 17, 1981.

Section III.G of appendix R to 10 CFR part 50, requires that where cables or equipment of redundant trains of systems necessary to achieve and maintain hot shutdown conditions are located within the same fire area outside of primary containment, one of the following means of ensuring that one of the redundant trains is free of fire damage shall be provided:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustible or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If these conditions are not satisfied, section III.G.3 of appendix R to 10 CFR part 50 requires alternative shutdown capability independent of the fire area of concern. Furthermore, this section requires that fire detection and a fixed fire suppression system be provided in areas, rooms, or zones for which alternate shutdown capability is provided.

By letter dated July 31, 1991, and supplemented by letter dated August 6, 1991, the licensee requested an exemption from the requirements of 10 CFR part 50, appendix R, section III.G.3. Specifically, the requested exemption pertains to the requirement to have a fixed suppression system in the Battery Room Corridor.

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) Authorized by law and will not endanger life or property or common defense and security and are otherwise in the public interest, and (2) present special circumstances. Section 50.12(a)(2)(ii) of 10 CFR part 50 indicates that special circumstances exist when application of the regulation in the particular circumstances would not

serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III

The proposed exemption is needed as the result of the licensee's investigation of deficiencies identified during a review of the FitzPatrick fire protection program.

The licensee recently determined that redundant cables for safe shutdown systems are located in the Battery Room Corridor Fire Zone BR-5. Alternative shutdown capability is required for this area as a result of possible loss of Divisions "A" and "B" cabling due to a fire in the area. Modifications previously implemented in Fire Zone BR-4 to ensure alternative shutdown capability for a fire in the main control room also ensure alternative shutdown capability for a fire in Fire Zone BR-5. This alternative shutdown capability is provided by the provision of Division "B" dc power to the remote shutdown panels via distribution panel 71 DC-B4 (Fire Zone EG-6). Automatic fire detection is provided for the Battery Room Corridor; however, fixed fire suppression system capability is not. As a result, the Battery room Corridor is not in compliance with section III.G.3 of appendix R to 10 CFR part 50.

The Battery Room Corridor has low combustible loading consisting primarily of cable insulation. Any fire in the insulation would be expected to develop slowly. Furthermore, this corridor has an equivalent fire severity of less than one hour. Automatic detection consisting of ceiling mounted ionization detectors is provided in this corridor. Potential fires in the Battery Room Corridor would involve primarily cable insulation located in trays near ceiling level or in vertical risers along the south wall. Fires of this nature would be detected in the incipient stage, with alarm notification in the continuously manned main control room. Alarm notification would result in prompt dispatch of the fire brigade for rapid initiation of manual fire fighting activities. Portable extinguishers and manual hose stations are provided in the Battery Room Corridor and adjacent areas to assist in this fire fighting effort. Reasonable assurance is provided that manual fire fighting activities would result in prompt extinguishment of postulated fires. Since alternate shutdown capability is provided independent of the fire area of concern, any fire that was to occur in the Battery Room Corridor would not affect the ability of the plant to achieve and maintain safe shutdown.

Based on the above evaluation, the staff concluded that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of appendix R to 10 CFR part 50. The current level of fire protection in the Battery Corridor provides an equivalent level of fire safety as that required by 10 CFR part 50, appendix R, section III.G.3, and does not adversely affect plant safety.

Therefore, an exemption to the requirements of section III.G.3 of appendix R to 10 CFR part 50 in relation to fixed fire suppression in the Battery Room Corridor should be granted.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) the exemption as described in section III. is authorized by law and will not endanger life or property or common defense and security and is otherwise in the public interest, and (2) in this case, special circumstances are present in that application of the regulation is not necessary to achieve the underlying purpose of 10 CFR part 50, appendix R.

Accordingly, the Commission hereby grants the exemption from the requirements of section III.G.3 of appendix R to 10 CFR part 50 regarding a fixed fire suppression system in the Battery Room Corridor.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption would have no significant effect on the quality of the human environment (56 FR 42363, August 27, 1991).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of September, 1991.

For The Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-23101 Filed 9-24-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co., et al.; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company, Centerior Service Company, and Cleveland Electric Illuminating Company, for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would change Technical Specification 5.3.1, "Fuel Assemblies," to allow limited substitution of stainless steel filler rods for fuel rods. The proposed amendment was initially noticed in the **Federal Register** on June 26, 1991 (56 FR 29282). It is being renoticed because of a reduction in scope of the original request.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because approved methodologies will be used to determine core performance and accident response. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated accident because fuel performance parameters are not being changed, and because Technical Specifications concerning the nuclear heat flux hot channel factor, the nuclear enthalpy rise hot channel factor, the quadrant power tilt, and the departure from nucleate boiling parameters are not being changed. Finally, the proposed change would not involve a significant reduction in a margin of safety, because substitution with stainless steel filler rods will be bounded by cycle specific reload analysis using approved methodologies.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of

publication of this will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 25, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. 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 hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The 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 becomes 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 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.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service 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 petition are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to John N. Hannon: 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 Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 31, 1991 supplemented August 29, 1991, 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 University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 20th day of September 1991.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Acting Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–23242 Filed 9–24–91; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Statement of Policy on Confidential Treatment of Proprietary Information Obtained in Connection with RTC's Renegotiation Efforts

AGENCY: Resolution Trust Corporation.

ACTION: Notice of adoption.

SUMMARY: The RTC is attempting to negotiate certain solvent institution cases resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988 and August 9, 1989. The Board of Directors of the RTC has adopted a policy that provides that any Proprietary Information obtained by the RTC or its advisors in the course of such renegotiations from parties that acquired such insolvent institutions will be treated as confidential by the RTC and others and that in order to prevent the improper disclosure of such information and maintain the integrity of the renegotiation effort, such information shall not be disclosed except as provided in the Policy Statement.

DATES: This Policy Statement is effective September 10, 1991.

FOR FURTHER INFORMATION CONTACT: James N. Sabin, Counsel, RTC (202) 736–0379.

SUPPLEMENTARY INFORMATION:

Background

As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the Congress directed the Resolution Trust Corporation (the "RTC") to review and analyze all insolvent institution cases resolved by the Federal Savings and Loan Insurance Corporation ("FSLIC") between January 1, 1988 and August 9, 1989 (the "1988–89 Assisted Transactions"), and to actively review all means by which the RTC can reduce costs under existing FSLIC agreements relating to such cases. The RTC also was instructed in FIRREA to "exercise any and all legal rights to modify, renegotiate, or restructure such agreements where savings would be realized by such actions."

As part of the Resolution Trust Corporation Funding Act of 1991, the Congress also directed RTC to "pursue all legal means by which the (RTC) can reduce both the direct outlays and the tax benefits associated with the (1988–89 Assisted Transactions) including, but not limited to, restructuring to eliminate tax-free interest payments, and renegotiating to capture a larger portion of the tax benefits for the (RTC)."

The RTC is in the process of carrying out these congressional mandates and either has commenced or intends to commence discussions with parties that acquired insolvent institutions (individually, a "Purchaser" and collectively, the "Purchasers") in the 1988–89 Assisted Transactions in an attempt to revise certain of the terms of such transactions. As part of this process, the RTC staff and their outside advisors may request or obtain from Purchasers in connection with the RTC's due diligence efforts certain proprietary, non-public information (*e.g.*, prospective business and tax plans, including possibly prospective tax models and tax strategies, and financial forecasts and projections) concerning the institution acquired by any such Purchaser, which information the FSLIC Resolution Fund (the "FRF"), the Federal Deposit Insurance Corporation (the "FDIC"), as manager of the FRF, or the RTC is not otherwise entitled to receive (the "Proprietary Information").

In order to prevent the improper disclosure of this Proprietary Information, and to maintain the integrity of the RTC's renegotiation efforts as well as the integrity of the RTC itself, it is important that the RTC, its employees and others who may come in contact with this Proprietary Information hold such Proprietary Information confidential and not disclose this information except as permitted. Accordingly, the RTC is hereby establishing the policy described herein concerning the treatment of such Proprietary Information. This policy shall be effective as of the date hereof and is to be followed by RTC employees and others to whom it applies.

General Policy

Any Proprietary Information obtained by the RTC or its directors, officers, employees, agents, or advisors (including, without limitation, attorneys, accountants, consultants, investment bankers, and financial advisors (collectively, "Representatives")) from any Purchaser as a result of the RTC's efforts pursuant to FIRREA to modify, renegotiate, or restructure a 1988–89 Assisted Transaction with such Purchaser, which information the FRF, the FDIC, or the RTC is not otherwise entitled to receive, shall be treated as confidential by the RTC and its directors, officers, employees, and Representatives and neither the RTC nor its directors, officers, employees, or Representatives shall disclose or otherwise provide any such Proprietary Information to any other Person (as hereinafter defined) except those Persons specifically permitted to receive such information as provided for in this Statement of Policy.

Permitted Disclosures

Notwithstanding any other provision in this Statement of Policy, any Proprietary Information received by the RTC or its directors, officers, employees, or Representatives from any Purchaser may be disclosed to any other Federal Agency (or subdivision thereof) whose officers or employees are represented on (i) the RTC Oversight Board, or (ii) the RTC Board of Directors, provided the permitted recipient of such information agrees to be subject to the same confidentiality and disclosure restrictions as are provided for herein. In addition, (i) the RTC or its directors, officers, employees and Representatives may disclose any such Proprietary Information to which a relevant Purchaser gives its prior written consent, (ii) any Proprietary Information may be disclosed by the RTC to any of the RTC's officers, directors, employees, or Representatives provided such party agrees to keep such information confidential and not disclose such information except in accordance with this Statement of Policy, and (iii) the RTC or its directors, officers, employees, or Representatives may make any disclosure of such information that is required by law.

Certain Information Not Proprietary Information

As used in this Statement of Policy, the term "Proprietary Information" shall not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by the FRF, the FDIC, or the RTC or any of their respective directors, officers, employees, or the RTC's Representatives of such Proprietary Information, (ii) was within the possession of the FRF, the FDIC, or the RTC or any of their respective directors, officers, or employees or the RTC's Representatives prior to such information being furnished to the FRF, the FDIC, the RTC or the RTC's Representatives by or on behalf of the relevant Purchaser, provided that the source of such information was not known by the FRF, the FDIC, the RTC or the RTC's Representatives to be bound by any agreement with, or subject to any other contractual, legal, or fiduciary obligation related to, the relevant Purchaser with respect to the disclosure of such information, (iii) becomes available to the RTC or its Representatives on a non-confidential basis from a source other than the relevant Purchaser, provided that such source is not known by the RTC or its Representatives to be bound by any agreement with, or subject to any other contractual, legal or fiduciary obligation related to, the relevant Purchaser with respect to the disclosure of such information, (iv) was independently developed by the RTC or its Representatives without reference to the Proprietary Information, provided such independent development can be reasonably established, (v) is in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular Purchaser, or (vi) the FRF, the FDIC, or the RTC is otherwise entitled to receive.

Certain Definitions

As used in this Statement of Policy, the term "Person" or "Persons" shall be broadly interpreted to include any corporation, partnership, group, individual, governmental body, or entity; and the term "disclose" shall mean to give access to a record or document whether by producing or furnishing the written record or document (or copies thereof) or by verbally relating the information contained therein.

By Order of The Board of Directors.

Dated at Washington, DC, this 10th day of September, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-22987 Filed 9-24-91; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29698; File Nos. SR-Amex 91-06; SR-CBOE-91-11; SR-NYSE-91-18; SR-PHLX-91-28; SR-PSE-91-13]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al.; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to the Options Exchanges' Joint Plan for the Selecting, Listing, Challenging and Arbitrating the Eligibility of New Standardized Equity Options.

September 17, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), the American Stock Exchange, Inc. ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), New York Stock Exchange, Inc. ("NYSE"), Philadelphia Stock Exchange, Inc. ("PHLX") and Pacific Stock Exchange, Inc. ("PSE") (collectively, "the Exchanges") filed with the Securities and Exchange Commission ("Commission") identical proposed rule changes to adopt the Options Exchanges' Joint Plan ("the Plan") for the selecting listing, challenging and arbitrating the eligibility of new standardized equity options.

The Amex and CBOE proposals were published for comment in Securities Exchange Act Release No. 29109 (April 19, 1991), 56 FR 19699. The Commission received no comments on the proposals. The Commission today also solicits comments on the NYSE, PHLX and PSE proposals from interested persons.

The adoption of Rule 19c-5 under the Act,[1] which provides for the gradual elimination of restrictions against the multiple trading of standardized options on exchange-listed stocks,[2] effectively eliminated the Options Allocation Plan ("the Allocation Plan") which had served since 1980 as the principal agreement among the options exchanges under which exchange-listed stocks were selected for options trading.[3] The primary function of the Allocation Plan was to allocate new options to the options exchanges so that one exchange would have the exclusive right to list and trade a new option. The Allocation Plan also served as a vehicle to accommodate the orderly introduction of new options and to ensure compliance with the exchanges' uniform options listing standards.[4] While the adoption of Rule 19c-5 removed the need for a joint plan to allocate options, there is a continued need for joint procedures to facilitate the orderly introduction of new equity options and to ensure that there is a mechanism in place to ensure that only eligible securities are selected for options trading. Accordingly, the Exchanges and the Options Clearing Corporation ("OCC") have agreed to adopt the Joint Exchange Options Plan ("the Plan"). As described in more detail below, under the Plan, there will be specific procedures governing the selecting, listing, challenging and arbitrating the eligibility of new equity options overlying both exchange-traded and over-the-counter-listed securities. The Plan is to become effective immediately upon the Commission's approval of Plan rule filings from each of the exchanges noted above, which this order accomplishes.

Under the Plan, an exchange ("the Selecting Exchange") which seeks to list a new equity option on a security ("the Selected Option") must notify OCC of its selection through the submission of an intent to certify and simultaneously give written notification of its selection to the other exchanges.[5] Upon receipt of

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[1] See Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 (order approving the adoption of Rule 19c-5).

[2] Multiple trading is the trading of standardized options with the same underlying security on more than one options exchange.

[3] See Securities Exchange Act Release No. 16863 (May 30, 1980), 45 FR 37928.

[4] The options exchanges operate under uniform rules which require that an underlying security meet certain minimum guidelines for options trading. These guidelines include standards regarding the number of shares outstanding, number of shareholders, trading volume, share price, and regulatory compliance. See, *e.g.*, CBOE Rule 5.3. On August 29, 1991, the Commission approved uniform proposals by the options exchanges to lower the options listing standards. See Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949 ("Options Listing Standards Approval Order").

[5] In order for a security to be listed on a national securities exchange, section 12(d) of the Act provides that exchange authorities must certify to the Commission that the security has been approved by the exchange for listing and registration. Section 12(d) also provides that a security's registration becomes effective 30 days after receipt of such certification by the Commission or within such shorter time as the Commission may determine. In the context of standardized options, therefore, an exchange must certify to the Commission that the underlying security satisfies all exchange requirements for options trading (*i.e.*, compliance with the uniform options listing standards, see

Continued

the notification from the Selecting Exchange, any other exchange may submit an intent to certify the Selected Option to OCC no later than 4 p.m. Eastern Standard Time on the business day following receipt of the notification, challenge the eligibility of the Selected Option by such time or choose to do nothing. As described below, the Plan establishes specific waiting periods before a Selected Option can commence trading. In sum, however, the waiting periods vary according to the number of certifying exchanges and whether any exchanges have challenged the eligibility of the Selected Option.

First, where no challenge is asserted as to eligibility of the Selected Option and no other exchange has submitted an intent to certify such option, the Selecting Exchange may commence trading in such option on the third business day following the date of its submission to OCC of its certification for the option. Any other exchange may not commence trading in such option until the eighth business day following the certification date.

Second, where no challenge is asserted as to the Selected Option and one or more other exchanges submit an intent to certify such option, then the Selecting Exchange and any other exchange which has submitted an intent to certify such option may commence trading in such option on the fifth business day following the date of certification by the Selecting Exchange. Any other exchange may not commence trading in such option until the tenth business day following the certification date.

Third, if a challenge is made to a Selected Option, the challenging exchange(s) and the challenged exchange(s) must submit written support for their claims of eligibility or ineligibility to the Arbitrator (OCC) and all other exchanges by the third business day following the certification date. The Arbitrator shall resolve the challenge by the close of the business day following the day it received written support for the Selected Option's eligibility or ineligibility from the appropriate exchanges. If the Arbitrator deems the Selected Option eligible for options trading, the challenging exchanges, as well as any other exchange, may submit an intent to certify prior to the close of the business day following the day of the Arbitrator's determination. Trading of the Selected Option will commence on the third business day following the Arbitrator's determination in favor of the Selecting Exchange(s).

The Plan provides that an exchange that elects to notify OCC of its intent to certify a Selected Option is prohibited from challenging such selection. Conversely, an exchange which challenges the eligibility of a Selected Option is prohibited from challenging such selection. Conversely, an exchange which challenges the eligibility of a Selected Option is prohibited from requesting certification of such option (until the Arbitrator has reached a decision on the challenge).

OCC, as Arbitrator, shall determine whether Selected Options are eligible and there will be no appeal from its decisions. A Selected Option will be eligible only if it meets the exchanges' options listing standards in place on the date the Selecting Exchange notifies OCC of its intent to certify such option. The Plan also states that OCC, as issuer of any Selected Option, may, independent of any challenge, take any action permitted it under the Participant Exchange Agreement entered into between OCC and the exchanges.

The Exchanges state that the proposed rule changes are consistent with section 6(b)(5) of the Act in that they promote just and equitable principles of trade, protect the investing public and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.[6] Specifically, the proposals are designed to provide an orderly process for the selection and certification of new equity options on exchange-traded and OTC-listed stocks.

Although the elimination of restrictions against the multiple trading of standardized options on exchange-listed stocks rendered the Allocation Plan obsolete, the listing of new options which may be multiply traded, nevertheless, makes it necessary for the exchanges to form an agreement establishing: (1) An orderly procedure for the certification of a new option by one or more exchanges, and (2) a process for challenging the certification or eligibility of a new option.

In this regard, the experience of the Commission with the Exchanges' selection of new options has alerted the Commission, the options exchanges, and the member firms to the need to create uniform procedures governing the selection and challenge of new options listings. The competition among the options exchanges frequently causes the Exchanges to seek to list potentially lucrative new options as quickly as possible. This process places extreme pressure on the process to determine whether an option is eligible for trading. As a result, member firms are often hindered in making their decisions on where to direct order flow for new options and, at times, unnecessary uncertainty has been created over whether new options selections are in fact eligible. To reduce these problems, the Exchanges have developed uniform procedures establishing clear guidelines for notifying the Commission, OCC, and the other options exchanges about an option selection and providing the Exchanges with a fair means of challenging the selection for failure to meet the options listing standards.

The Commission believes that the joint Plan among the options exchanges is a reasonable means to provide for the orderly introduction of new options for the following reasons. First, the Plan requires a Selecting Exchange to give notice of an intent to certify to the Commission, the other exchanges, and OCC and provides an opportunity for the other exchanges to certify before trading in the option commences. At the same time, the Plan stipulates certain rigid time frames within which other options exchanges must act if they want to select the new option and begin trading simultaneously with the first Selecting Exchange. These guidelines will prevent a Selecting Exchange from trying to list an option before its competitors where the legality of the option under the uniform listing standards is questionable. In addition, by establishing in the Plan pre-set waiting periods before which trading in a new option can commence, member firms will be afforded adequate notice that a new option will be multiply traded and, therefore, will be able to make their order routing decisions in an effective manner.

Second, the Plan allows exchanges to contest options certifications. In this regard, the Plan gives both challenged and challenging exchanges an opportunity to present their arguments to an impartial and experienced party who will determine that the Selected

supra note 4). In addition, as a matter of practice, the options exchanges generally request accelerated effectiveness of their certifications of registration for options pursuant to Rule 12d1–3 under the Act. As a result, currently, only a few days generally elapse between the time an exchange submits a certification for an option and the time it commences trading the option.

[6] 15 U.S.C. 78f (1982).

Option is eligible for trading only if it meets the exchanges' options listing standards. In addition, the Plan does not penalize exchanges from making good-faith challenges to a Selected Option's eligibility because it allows an unsuccessful challenging exchange to certify a Selected Option after the arbitrator renders an opinion in favor of the Selecting Exchange(s).

In sum, the Commission believes the Plan strikes a reasonable balance among the needs to: (1) Allow the options exchanges to list new options as soon as possible to reap the benefits of their research efforts; (2) ensure compliance with the exchanges' uniform options listing standards; and (3) ensure that options are introduced in a fair and orderly manner.

The Commission also believes that the Plan is consistent with Rule 19c-5 under the Act, including those parts of the Plan that require the exchanges that do not initially certify an option to wait five business days after the date the Selecting Exchange(s) begins trading in such option to commence trading in the option. The Commission believes that it is reasonable for the Plan to provide for a five-day delay after the date the Selecting Exchange(s) commence trading a new option for additional exchanges to list the option because the delay facilitates the orderly and fair introduction of new options and it prevents unnecessary confusion among member firms in deciding where to direct their order flow. The Commission believes that a five-day waiting period, in light of the fact that it occurs after each exchange has had an opportunity to initially list the option, does not constitute a condition or limitation on the ability of an exchange to list an option already listed on another exchange and, therefore, is consistent with Rule 19c-5.[7]

In addition, the Commission notes that approval of the Plan does not limit the authority of the Commission under section 19(h) of the Act. Section 19(h) provides the Commission with the authority to take action against an exchange if the Commission finds that the exchange is in violation of the Act, the rules and regulations thereunder, or its own rules. Accordingly, notwithstanding the Plan, the Commission has the authority to prevent an exchange from listing a new option if the Commission finds that the option does not meet the exchange's initial options listing standards. The Commission also believes that the Plan is consistent with section 19(h) because it is a vehicle to ensure that the Exchanges will comply with their listing standards rules when selecting new options.

The Commission finds good cause for approving the NYSE, PHLX, and PSE proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because it will allow the Plan to become effective immediately. As stated above, the Plan is to become effective immediately upon the Commission's approval of Plan rule filings from each of the Exchanges. In this regard, the Commission notes that its recent approval of lower options listing standards will likely cause the options exchanges to list several new options.[8] Accordingly, it is necessary for the promotion of fair and orderly markets and the protection of investors to have the Plan in place before these lower standards are in effect to facilitate the orderly introduction of these new options. In addition, the Amex and CBOE proposals, which are identical to the NYSE, PHLX, and PSE proposals, already have been published for comment. The Commission believes, therefore, that granting accelerated approval of the proposed rule changes is appropriate and consistent with section 6 of the Act.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, 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 the filings will also be available for inspection and copying at the respective principal offices of the NYSE, PHLX, and PSE. All submissions should refer to File No. SR-NYSE-91-18, SR-PHLX-91-28, or SR-PSE-91-13 and should be submitted by October 16, 1991.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that SR-Amex-91-6 and SR-CBOE-91-11 are approved and SR-NYSE-91-18, SR-PHLX-91-28, and SR-PSE-91-13 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-23049 Filed 9-24-91; 8:45 am]

BILLING CODE 8010-01-M

[7] Rule 19c-5 was intended to end the Allocation Plan and expand multiple trading to all stock options. The proposed rule change furthers this goal by establishing fair selection and challenge procedures designed to let any options exchange trade any eligible option.

[8] *See* Options Listing Standards Approval Order, *supra* note 4.

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30-3(a)(12) (1989).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

September 19, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

20th Century Industries
Common Stock, No Par Value (File No. 7-7255).
PS Business Parks, Inc.
Common Stock Series A, $.01 Par Value (File No. 7-7256).
Public Storage Properties XVI
Common Stock, Series A, $.01 Par Value (File No. 7-7257).
Public Storage Properties XX
Common Stock, Series A, $.01 Par Value (File No. 7-7258).
IBP, Inc.
Rights to Subscribe to Common Stock (File No. 7-7259).

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 10, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the

extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-23001 Filed 9-24-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29704; File No. SR-NASD-91-41]

September 18, 1991.

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Examination, Examination Specifications and Study Outline for the ("Series 26") Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 12, 1991 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby submits amendments to the examination specifications and study outline for the Investment Company and Variable Contracts Products ("Series 26") quantifications examination. The amendments add new questions to reflect both regulatory and business changes in this segment of the securities industry and update material concerning NASD and SEC Rules. The number of questions per test has been increased to 100 and the testing time will be two hours.

The above-described amendments do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Rules of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD 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 NASD 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

Pursuant to section 15A(g)(3) of the Act, the NASD is authorized to prescribe standards of training, experience, and competence for persons associated with NASD members. To this end, the NASD has developed examinations that it administers to establish that such persons have attained the requisite levels of knowledge and competence. The NASD periodically reviews the content of the examinations to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The NASD believes the proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act, which authorizes the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the amendments to the Series 26 examination, specifications and study outline impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 16, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-23051 Filed 9-24-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 19, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Royal Bank of Scotland Group Inc.
American Depositary Shares B (File No. 7-7260).

Household International
Depositary Shares Preferred, No Par Value (File No. 7-7261).

20th Century Industries
Common Stock, No Par Value (File No. 7-7262).

Public Storage Properties XVI, Inc.
Common Stock, Series A, $.01 Par Value (File No. 7-7263).

Public Storage Properties XX, Inc.
Common Stock, Series A, $.01 Par Value (File No. 7–7264).
PS Business Parks, Inc.
Common Stock, Series A, $.01 Par Value (File No. 7–7265).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 10, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc 91–23002 Filed 9–24–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18325; 812–7719]

Pioneer Bond Fund, et al; Notice of Application

September 19, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Pioneer Bond Fund, Pioneer Europe Fund, Pioneer Fund, Pioneer Growth Trust (composed of three portfolios: Pioneer Capital Growth Fund, Pioneer Equity-Income Fund, and Pioneer Gold Shares), Pioneer Money Market Trust (composed of three portfolios: Pioneer Cash Reserves Fund, Pioneer U.S. Government Money Market Fund, and Pioneer Tax-Free Money Fund), Pioneer Municipal Bond Fund, Pioneer II, Pioneer Three, and Pioneer U.S. Government Trust (collectively, the "Funds"); and Pioneer Funds Distributor, Inc. (the "Underwriter").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds to impose a contingent deferred sales load on the redemption of certain shares purchased at net asset value and to waive the load in certain instances.

FILING DATE: The application was filed on May 7, 1991 and was amended and restated on September 9, 1991 and September 16, 1991.

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 October 14, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Pioneer Group, Inc., 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Barry D. Miller, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. The Underwriter is the principal underwriter of each of the Funds except for Pioneer Money Market Trust, which is sold directly without the use of an underwriter. The investment manager for each of the Funds is Pioneering Management Corporation ("PMC"), an affiliated person of the Underwriter.

2. Currently, the Funds impose no front-end sales charge on (i) purchases of $1 million or more, or (ii) purchases by certain benefit plans ("Group Plans") under which a sponsoring organization recommends, solicits, or otherwise facilities purchases by its employees, members, or participants. Pioneer Money Market Trust imposes no front-end sales charge under any circumstances.

3. Each of the Funds (except Pioneer Fund, Pioneer II, and Pioneer Three) has adopted a distribution plan in accordance with rule 12b–1 under the Act. Expenditures of the Funds pursuant to these distribution plans may not exceed 0.25% of average daily net assets (0.15% in the case of Pioneer Money Market Trust). Distribution plans have been proposed for Pioneer Fund, Pioneer II, and Pioneer Three, and these plans will be voted upon at shareholder meetings scheduled for October 15, 1991.

4. The Funds (except Pioneer Money Market Trust) now propose to impose a contingent deferred sales charge (the "Charge") upon the redemption or repurchase of Fund shares [1] if (a) the shares being redeemed were not subject to a sales charge when originally purchased because they were part of a purchase of $1,000,000 or more or were purchased under a Group Plan, and (b) the shares have been held for less than one year. In addition, applicants propose to waive the Charge with respect to certain "Qualifying Redemptions," as described below.

5. The Charge will be imposed on redemptions from Pioneer Money Market Trust only if (a) the applicable shares were originally purchased from another Fund without imposition of a sales charge (per subparagraph (a) of the preceding paragraph) and then exchanged for shares of the Pioneer Money Market Trust, and (b) the shares have been held for a total of less than one year.

6. The Charge will be assessed at the rate of 1% of the lesser of the net asset value of the shares redeemed or the total cost of such shares. The Charge will be deducted from the proceeds of an investor's redemption. The Charge will be paid to the Underwriter or its affiliates to the extent that such entities have paid broker-dealer commissions or other expenses on net asset value sales within the preceding twelve months for which they have not received reimbursement under any applicable distribution plan (as described above) or otherwise. Any portion of a Charge not payable to the Underwriter or its affiliates will be paid to the applicable Fund.

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[1] The application refers to both "redemptions," meaning the direct sale by shareholders to the issuing investment company, and "repurchases," meaning the sale by shareholders to the Underwriter through another broker-dealer. Since the effect of the requested relief is the same for both redemptions and repurchases, this notice will employ the term "redemption" to refer to either such transaction.

7. No Charge will be imposed on shares purchased prior to the date that the requested order is granted. No Charge will be imposed when an investor redeems shares acquired through reinvestment of dividend income or capital gain distributions. Shares subject to the Charge that are exchanged for shares in another mutual fund managed by PMC will continue to be subject to the Charge until one year from the original date of purchase.

8. In determining whether the Charge is applicable to a particular redemption, it will be assumed that the first shares redeemed by an investor will be those shares on which no Charge is imposed, as set forth in the preceding paragraph. Shares subject to the Charge will be redeemed in the order purchased.

9. Applicants seek authority to waive the Charge with respect to the following types of redemptions ("Qualifying Redemptions"): (a) redemptions 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) redemptions in connection with certain distributions from Individual Retirement Accounts ("IRAs"), 403(b) programs,[2] or qualified retirement plans (i) that are on account of a participant's disability or death, (ii) that are part of a series of substantially equal payments made over the life expectancy of the participant or the joint life expectancy of the participant and his beneficiary, or (iii) that constitute a tax-free return of excess contributions described in Code sections 401(a)(8), 401(g), 403(b), 408(d)(4) or (5), 408(k)(6) or 501(c)(18)(D); or (c) redemptions from a 403(b) program or a qualified retirement plan (i) after the participant's service with his employer terminates, (ii) that represent a participant's directed transfer under a defined contribution plan, or (iii) that are in the form of a loan to the participant as described in Code section 72.

10. Applicants request that any order issued by the SEC relating to this application also apply to any Fund that in the future lowers the level of its sales charge structure and to any other open-end investment company created in the future ("Additional Fund") having a sales charge structure equivalent to or lower than that of the Funds and for which the Underwriter serves as principal underwriter.

[2] A 403(b) program is a retirement or deferred compensation arrangement for employees of public schools and certain other tax-exempt organizations.

Applicants' Legal Analysis

1. Section 2(a)(32) of the Act defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the Charge will not prevent a redeeming shareholder from receiving his proportionate share of the current net assets of a Fund, but will merely defer the deduction of a sales load and make it contingent upon an event that may never occur. However, to avoid uncertainty in this regard, applicants request an exemption from the operation of section 2(a)(32) to the extent necessary to impose the proposed Charge and maintain each Fund's qualification as an open-end investment company under section 5(a)(1) of the Act.

2. Section 2(a)(35) of the Act defines sales load as the difference between the price of a security and the amount of the sale proceeds actually invested by the issuer. Mutual funds traditionally have imposed sales loads at the time their securities are purchased. The Charge is paid to the Underwriter solely as a form of compensation for its services and expenses related to offering shares of the Funds for sale to the public. Applicants submit that this arrangement, but for the timing of the imposition of the Charge, is within the section 2(a)(35) definition of sales load. Applicants contend that the deferral of the sales load, and its contingency upon the occurrence of an event that may not occur, does not change the basic nature of this charge, which is in every other respect a sales load. However, to avoid any uncertainty in this regard, applicants request an exemption from section 2(a)(35) to the extent necessary to impose the proposed Charge.

3. Section 22(c) of the Act and rule 22c–1 thereunder preclude a registered investment company issuing a redeemable security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. Applicants submit that imposition of the Charge does not violate section 22(c) or rule 22c–1. The price of a Fund's shares on redemption will be based on current net asset value. The Charge will merely be deducted at the time of redemption in arriving at the net proceeds payable to the shareholder. However, to avoid any uncertainty, applicants request an exemption from section 22(c) and rule 22c–1 to the extent necessary to impose the proposed Charge.

4. Section 22(d) of the Act requires a registered investment company and its principal underwriter to sell the company's securities at a current public offering price described in the company's prospectus. Subject to certain conditions, rule 22d–1 provides an exemption from section 22(d), allowing investment companies to charge different loads to different classes of investors. Traditionally, however, rule 22d–1 has applied to sales loads imposed at the time of purchase. Nevertheless, applicants assert that they will comply with the conditions of rule 22d–1 as if the Charge was a front-end sales load. Accordingly, applicants request an exemption from section 22(d) to the extent necessary to permit the waiver of the Charge as described above.

Applicants' Condition

If the requested order for exemption is granted, applicants expressly agree that they will comply with proposed rule 6c–10 under the Act as currently proposed and as it may be reproposed, adopted, or amended in the future.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–23050 Filed 9–24–91; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration (UNC Incorporated, Common Stock, $0.20 Par Value) File No. 1–5400

September 19, 1991.

UNC Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder to withdraw its Common Stock from listing and registration on the Pacific Stock Exchange, Inc. ("PSE") and Midwest Stock Exchange, Inc. ("MSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's Common Stock is already listed on New York Stock Exchange ("NYSE"). The Company's Board of Directors feels that continued listing and registration of the Common Stock on both PSE and the MSE is unduly burdensome because since the original listing of the Common Stock on

both the PSE and the MSE, trading volume has been relatively low. In addition, continued listing of the Company's Common Stock on the PSE and the MSE is costly to the Corporation.

Any interested person may, on or before October 10, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and/or PSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-23003 Filed 9-24-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Deputy Secretary

[Public Notice 1484]

Determination On Assistance to the Baltic States

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2261) (the "Act"), section 1-201 of Executive Order 12163, as amended, and section 1(a)(1) and section 4(d) of State Department Delegation of Authority No. 145, I hereby authorize the use of up to $5 million in funds made available under chapter 4 of part II of the Act in Fiscal Year 1991 for assistance to the Baltic States, notwithstanding any other provision of law.

This determination shall be reported to Congress immediately and published in the **Federal Register.**

Dated: September 9, 1991.

Lawrence S. Eagleburger,

Deputy Secretary of State.

[FR Doc. 91-22990 Filed 9-24-91; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1485]

Determination Under Section 620(f) of the Foreign Assistance Act of 1961, as Amended

Pursuant to section 620(f)(2) of the Foreign Assistance Act of 1961, as amended, (22 U.S.C. 2370(f)(2)), and section 1-201(a)(12) of Executive Order No. 12163, as amended, I hereby determine that the removal of Estonia, Lativa and Lithuania from the application of section 620(f) of the Foreign Assistance Act, (and other provisions which reference it), for an indefinite period, is important to the national interest of the United States.

This determination shall be reported to the Congress and published in the **Federal Register.**

Dated: September 14, 1991.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 91-22991 Filed 9-24-91; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1486]

Determination on Assistance to the Baltic States

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2261) (the "Act"), and section 1-201 of Executive Order 12163, as amended, I hereby authorize the use of an additional $6 million in funds made available under chapter 4 of part II of the Act in Fiscal Year 1991 for assistance to the Baltic States, notwithstanding any other provision of law.

This determination shall be reported to Congress immediately and published in the **Federal Register.**

Dated: September 13, 1991.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 91-22992 Filed 9-24-91; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from October 21, at 8 a.m., through October 24, 1991, at 4:30 p.m.

ADDRESSES: The meeting will be held at the Residence Inn, 900 Mays Landing Road, Somers Point, NJ., and FAA headquarters, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore H. Davies, Executive Director, ARPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from October 21, at 8 a.m., through October 22, 1991, at 4:30 p.m., at the Residence Inn, 900 Mays Landing Road, Somers Point, NJ. The meeting will reconvene October 23, at 10 a.m., through October 24, at 4:30 p.m., in the MacCracken Room, FAA headquarters, 800 Independence Avenue, SW., Washington, DC. The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 18, 1991. The next quarterly meeting of the FAA ATPAC is planned to be held from January 6-10, 1992, in Monterey, CA. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on September 18, 1991.

Theodore H. Davies,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 91-23035 Filed 9-24-91; 8:45 am]

BILLING CODE 4910-13-M

Establishment of Airport Radar Service Area at Eugene Mahlon Sweet Field Airport, OR; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meeting.

SUMMARY: This notice announces a fact-finding informal airspace meeting to solicit additional information from airspace users and others concerning the establishment of an Airport Radar Service Area (ARSA) at Eugene Mahlon Sweet Field Airport, OR.

DATES: Comments must be received on or before January 18, 1992. The informal airspace meting will be held on Tuesday, November 19, 1991.

ADDRESSES: The informal airspace meeting location is as follows:

Date: Tuesday, November 19, 1991.
Time: 7 p.m.
Location: Lane Community College, Main Campus, Forum Room, 4000 East 30th Street, Eugene, Oregon.

FOR FURTHER INFORMATION CONTACT: George Orr, System Management Branch (ANM–530), Air Traffic Division, Federal Aviation Administration, Northwest Mountain Region Headquarters, 17900 Pacific Highway South, C–68966, Seattle, WA 98168; telephone: (206) 431–2530.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by a representative of the FAA's Northwest Mountain Region. Each participant will be given an opportunity to make a presentation.

(b) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position paper or other handout material relating to the substance of the meeting may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) The meeting will not be formally recorded. However, a summary of the comments made at this meeting will be filed in the docket.

Agenda

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
Closing Comments

Issued in Washington, DC, on September 13, 1991.

William C. Davis,
Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91–23034 Filed 9–24–91; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 166; User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., appendix I), notice is hereby given for the twelfth meeting of Special Committee 166 to be held October 15–16, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of minutes of the eleventh meeting held on June 20–21, 1991, RTCA paper no. 351–91/SC166–72 (enclosed); (3) Approval of minutes of working group meeting held on August 19–21, 1991, RTCA paper no XXX–91/SC166–XX (enclosed); (4) Reports on action items assigned during working group meeting; (5) Assessment of FAA response to RTCA letter requesting data for committee deliberations; (6) Report by chairman of Transition/Economics Working Group activity; (7) Review of user inputs to Chapter 8 of Committee Report; (8) Approval of sixth partial draft of Committee Report, RTCA paper no. XXX–91SC166–XX; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCS Secretariat, 11430 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 16, 1991.

Joyce J. Gillen,
Designated Officer.

[FR Doc. 91–23029 Filed 9–24–91; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 169 Aeronautical Data Link Applications; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. appendix I), notice is hereby given for the fourth meeting of Special Committee 169 to be held October 17–18, 1991, in the RTCA conference room, 1140 Connecticut Avenue, NW, suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (20 Review of meeting agenda; (3) Approval of minutes of the third meeting agenda; (3) Approval of minutes of the third meeting held on August 6–7, 1991, RTCA paper no. XXX–91/SC169–XX (enclosed); (4) Report of Air Traffic Services Data Link Communications Working Group activities; (5) Mitre Corporation briefing on communications security; (6) FAA briefing on testing of systems; (7) FAA briefing on Flight Operations and Air Traffic Management Integration Program; (8) Report of FAA Satellite Implementation Group meeting; (9) Develop proposals to establish new special committees; (10) Establish working groups; (11) Assignment of tasks; (12) Other business; (13) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036· (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 17, 1991.

Joyce J. Gillen,
Designated Officer.

[FR Doc. 91–23027 Filed 9–24–91; 8:45 am]

BILLING CODE 4910–B–M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118-137 MHZ); Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92-463, 5 U.S.C., appendix I), notice is hereby given for the second meeting of Special Committee 172 to be held October 21-23, 1991, in the RTCA Conference Room, 1140 Connecticut Avenue., NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows; (1) Chairman's introductory remarks; (2) Approval of the first meeting's minutes, RTCA paper no. 365-91/SC172-13; (3) Working groups reports; (a) VHF Communications System Recommendations Working Group (WG-1); (b) VHF Data Radio Signal-in-space MASPS Working Group (WG-2); (4) Technical presentations; (5) Working group sessions; (6) Back in plenary; (a) Review working group progress; (b) Task assignment; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, D.C. 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on September 19, 1991.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 91-23028 Filed 9-24-91; 8:45 am]

BILLING CODE 4910-13-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1991, Public Law 101-516, signed into law by President George Bush on November 5, 1990, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Regional Transportation District, Denver, CO	CO-03-0046-00	$143.985	07/23/91
Mass Transit Administration, Baltimore, MD	MD-03-0052-00	1,974,999	08/14/91
Maine Department of Transportation, Maine	ME-03-0027-00	3,437,835	08/08/91
Casco Bay Island Transit District, Portland, ME	ME-03-0028-00	909,999	08/07/91
Westchester Department of Transportation, New York, N.Y.-Northeastern NJ	NY-03-0266-00	3,999,999	08/26/91
Metro Regional Transit Authority, Akron OH	OH-03-0110-00	2,700,000	08/14/91

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
South Coast Area Transit, Oxnard-Ventura-One Thousand Oaks, CA	CA-90-X405-01	$34.400	07/03/91
Southern California Rapid Transit District, Los Angeles-Long Beach, CA	CA-90-X416-01	23,712,000	07/03/91
City of Santa Rosa, Santa Rosa, CA	CA-90-X423-00	661,982	07/27/91
City of Vallejo, San Francisco-Oakland, CA	CA-90-X424-00	190,222	07/03/91
Omnitrans, San Bernardino-Riverside, CA	CA-90-X431-00	7,889,772	07/20/91
City of Gardena, Los Angeles-Long Beach, CA	CA-90-X433-00	524,800	07/01/91
City of La Mirada, Los Angeles-Long Beach, CA	CA-90-X437-00	156,000	07/03/91
City of Corona, San Bernardino-Riverside, CA	CA-90-X446-00	134,000	07/03/91
City of Fresno, Fresno, CA	CA-90-X450-00	2,851,273	07/02/91
City of Pueblo, Pueblo, CO	CO-90-X057-01	66,935	07/02/91
Greater New Haven Transit District, New Haven, CT	CT-90-X185-00	1,179,604	07/05/91
Greater Bridgeport Transit District, Bridgeport, CT	CT-90-X187-00	1,000,000	07/23/91
Milford Transit District, Bridgeport, CT	CT-90-X188-00	120,000	07/05/91
Valley Regional Planning Agency, Bridgeport, CT	CT-90-X189-00	200,000	07/05/91
Middletown Transit District, Hartford, CT	CT-90-X190-00	200,000	07/05/91
Gary Public Transportation Corporation, Chicago, IL-Northwestern IN	IN-90-X153-00	3,188,863	07/02/91
Northwestern Indiana Regional Planning Commission, Chicago, IL-Northwestern IN	IN-90-X154-00	1,383,023	07/02/91
Northern Indiana Commuter Transportation District, Chicago, IL.-Northwestern IN	IN-90-X155-00	2,538,350	07/02/91
City of Henderson Transit, Evansville, IN.-KY	KY-90-X056-00	165,775	07/02/91
Pioneer Valley Transit Authority, Springfield-Chicopee-Holyoke, MA.-CT	MA-90-X124-00	612,999	07/12/91
Suburban Mobility Authority for Regional Transportation, Detroit, MI	MI-90-X140-00	10,016,123	07/26/91

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Obligation date
City of Saginaw System, Saginaw, MI	MI-90-X147-00	1,113,963	07/02/91
Capital Area Transportation Authority, Lansing, MI	MI-90-X148-00	1,198,694	07/02/91
City of Rochester, Rochester, MN	MN-90-X055-00	454,160	07/02/91
Rockland County Department of Public Transportation, New York, NY-Northeastern NJ	NY-90-X206-00	2,382,000	07/03/91
Oneida County, Utica-Rome, NY	NY-90-X210-00	635,834	07/03/91
Southwest Ohio Regional Transit Authority, Cincinnati, OH-KY	OH-90-X152-00	2,300,996	07/02/91
Rhode Island Department of Transportation, Providence-Pawtucket-Warwick, RI-MA	RI-90-X016-00	160,000	07/05/91
Central Midlands Regional Planning Council, Columbia, SC	SC-90-X032-02	75,504	07/01/91
Milwaukee County Transit System, Milwaukee, WI	WI-90-X145-00	8,049,178	07/02/91
City of Madison, Madison, WI	WI-90-X148-00	3,536,758	07/03/91

Issued on September 19, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91-23014 Filed 9-24-91; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 29-91]

Treasury Notes of September 30, 1993, Series AF-1993

Washington, September 19, 1991.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of Title 31, United States Code, invites tenders for approximately $13,000,000,000 of United States securities, designated Treasury Notes of September 30, 1993, Series AF-1993 (CUSIP No. 912827 C4 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 30, 1991, and will accrue interest from that date, payable on a semiannual basis on March 31, 1992, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any posssession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be isued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in ths circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, September 24, 1991, prior to 12 noon, eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, September 23, 1991, and received no late than Monday, September 30, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international; organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all

others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted to an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over pay.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, September 30, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, September 26, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under ths circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-23218 Filed 9-23-91; 12:59 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 30-91]

Treasury Notes of September 30, 1996, Series T-1996

Washington, September 19, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of September 30, 1996, Series T-1996 (CUSIP No. 912827 C5 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 30, 1991, and will accrue interest from that date, payable on a semiannual basis on March 31, 1992, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of

the United States, or any local taxing authority, except as provided in 32 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (32 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in their circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, September 25, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 24, 1991, and received no later than Monday, September 30, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted din full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the hightest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, September 30, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, September 26, 1991. When payment has been submitted with the tender and the purchase price of the Noted allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury

Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-23219 Filed 9-23-91; 8:45 am]

BILLING CODE 4810-40-M

United States Customs Service

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

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

ACTION: Notice of calculation and interest.

SUMMARY: This notice advises the public of the interest rates for overpayments and underpayments of Customs duties. The rates are 9 percent for overpayments and 10 percent for underpayments for the quarter beginning October 1, 1991. This notice is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, (317) 298-1245.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

The rates of interest for the period of October 1, 1991-December 31, 1991, are 9 percent for overpayments and 10 percent for underpayments. These rates will remain in effect through December 31, 1991, and are subject to change on January 1, 1992.

Dated: September 20, 1991.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 91-23079 Filed 9-24-91; 8:45 am]

BILLING CODE 4820-02-M

Office of Thrift Supervision

Davy Crockett Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Davy Crockett Federal Savings Association, Crockett, Texas, on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23072 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

Evergreen Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Evergreen Federal Savings and Loan Association, Charleston, West Virginia on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23073 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

American Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as Conservator for American Federal Savings Bank, Sanford, Maine ("Association"), with the Resolution Trust Corporation as sole receiver for the Association on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23066 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

Columbia Savings and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Columbia Savings and Loan Association, F.A., Beverly Hills, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23067 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

Comfed Savings Bank, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Comfed Savings Bank, F.A., Lowell, Massachusetts ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23068 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

Davy Crockett Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Davy Crockett Federal Savings Bank, Crockett, Texas, OTS No. 8019, on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23070 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

Evergreen Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Evergreen Federal Savings Bank, Charleston, West Virginia, on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23071 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

First Atlantic Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Atlantic Federal Savings and Loan Association, South Plainfield, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23063 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

First Jersey Savings Association, F.A.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Jersey Savings Association, F.A., Wyckoff, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23069 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

Louisiana Savings Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Louisiana Savings Association, F.A., Lake Charles, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23064 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

Sovereign Savings Bank, FSB; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section (d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Sovereign Savings Bank, FSB, Palm Harbor, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 13, 1991.

Dated: September 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23065 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-45; OTS No. 0206]

Union Federal Savings Bank, Evansville, IN; Final Action; Approval of Conversion Application

Notice is hereby given that on September 16, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Union Federal Savings Bank, Evansville, Indiana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Deputy Regional Director, Office of Thrift Supervision, 8250 Woodfield Crossing, Blvd., suite 305, Indianapolis, Indiana 46204.

Dated: September 18, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-23062 Filed 9-24-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans Affairs Scientific Review and Evaluation Board for Health Services Research and Development has been renewed for a two year period beginning September 11, 1991, through September 11, 1993.

Dated: September 11, 1991.

By direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 91–23036 Filed 9–24–91; 8:45 am]

BILLING CODE 8320–01–M

Prosthetics Services Advisory Committee; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Prosthetics Services Advisory Committee will be held October 17–18, 1991, in the Omar N. Bradley Conference Room, Room 1105, 801 I (EYE) Street, NW., Washington, DC.

The purpose of the Prosthetics Services Advisory Committee is to advise the Secretary of Veterans Affairs and the Chief Medical Director on major policy questions raised by VA's responsibility to provide state-of-the-art prosthetics and associated rehabilitation research, development, and evaluation of such technology.

The meeting will convene at 8:30 a.m. and adjourn at 4 p.m. on both October 17 and 18. The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Jim Mayer, Rehabilitation Research and Development Service, phone (202) 535–7283, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to October 11, 1991.

Dated: September 13, 1991.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 91–23037 Filed 9–24–91; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held October 9–11, 1991, Hotel Washington, 15th & Pennsylvania Avenue, Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The session will convene on October 9 with a site visit to Martinsburg, West Virginia, VA Medical Center starting at 9 a.m.–4:30 p.m. The meeting will continue at the Hotel Washington on October 10 from 9 a.m.–4:30 p.m. and October 11 from 9 a.m.–12 noon. All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Committee Coordinator, Department of Veterans Affairs (phone 202/535–7182) prior to October 8, 1991.

Dated: September 19, 1991.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 91–22999 Filed 9–24–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 186
Wednesday, September 25, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 30, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1992 Federal Reserve Board employee salary structure adjustments and merit program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You can call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–23222 Filed 9–23–91; 12:50 pm]

BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on September 23, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, September 30, 1991.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed acquisition of computer equipment within the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 23, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–23223 Filed 9–23–91; 12:50 pm]

BILLING CODE 6210–01–M

NATIONAL SCIENCE BOARD

DATE AND TIME:

October 11, 1991, 8:30 a.m., Closed Session

October 11, 1991, 9:30 a.m., Open Session

PLACE: National Science Foundation, 1800 G Street, NW, Room 540, Washington, DC 20550.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, October 11, 1991

Closed Session (8:30 a.m.–9:30 a.m.)

1. Minutes—August 1991 Meeting.
2. NSB and NSF Staff Nominees.
3. Future NSF Budgets.
4. Grants and Contracts.

Friday, October 11, 1991

Open Session, (9:30 a.m.–12:00 Noon)

5. Chairman's Report.
6. Minutes—August 1991 Meeting.
7. Proposed 1992 Award Review Exemptions.
8. Status of Science & Engineering Indicators Report.
9. Director's Report.
10. Overview of Environmental Sciences Activities.
11. Other Business.

Thomas Ubois,

Executive Officer.

[FR Doc. 91–23274 Filed 9–23–91; 3:54 pm]

BILLING CODE 7555–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, October 7, 1991, and at 9:00 a.m. on Tuesday, October 8, 1991, in Flushing, New York. The October 7 meeting, at which the Board will consider the anticipated Postal Rate Commission's Decision and Further Recommended Decision in Docket No. R90–1 is closed to the public. (See 56 FR 47115, September 17, 1991.)

The October 8 meeting is open to the public and will be held in the first floor auditorium of the Queens Division General Mail Facility, 142–02 20th Avenue, Flushing, NY. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris at (202) 268–4800.

Agenda

October 7—1:00 p.m. (Closed)

1. Consideration of the Postal Rate Commission's Decision and Further Recommended Decision in Docket No. R90–1.

Tuesday Session

October 8—9:00 a.m. (Open)

1. Minutes of the previous Meetings, August 8–9 and September 9, 1991.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Board of Governors 1992 Meeting Schedule. (Chairman Pace)
4. Board of Governors 1992 Budget. (Chairman Pace)
5. Capital Investments.
   a. Remote Computer Reading. (William J. Dowling, Assistant Postmaster General, Engineering and Technical Support Department)
   b. Baltimore, Maryland, Incoming Mail Facility. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
6. Review of Eagle Hub Contract Award Procedure. (Mr. Smith)
7. Report on the Northeast Region. (Mr. Peter Jacobson, Regional Postmaster General)
8. Report on the Brooklyn-Queens Division. (Mr. John W. Duchesne, Field Division General Manager/Postmaster)
9. Review of Capital Investment Program. (Comer Coppie, Senior Assistant Postmaster General, Finance Group)
10. Report on Administrative Services Group Programs. (Mitchell H. Gordon, Senior Assistant Postmaster General, Administrative Services Group)
11. Tentative Agenda for November 4–5, 1991, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 91–23278 Filed 9–23–91; 3:51 pm]

BILLING CODE 7710–12–M

RESOLUTION TRUST CORPORATION

Notice of a Matter To Be Added for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that the following matter will be added to the agenda for consideration at the open meeting of the Board of Directors of the Resolution Trust Corporation scheduled to follow the FDIC open meeting that begins at 2:00 p.m. on Tuesday, September 24, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Discussion Agenda

A. Memorandum re: Operating Plan and Projected Funding Requirement for October 1, 1991 through September 30, 1992.

Requests for further information concerning the meeting may be directed to John M. Buckley, Jr., Executive Secretary of the Corporation, at (202) 416–7282.

Dated; September 23, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–23261 Filed 9–23–91; 3:18 pm]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 56, No. 186
Wednesday, September 25, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-038]

Black Stem Rust

Correction

In proposed rule document 91-22169 beginning on page 46737, in the issue of Monday, September 16, 1991, make the following corrections:

1. On page 46738, in the first column, in the second paragraph, in the first line "international" should read "interstate".

2. On the same page, in the 2d column, in the 18th line insert "rust-resistant" following "grow".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP91-2981-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Correction

In notice document 91-22391 beginning on page 47193 in the issue of Wednesday, September 18, 1991, make the following corrections:

1. On page 47198, in the second column, under Filing number 11., in the docket numbers, "CP91-29997" should read "CP91-2997".

2. On page 47199, in the first column, in the file line at the end of the document, "FR Doc. 91-2391" should read "FR Doc. 91-22391".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM92-1-22-000]

CNG Transmission Corp. Proposed Changes in FERC Gas Tariff

Correction

In notice document 91-21881 appearing on page 46418, in the issue of Thursday, September 12, 1991, the docket number was omitted from the heading and should appear as shown above.

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Correction

In notice document 91-14693 appearing on page 28398 in the issue of Thursday, June 20, 1991, in the first column, in the file line at the end of the document, "FR Doc 91-14692" should read "FR Doc 91-14693".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18176; 812-7721]

Scottish Widows International Fund, et al.; Application

Correction

In notice document 91-13509 beginning on page 26451 in the issue of Friday, June 7, 1991, make the following correction:

On page 26453, in the first column, in the file line at the end of the document, "FR Doc. 91-15309" should read "FR Doc. 91-13509".

BILLING CODE 1505-01-D

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously transmitted documents. Such documents are listed below. Corrections are arranged by the CFR title and part or section number as signed in the appropriate regulatory or nonregulatory section in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-0191]

Brown Stem Rust

Correction

In proposed rule document 91-23130 beginning on page 40-27, in the issue of Monday, September 23, 1991, make the following correction:

1. On page 40-28, in the first column, in the second paragraph, in the last line, "interstate" should read "interstate".

2. On the same page, in the 2d column, in the fifth line from "True resistant" following, "Brown".

[illegible]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP91-2081-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Correction

In notice document 91-22 [illegible] beginning on page 47193 in the issue of Wednesday, September 18, 1991, make the following corrections:

1. On page 47193, in the second column, under Filing Docket 91-, in the docket number "CP91-2080" should read "CP91-2081".

2. On page 47190, in the first column, in the file line at the end of the document, "90 Dkt. RP-0207" should read "91 Dkt. RP-0207".

[illegible]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM92-1-23-000]

CNG Transmission Corp. Proposed Changes in FERC Gas Tariff

Correction

In notice document 91-[illegible] appearing on page 40-18 in the issue of Thursday, September 12, 1991, the docket number was omitted from the

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Correction

In notice document 91-[illegible] appearing on page 25232 in the issue of Thursday, June 20, 1991, in the first column, in the file line at the end of the document, "90 Dkt. 91-1002" should read "91 Dkt. 91-1002".

[illegible]

SECURITIES AND EXCHANGE COMMISSION

[Inst. No. IC-18708; File No. 812-7771]

Scottish Widows International Fund, et al.; Application

Correction

In notice document 91-[illegible] beginning on page 40-31 in the issue of Friday, June 7, 1991, make the following corrections:

1. On page 26457, in the first column, in the file line at the end of the document, "FR Doc. 91-13207" should read "FR Doc. 91-13207".

[illegible]

federal register

Wednesday
September 25, 1991

Part II

Environmental Protection Agency

40 CFR Part 88

Air Programs; Credit Program for California Pilot Test Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[AMS-FRL 3997-5]

Air Programs; Credit Program for California Pilot Test Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Provisions of the Clean Air Act enacted in 1990 require EPA to promulgate a clean-fuel vehicle program in the State of California. The program calls for the establishment of clean-fuel vehicle sales requirements, fuel availability requirements, state opt-in provisions, and, at the discretion of the Administrator, a credit program. This NPRM addresses only the credit program portion of the California Pilot Test Program. The credit program would assist vehicle manufacturers in meeting their clean-fuel vehicle sales requirement. Participation in the credit program by the vehicle manufacturers would be optional.

DATES: Comments on this proposal will be accepted until November 18, 1991.

EPA will conduct a public hearing on this Notice of Proposed Rulemaking on October 18, 1991, at 9 a.m.

Additional information on the public hearing and submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: Interested parties may submit written comments in response to this notice (in duplicate if possible) to Public Docket No. A-91-23, at: Air Docket Section, U.S. Environmental Protection Agency, Attention: Docket No. A-91-23, First Floor, Waterside Mall, room M-1500, 401 M Street SW., Washington, DC 20460.

The public hearing will be held at EPA's Motor Vehicle Emission Laboratory in Ann Arbor, Michigan.

Materials relevant to this notice have been placed in Docket No. A-91-23 by EPA. The docket is located at the above address and may be inspected between 8:30 a.m. and noon and 1:30 and 3:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Machiele, U.S. EPA (SDSB-12), Emissions Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4264.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. California Pilot Test Program

The Clean Air Act Amendments of 1990 (Pub. L. 101-549) added part C to title II of the Clean Air Act entitled "Clean Fuel Vehicles." Under part C of title II. EPA is to establish two programs: A national clean-fueled fleets program in certain nonattainment areas and a clean-fuel pilot program in the State of California (the California Pilot Test Program, hereinafter referred to as the Pilot Program). The clean-fueled fleets program requires certain states to revise their state implementation plans to develop a program that requires a minimum percentage of new vehicles purchased by certain fleet owners to be clean-fuel vehicles. The Pilot Program places requirements on vehicle manufacturers with sales in the State of California to sell a minimum number of clean-fuel vehicles in that state. This NPRM concerns one aspect of the Pilot Program, the vehicle credit program for manufacturers.

The provisions for the Pilot Program are contained in section 249 of the Clean Air Act, as amended (CAA). Subsection (a) states that the purpose of the Pilot Program is "to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas." Subsection (c)(1) mandates that clean-fuel vehicles are to be produced, distributed, and sold (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in the State of California in numbers that meet or exceed 150,000 per year in model years 1996 through 1998, and 300,000 per year in model year 1999 and thereafter. Clean-fuel vehicles purchased by California fleet owners to comply with the clean-fueled fleets program are included as ultimate purchasers for the Pilot Program.

Furthermore, subsection (c)(2) requires the State of California to submit a revision to its State Implementation Plan (SIP) that will require "that clean alternative fuels on which the clean-fuel vehicles required under this paragraph can operate shall be produced and distributed by fuel suppliers and made available in the state of California." Subsection (f) goes on to require EPA to establish a voluntary opt-in program by which States other than California may revise their State Implementation Plans to provide incentives for the sale and use of clean-fuel vehicles and clean alternative fuels.

To assist vehicle manufacturers in meeting their respective shares of the vehicle sales requirements of the Pilot Program, section 249(d)(1) of the CAA gives EPA discretionary authority to establish a credit program. That section provides that EPA "may (by regulation) grant a motor vehicle manufacturer an appropriate amount of credits toward fulfillment of such manufacturer's share" of the sales requirement for the sale of more clean-fuel vehicles than required and/or the sale of clean-fuel vehicles meeting more stringent emission standards. Manufacturer involvement in the credit program would be voluntary. As long as a manufacturer fulfills its sales requirement through its own clean-fuel vehicle sales, there would be no need for the manufacturer to participate in the credit program, unless it chooses to accumulate credits for future use of for trading with other manufacturers. If EPA decides to promulgate a credit program, it must be promulgated within one year of enactment of the Clean Air Amendments of 1990, i.e., November 15, 1991. EPA must administer the program and the vehicle emission credit standards and credit weighting requirements established by EPA for the clean-fueled fleets program must also apply to the Pilot Program.

The vehicles to be sold under the Pilot Program are those that are certified to the clean-fuel vehicle standards to be established pursuant to sections 242 and 243 of the CAA. Section 243 identifies the non-methane organic gas (NMOG), carbon monoxide (CO), nitrogen oxides (NOx), particulate matter (PM), and formaldehyde (HCHO) standards that are to apply to clean-fuel light-duty vehicles (LDVs) and light-duty trucks (LDTs). For LDTs under 6000 lbs gross vehicle weight rating (GVWR) and LDVs, there are two sets of standards, one for Phase I (through model year 2000) and another for Phase II (2001 and subsequent model years). For LDTs above 6000 lbs GVWR, there is one set of standards effective in model year 1998.

Section 242(b) states that clean-fuel vehicles must also meet all other requirements of title II that are applicable to conventional gasoline vehicles of the same category and model-year, except as provided in section 244, which provides that EPA administer and enforce the section 243 standards in the same manner as the State of California, and except to the extent that any such requirement is in conflict with the provisions of part C.

B. CARB's Low-Emission Vehicle and Clean Fuels Program

Many of the provisions of the Pilot Program described above mirror similar requirements established for the State of

California by the California Air Resources Board (CARB). (See documents in the Docket, entitled "Proposed Regulations for Low-Emission Vehicles and Clean Fuels: Staff Report", "Proposed Regulations for Low-Emission Vehicles and Clean Fuels: Technical Report", "Regulations for Low-Emission Vehicles", and "Regulations for Clean Fuels"). CARB's Low-Emission Vehicle program establishes a manufacturer fleet average NMOG exhaust emission requirements and percent of sales requirements for vehicle manufacturers which will result in the sale of a large number of clean-fuel vehicles annually. CARB's program also establishes four levels of clean-fuel vehicle emission standards (called vehicle emission categories), clean-fuel availability requirements, and a vehicle credit program.

CARB's Low-Emission Vehicle program begins in 1994. Clean-fuel vehicle sales are required through the establishment of decreasing fleet average NMOG exhaust emission requirements for manufacturers of vehicles under 6000 lbs GVWR and clean-fuel vehicle sales percentage requirements for manufacturers of trucks up to 14,000 lbs GVWR. The projected sales of clean-fuel vehicles in California resulting from these requirements will likely far exceed the Pilot Program requirements. Based on the projected sales of just LDVs and LDTs under 3750 loaded vehicle weight (LVW), clean-fuel vehicle sales under CARB's program are expected to reach almost 200 percent of the Pilot Program sales requirement in 1996 and 400 percent of the sales requirement in 1999. This sales projection assumes that all clean-fuel vehicles sold to meet CARB's program requirements also meet the federal clean-fuel vehicle requirements contained in the CAA Amendments. If they do not, only the sale of clean-fuel vehicles that meet the federal clean-fuel vehicle requirements will count toward the Pilot Program minimum requirements.

To help facilitate the development of clean-fuel vehicles and reduce the cost to the manufacturers to comply with the requirements of the Low-Emission Vehicle program, CARB has established a vehicle emission credit program. Credits are granted to vehicle manufacturers for the sale of more clean-fuel vehicles than are required and for the sale of clean-fuel vehicles meeting lower emission standards. Credits generated may then be averaged with other vehicle classes (subject to certain limitations), traded to other manufacturers, or banked for future use. Additional details on CARB's credit program are contained in the next section, as well as referenced in the docket.

To the extent clean-fuel vehicles are sold in California which are capable of operating on alternative fuels, CARB has established requirements to make such fuels available for sale. These fuel availability requirements are triggered if at least 20,000 clean-fuel vehicles which can operate on a given fuel are sold. The number of service stations which must make the fuel available for sale is determined as a function of the vehicle manufacturers' projected clean-fuel vehicle sales, with certain minimum requirements (e.g., 90 service stations in the first year).

The exhaust emission standards CARB has established are essentially the same as those required for clean-fuel vehicles under the CAA. CARB has established NMOG, CO, NOx, PM, and formaldehyde exhaust emission standards for its least stringent vehicle emission category, called Transitional Low-Emission Vehicles (TLEVs), which are identical to those required for clean-fuel vehicles under Phase I (through model-year 2000) of the federal program for LDVs and LDTs under 6000 lbs GVWR. Similarly, CARB's exhaust emission standards for its next more stringent vehicle emission category, called Low-Emission Vehicles (LEVs), are identical to those required for clean-fuel vehicles under Phase II of the Pilot Program. For clean-fuel vehicles from 6000 to 8500 lbs GVWR, CARB's exhaust emission standards for its LEV emission category are identical to those required for the Pilot Program (there is no TLEV category for trucks over 6000 lbs). CARB goes further than the CAA requirements, however, by establishing two additional, more stringent vehicle emission categories for all clean-fuel vehicle classes: Ultra-Low-Emission Vehicles (ULEVs) and Zero-Emission Vehicles (ZEVs).

C. Content of NPRM

The language of the CAA indicates that the Pilot Program has been modelled in large part after the provisions of CARB's Low-Emission Vehicle program. The clean-fuel vehicle standards, fuel availability language, and credit program are all examples of this.

As a result of the many similarities between the Pilot Program and CARB's Low-Emission Vehicle program, and the likelihood that CARB's program will result in more clean-fuel vehicles being sold than are required under the Pilot Program, the Pilot Program is unlikely to have a significant environmental impact in California. Thus, EPA intends to fulfill its requirements under the Pilot Program in a manner which will minimize any additional economic burden on vehicle manufacturers or adverse impacts on other entities. To accomplish this, EPA intends to formulate the Pilot Program requirements as similar as possible, given the statutory limitations, to the provisions established by CARB. EPA believes this approach is consistent with the intent of the CAA's Pilot Program.

As noted earlier, this NPRM concerns only the proposed credit program as authorized in section 249(d) of the CAA. If EPA chooses to exercise its authority to establish a vehicle credit program, it must promulgate regulations establishing such a credit program by November 15, 1991 (section 249(d)(2) of CAA). Regulations concerning other aspects of the Pilot Program, including sales requirements, clean-fuel vehicle exhaust emission standards (NMOG, CO, NOx, PM, and HCHO), and other requirements applicable to clean-fuel vehicles, are not required to be promulgated until two years after the enactment of the Clean Air Act Amendments of 1990, i.e., November 15, 1992 (sections 242(a), 249(c), and 249(f) of the CAA). Consequently, these aspects of the Pilot Program will be addressed in a subsequent rulemaking.

The following sections of this NPRM will discuss only the provisions of the Pilot Program that relate to the promulgation of a credit program. For purposes of comparison, CARB's Low-Emission Vehicle credit program is described in more detail. Areas where the credit program for the Pilot Program must differ from that of CARB's credit program are then examined. Following a description of the proposed credit program, its environmental, economic, and energy impacts are discussed. The remaining sections cover public participation, EPA's statutory authority for the rule, administrative designation of the rule, compliance with the Regulatory Flexibility Act, and reporting and recordkeeping requirements.

II. Credit Program

A. Need for a Credit Program

Section 249(d)(1) of the CAA provides EPA with discretionary authority to establish a vehicle credits program. As discussed in the introduction, the vehicles covered in the Pilot Program may be a subset of the vehicles required under CARB's Low-Emission Vehicle program. Assuming this, the magnitude of CARB's program, including its credit program, is such that manufacturers should easily meet the requirements of

the Pilot Program if the federal credit program offers the same or similar flexibilities to the manufacturers as CARB's program. Therefore, a credit program for the Pilot Program should provide no economic benefits beyond those resulting from CARB's program and result in little additional burden even if the two programs are administered separately.

Failure by EPA to promulgate a credits program, however, would eliminate the flexibility afforded by CARB's credit program. The loss of flexibility could significantly increase costs to a manufacturer in complying with both the Pilot Program and CARB's Low-Emission Vehicle program because a manufacturer would be required to satisfy its annual sales requirement through its own production and sales of clean-fuel vehicles. This could cause a manufacturer, who under CARB's program could take advantage of the averaging, trading, and banking options, to incur additional costs due to the absence of these opportunities in the Federal program.

EPA proposes to allow manufacturers flexibility in meeting their clean-fuel vehicle sales requirements by permitting them to produce and sell fewer vehicles which meet more stringent emission standards than required, to purchase credits from other manufacturers in lieu of producing and selling clean-fuel vehicles, or to bank credits for use at a later date in lieu of future clean-fuel vehicle sales. Such flexibility would allow manufacturers to optimize their clean-fuel vehicle development programs in concert with CARB's program.

B. Statutory Requirements

Section 249(d) places a number of statutory requirements on the design of a federal credits program. EPA may issue credits to vehicle manufacturers for the sale of more clean-fuel vehicles than required and for the sale of clean-fuel vehicles that meet more stringent emission standards than those otherwise applicable to clean-fuel vehicles. Further, the more stringent standards for the issuance of credits and the requirements relating to the weighting of credits on the basis of emission reductions which are established by EPA under the provisions of the clean-fueled fleets program are also to apply to the Pilot Program. Credits issued by EPA to manufacturers under the Pilot Program may be transferred to other manufacturers, i.e., they may be traded. Furthermore, any credits issued in accordance with the Pilot Program are to be granted notwithstanding any State law requirements or credits granted with respect to the same vehicles under State law. Despite these statutory requirements, section 249(d)(1)(B) provides EPA with some discretion regarding the credit program for the Pilot Program by stating that the "Administrator may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as he finds appropriate."

C. Credit Provisions of CARB's Low-Emission Vehicle Program

CARB has established a program which requires the sales of clean-fuel vehicles through the establishment of decreasing fleet average NMOG emission requirements for manufacturers of vehicles up to 6000 lbs GVWR and clean-fuel vehicle sales percentage requirements for manufacturers of trucks up to 14,000 lbs GVWR. This separation of the vehicle classes for the purposes of establishing clean-fuel vehicle sales requirements has resulted in CARB actually having two different credit programs. One applies to LDVs and LDTs up to 6000 lbs GVWR. The second program applies to medium-duty vehicles, which, when pertaining to clean-fuel vehicles, are defined in CARB's Low-Emission Vehicle Regulations as any 1992 and subsequent model year heavy-duty low-emission vehicle or ultra-low emission vehicle having a manufacturer's GVWR of 14,000 lbs or less. The clean-fuel vehicle classes subject to the Pilot Program will be a subset of the classes subject to CARB's program since the Pilot Program only includes vehicles up to 8500 lbs GVWR.

1. Credits for Clean-Fuel Vehicles Under 6000 lbs GVWR

For vehicles up to 6000 lbs GVWR, CARB requires each manufacturer to certify its vehicles to conventional and clean-fuel vehicle emission standards in numbers such that the manufacturer's California fleet average NMOG exhaust emission value is less than or equal to the fleet average NMOG exhaust emission requirement for the corresponding model-year, vehicle type, and loaded vehicle weight subclass. In addition to meeting the fleet average NMOG requirement, each manufacturer's fleet must also consist of a required percentage of ZEVs starting in the 1998 model year.

If a manufacturer certifies either of the two loaded vehicle weight subclasses at fleet average NMOG exhaust emission values lower than the corresponding fleet average requirement, the manufacturer may earn emission credits in units of grams per mile equal to the difference between the manufacturer's fleet average and the fleet average requirement, multiplied by the number of vehicles sold in that weight class by the manufacturer. In the same fashion, manufacturers would earn emission debits if the fleet average NMOG value was greater than the fleet average NMOG requirement.

A manufacturer can apply emission credits earned from one of the weight subclasses to the other weight subclass, trade the credits to another manufacturer to be applied to either weight subclass, bank the credits for a later model-year, or any combination thereof. The credits cannot be applied, however, to truck classes over 6000 lbs GVWR.

2. Credits for Clean-Fuel Vehicles 6001 to 14,000 lbs GVWR

For trucks from 6001 to 14,000 lbs GVWR, CARB requires, starting with the 1998 model year, each manufacturer to certify its vehicles to conventional gasoline and clean-fuel vehicle emission standards in numbers such that the manufacturer's fleet consists of a minimum percentage of LEVs and a minimum percentage of ULEVs. There is no sales distinction between the test weight (tw) classes among these vehicles.

A manufacturer may earn credits by selling more clean-fuel vehicles than required by the sales percentages or by selling clean-fuel vehicles that meet more stringent standards than required (e.g., ZEVs). The credits are in units called "vehicle equivalent credits" which have a base unit value of 1.0 equal to one LEV. Credit values for the more stringent clean-fuel vehicles are determined by the additional NMOG reduction that the vehicle achieves compared to the LEV in the same weight class.

A manufacturer can apply the vehicle equivalent credits earned to either of the vehicle emission categories (LEV or ULEV), trade the credits to another manufacturer to be applied to either vehicle emission category, bank the credits for a later model-year, or any combination thereof. The credits cannot be applied, however, to vehicle classes under 6000 lbs GVWR.

3. Summary of CARB's Credit Program

Apart from the differences described above, CARB's two credit programs share many of the same provisions. These include discounting banked credits, granting credits to manufacturers starting in 1992 for selling clean-fuel vehicles before they are

required, allowing additional credit for clean-fuel vehicles that can operate over limited ranges under electrical power, and negative banking. Negative banking allows a manufacturer to certify its fleet even with a credit deficit with the stipulation that the manufacturer must equalize the credit deficit in a future model-year by earning credits or by purchasing credits in an amount equal to the previous credit deficit. In the credit program for vehicles up to 6000 lbs GVWR, credit deficits from model-years 1994 through 1997 must be equalized prior to the end of the 1998 model-year. For 1998 and subsequent model-years, a credit deficit in either CARB credit program must be equalized prior to the end of the following model-year.

D. Statutory Differences Between the Credit Programs of the Pilot Program and CARB's Low-Emission Vehicle Program

The goal of EPA is to promulgate the Pilot Program in a manner that minimizes any additional economic burden on vehicle manufacturers or adverse impacts on other entities due to CARB's Low-Emission Vehicle program. EPA's proposed credit program is designed to be consistent with CARB's credit program wherever it is reasonable and legally justifiable in order to grant vehicle manufacturers the same flexibility in meeting the Pilot Program sales requirements as provided to them in CARB's program. However, statutory provisions of the CAA preclude EPA from promulgating a credit program for the Pilot Program that exactly matches that of CARB's. The differences between the Pilot Program and CARB's credit programs are presented below.

The principal difference between the two programs centers on the weighting of credits. Section 249(d)(3) of the CAA states that clean-vehicle emission credit standards and credit weighting requirements established by the Administrator for the credit program of the clean-fueled fleets program shall also apply to the credit program for the Pilot Program. The emission credit standards for the clean-fueled fleets and the Pilot Program will conform as close as possible to those of CARB pursuant to section 246(f)(4). However, since the weightings used in the proposed clean-fueled fleets program differ from the credit weightings in CARB's program, the weightings for the Pilot Program must also differ from CARB. For reference, a copy of the fleets NPRM, "Fleets Regulation: Federal Fleets Program, Credits Standards and Program, and Exemptions from Transportation Control Measures", has been placed in the docket.

The use of the clean-fueled fleets credit weightings necessitates that the Pilot Program's credits be different than CARB's in two ways. First, fleet average NMOG values used in CARB's program for vehicles under 6000 lbs GVWR would not be used. The fleets program proposes credits based on individual vehicle emission reductions because the CAA required a covered fleet operator to purchase a given percentage of clean-fuel vehicles in each procurement of new vehicles. Therefore, it is appropriate to issue credits in terms of vehicles instead of fleet averages. This method is similar to CARB's credit program for trucks over 6000 lbs GVWR.

Second, in keeping with the flexibility allowed in the CAA, the proposed clean-fueled fleets program allows averaging and trading across all subclasses of LDVs and LDTs, unlike CARB's program which does not allow the transfer of credits between vehicles less than and greater than 6000 lbs GVWR. In adopting the fleets' weighting method, the Pilot Program would allow the manufacturers even greater flexibility in the use of credits than does the CARB program.

Failure by EPA to use the same credit weighting as the clean-fueled fleets would be in conflict with the provisions of the CAA. However, the use of credit weightings different than that of CARB's program are not expected to have a negative impact on vehicle manufacturers or CARB. Rather, the proposed credit program would allow manufacturers even more flexibility due to the allowance of averaging and trading over all classes of vehicles up to 8500 lbs GVWR. This flexibility is in keeping with the intent of the CAA, as well as established EPA policy.

Section 249(c)(1) of the CAA specifies that a certain minimum number of clean-fuel vehicles must be sold each year. To the extent that negative banking is allowed and used extensively in the early years of the program, there is a possibility that the statutory minimum clean-fuel vehicle sales requirement would not be met. This would effectively delay the implementation of the program, which the CAA does not give EPA the authority to do. Even if the statutory minimum number of vehicles were sold each year as a result of CARB's program, negative banking would force the Pilot Program to be dependent on CARB's program to achieve its end, and would not allow EPA to properly enforce the minimum sales requirement should the manufacturers fail to reach it. EPA, therefore, believes that it must require manufacturers meet the minimum sales requirement of paragraph 249(c)(1). One approach to achieving this statutory objective is to prohibit negative banking. As an alternative, EPA might allow negative banking (consistent with the CARB program) so long as manufacturers meet the minimum sales requirement of paragraph 249(c)(1). EPA requests comments on how to carry out this approach and on the relative merits of these two options.

Even without negative banking, one might argue that a banking program could create the possibility that the minimum sales requirement may not be met since credits earned from earlier years could potentially be used in high enough quantities in a later model-year to satisfy the sales requirement without actually selling the minimum number of vehicles. However, since the vehicles that earned credits in earlier years are already in service, the total number of clean-fuel vehicles in use is not reduced by the presence of a banking program and the environmental benefits are not diminished. Therefore, EPA believes that banking credits for future use could result in an acceleration of the implementation of the program, not a delay.

The absence of negative banking should not significantly impact manufacturers. Since a manufacturer's clean-fuel vehicle sales requirements under CARB's plan will be higher than under the Pilot Program (assuming that vehicles sold to comply with CARB's program will also comply with the CAA), a manufacturer can still take advantage of CARB's negative banking provision and sell fewer clean-fuel vehicles in a model-year as long as its sales and/or credits are high enough to fulfill its Pilot Program requirement. On the presumption that CARB's sales requirements will far exceed those of the Pilot Program, an excess supply of Pilot Program credits should result. Consequently, the option of purchasing credits in lieu of meeting the Pilot Program sales requirements should be readily available. In this way, a manufacturer would not be prevented from taking full advantage of CARB's negative banking provision.

In summary, taking into account the above discussion and the economic and environmental impact sections to follow, EPA believes that differences, due to the CAA statutes, between the federal credit program and CARB's will not negatively impact the vehicle manufacturers or CARB's Low-Emission Vehicle program.

E. Proposed Credit Program for Pilot Program

EPA proposes the following credit program to grant vehicle manufacturers similar flexibility in meeting the Pilot Program sales requirements as they have in CARB's program. It is the intent of the EPA to match CARB's credit program wherever it is reasonable and consistent with the requirements of the CAA. Vehicle manufacturer participation in the Pilot Program's credit program would be voluntary. As long as a manufacturer fulfills its sales requirement through its own clean-fuel vehicle sales, there would be no need for the manufacturer to participate in the credit program, unless it chooses to accumulate credits for future use or for trading with other manufacturers.

1. Averaging

The CAA provides that the credit program for the Pilot Program include averaging, which would allow a manufacturer to earn credits from the sale of clean-fuel vehicles that meet more stringent NMOG exhaust emission standards than required. These credits could be applied toward the manufacturer's sales requirement in order to reduce the total number of clean-fuel vehicles it must sell. This should encourage the introduction of clean-fuel vehicles which meet more stringent standards. Averaging across vehicle classes would achieve the same environmental benefit and allow manufacturers similar flexibility as with CARB's program to optimize the development of their clean-fuel vehicle fleet.

The CAA does not specify any weight class restrictions on the use of credits for this program, which provides maximum flexibility to vehicle manufacturers in complying with their sales requirements. Consequently, EPA proposes only one averaging category covering all clean-fuel LDVs and LDTs. This is consistent with the CAA provisions for the clean-fueled fleets credit program and would allow the credit weighting requirements of the fleet program to be carried over to the Pilot Program. Finally, EPA is unaware of any strong environmental justification placing weight class restrictions on the use of the credits given the vehicle classes involved.

2. Trading

Trading of credits between manufacturers is explicitly permitted by section 249(d)(1) of the CAA. Trading would give manufacturers increased flexibility in meeting their sales requirements. Trading would also allow small volume manufacturers the ability to avoid the disproportionately high cost of clean-fuel vehicle development, while still contributing to the overall clean-fuel sales requirements. By purchasing credits through trading, small volume manufacturers would help defray the cost of developing the clean-fuel vehicle technology in proportion to their California sales volumes.

3. Banking

Although the CAA does not require a banking provision in the Pilot Program, EPA is proposing a banking program. EPA believes that a banking provision would encourage both the early development of clean-fuel vehicles and the development of vehicles meeting more stringent emission standards than required. It also facilitates the transition to tighter standards in the 2001 model-year. In addition, banking provides manufacturers the same flexibility as in CARB's program. Each model-year, a manufacturer would be given the option of either trading or banking credits earned that were not used in averaging to meet the current model-year sales requirement.

EPA proposes that banked credits not be subject to a discounting schedule or a finite life. While this is inconsistent with the discounting schedule utilized in CARB's program, it is consistent with the CAA requirements for the clean-fueled fleets program. A banked credit in the Pilot Program shall maintain its original value regardless of when it is used. EPA believes that the flexibility granted by infinite credit life is consistent with the intent of the CAA that the Pilot Program serve as an unique test program to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas.

EPA is also proposing that credits be granted for clean-fuel vehicles sold prior to 1996. The granting of early credits would allow manufacturers to bank credits, which could be used for averaging and trading in the initial years of the Pilot Program to assist in a smooth transition into the program. EPA proposes that clean-fuel vehicles sold in the 1994 model-year be the first vehicles eligible to receive early vehicle credits because 1994 would be the first full model-year after promulgation of all clean-fuel vehicle standards and certification requirements.

4. Credit Standards

Section 242 of the CAA does not require EPA to promulgate clean-fuel vehicle standards until November 15, 1992. However, in order to demonstrate how the proposed credit values were determined, table 1 lists exhaust emission standards that are included for illustrative purposes only. This table is included with the understanding that any changes in EPA's expectation of the standards prior to issuance of this final rule will be factored into the final rule calculations for the credit values. Also, any changes to these emission standards in the subsequent rulemaking on clean-fuel vehicle standards that cause a change in the credit values will be accounted for in the subsequent rulemaking. To simplify the credit calculations, only the 50,000 mile standards are used.

Section 243 of the CAA clearly defines the minimum clean-fuel vehicle NMOG, CO, NOx, PM, and formaldehyde exhaust emission requirements. Sections 243(e) and 243(f) establish a process by which CARB's standards are to replace the standards set forth in section 242 and section 234 in certain circumstances. In addition, section 246(f)(4) of the CAA, which concerns the clean-fueled fleets program, requires EPA to promulgate more stringent exhaust emission standards to be used solely for the purposes of issuing credits. These more stringent standards are to conform as closely as possible to the emission standards established by CARB. Section 249(d)(3) requires that these more stringent standards also apply to the Pilot Program.

Since the clean-fuel vehicle standards established in section 243 of the CAA are identical to those established by CARB in their Low-emission Vehicle program and the more stringent standards to be promulgated for credit purposes must also match those established by CARB, the exhaust emissions standards listed in table 1 for NMOG, CO, NO_x, particulate matter and formaldehyde match the exhaust emission standards established by CARB.

For vehicles up to 6000 lbs GVWR, Phase I clean-fuel vehicles would be equivalent to CARB's TLEV emission category and Phase II would be equivalent to CARB's LEV emission category. When Phrase II starts in the 2001 model-year, TLEVs will no longer qualify as a federal clean-fuel vehicle and will, therefore, not count toward meeting the Pilot Program sales requirements. For vehicles from 6001 and 8500 lbs GVWR, the CAA defines CARB's LEV emission category as a clean-fuel vehicle. The two additional emission categories for credit purposes only are defined to be CARB's ULEV and ZEV classifications.

Clean-fuel vehicles sold in California must meet all of the federal requirements in order to qualify as a

clean-fuel vehicle and count toward the Pilot Program sales requirement. Discussion of these and other certification and enforcement requirements will be contained in the subsequent rulemaking.

5. Credit Weighting

Pursuant to the statutory requirement of the CAA, EPA is proposing the same credit weighting and methodology used to determine the credit values proposed for the clean-fueled fleets program be used for the Pilot Program. Credits generated under the Pilot Program would be provided to vehicle manufacturers for use in meeting the minimum sales requirement of the Pilot Program, whereas credits under the clean-fueled fleets program are provided to fleet operators for use in fulfilling the clean-fuel fleets purchase requirements. For further information on the fleets program, the NPRM "Fleets Regulation: Federal Fleets Program, Credits Standards and Program, and Exemptions from Transportation Control Measures" has been placed in the docket. Although the fleets program includes both light-duty and heavy-duty vehicle classes, only the credit values for LDTs and LDVs are applicable to the Pilot Program.

The clean-fueled fleets proposal includes two sets of credit weightings: one based on NMOG exhaust emission reductions and the other based on a combination of NMOG and NO_X exhaust emission reductions. The set based on NMOG reductions is the required one for the fleets program, but a state covered by the fleets program could choose to use the NMOG and NO_X weighting provision in lieu of the NMOG set if it believed that the choice was appropriate and EPA approved. The State of California, however, has already adopted a credit program based solely on NMOG exhaust emission reductions, apparently in the belief that such a program is appropriate. Although other pollutants are being controlled by the clean-fuel vehicles, credit weightings based solely on NMOG reductions would also be the most consistent with the Pilot Program's goals of controlling pollution in ozone nonattainment areas of the State of California. Therefore, EPA is proposing that weighting factors based on the NMOG reduction method be used in the Pilot Program. EPA seeks comments on other weighting factors, in addition to NMOG exhaust emission reduction, that could be applicable to the Pilot Program. Any weighting factor must also be applicable to the clean-fuel fleets program.

The methodology proposed by the fleets program to determine credit values is directly applicable to the Pilot Program since the requirements for both programs are in terms of numbers of clean-fuel vehicles. The Pilot Program will require a vehicle manufacturer with sales in California to sell a minimum number of clean-fuel vehicles in the State of California. The fleets program will require that a minimum percentage of vehicles purchased by qualifying fleet owners be clean-fuel vehicles.

Section 246(f)(2)(C) of the CAA requires that credits be adjusted with appropriate weighting to reflect the level of emission reductions achieved by clean-fuel vehicles. Standards-based weighting factors depend not only on the more stringent standards EPA is required to promulgate, but also on the standards for conventional vehicles and for the minimum clean-fuel vehicle. The amount of credit assigned to a cleaner vehicle depends on how much further these vehicles go beyond the minimum clean-fuel vehicle in reducing emissions.

As mentioned above, the EPA is using the emission standards listed in table 1 for the purpose of credit calculations, with the understanding that any change in these standards that alters the NMOG exhaust emission reductions will be factored into the credit values either in the final rule or in the clean-fuel vehicle standards rulemaking.

The credit values proposed by the fleets program do not take into account Phase I clean-fuel vehicles because Phase I vehicles are not subject to the fleets program. Therefore, in addition to proposing the adoption of the fleets credit values for 2001 and subsequent model-years, EPA is proposing credit values for the Phase I vehicles of the Pilot Program using the same methodology as used to determine the credit values in the fleets program. The credit values being proposed for Phase I are shown in table 2 and would be effective through model year 2000. The credit values developed for the fleets program and proposed for 2001 and subsequent model-years are shown in Table 3.

A summary of how the proposed credit values were determined for Phase I follows. For a more detailed explanation of the methodology used for determining the credit values, see the NPRM "Fleets Regulation: Federal Fleets Program, Credits Standards and Program, and Exemptions from Transportation Control Measures," in the docket.

To facilitate the exchange of credits across all subclasses of LDVs and LDTs, EPA is proposing that all credit values be normalized to the NMOG exhaust emission reduction required by LDVs. Therefore, the term vehicle-equivalent refers to the reduction calculated for a LDV certified to the minimum clean-fuel standards (TLEV through 2000, LEV 2001 and after). In the case of early/extra clean-fuel vehicle sales, the equation for determining credit value would be:

$$\text{ncredit} = [S^{X}_{cv} - S^{X}_{TLEV,\ LEV,\ ULEV,\ or\ ZEV}] / [S^{LDV}_{cv} - S^{LDV}_{TLEV}] \quad (1)$$

where:

ncredit = normalized credit weighting (LDV equivalent)

$S_{TLEV,\ LEV,\ ULEV,\ or\ ZEV}$ = NMOG standard for TLEV, LEV, ULEV, ZEV

S_{cv} = NMHC standard for conventional vehicle

x = the vehicle class/subclass of interest

For credit issuance involving LEV, ULEV, or ZEV sales which are also being used to demonstrate compliance with the minimum sale requirement, the equation is:

$$\text{ncredit} = [S^{X}_{TLEV} - S^{X}_{LEV,\ ULEV,\ or\ ZEV}] / [S^{LDV}_{cv} - S^{LDV}_{TLEV}] \quad (2)$$

Using these two equations, the resulting credit values through the 2000 model-year are shown in table 2. Since the LDTs over 6000 lbs GVWR will not be included in the minimum sales requirement until the standards for these trucks become effective in the 1998 model-year, the credit values in table 2.2 for these vehicles do not apply until the 1998 model-year. Manufacturers may still earn early credits for LDTs over 6000 lbs GVWR corresponding to the values in table 2.1.

The proposed credit weightings are based solely on emission standards and do not reflect any subclass differences in mileage or vehicle life. Any useful life difference among the clean-fuel vehicle classes that might affect the level of emission reduction is small and, therefore, can be neglected. Since there is not a substantial difference between the useful lives of LDVs and LDTs, and since the trend in these vehicle classes is toward increasing similarity in usage patterns and technology, adjusting the credit does not seem justifiable given the increased complexity that these factors would present. EPA requests comment on this approach, keeping in mind that any adjustment to the credit weighting must be applicable to both the Pilot Program and the clean-fueled fleets program.

Another factor that could be included in the credit values is the potential for vehicles which use electrical power for a limited driving range with another fuel source providing the balance of the power. Called hybrid electric vehicles, these vehicles do not deserve the full credit of a ZEV, but may merit additional credit than the emission

category to which the additional fuel source is certified. One option would be to adapt CARB's method of classifying these vehicles according to their emissions on the fuel source and adjusting the credit value to account for the vehicles' range on electric power. EPA requests comment on this issue.

6. Use of Credits

For credit generating purposes, if a manufacturer sells more clean-fuel vehicles than required for the Pilot Program, it would have the discretion of choosing which clean-fuel vehicles count toward the minimum sales requirement and which clean-fuel vehicles would count as additional clean-fuel vehicles. To determine how much credit is earned due to the additional vehicles, table 2.1 or table 3.1, depending on the model-year, would be used. If any of the vehicles chosen to count toward the minimum sales requirement also qualify as meeting the more stringent emission standards, the manufacturer would also receive credit corresponding to the credit values in table 2.2 or 3.2.

If a manufacturer does not sell the minimum number of clean-fuel vehicles required by the Pilot Program, credits can only be earned for the sale of clean-fuel vehicles meeting the more stringent emission standards. These credits would correspond to the credit values in table 2.2 or 3.2.

In the case where a manufacturer does not sell the minimum number of clean-fuel vehicles required by the Pilot Program, it must purchase sufficient credits in lieu of the clean-fuel vehicles it did not sell. These credit values are in table 2.3 or 3.3. The manufacturer would have the discretion of choosing which of the vehicles it sold were in lieu of selling the required clean-fuel vehicles. The manufacturer would then be required to purchase sufficient credits according to the credit values of the vehicle classes and/or subclasses it chose. Since the EPA is proposing only one trading class for the credits, the manufacturer would be free to apply the obtained credit to any of its vehicle classes and/or subclasses.

Although the sales requirement does not include trucks prior to the 1998 model year, credits earned from the early sale of these vehicles can be used starting in the 1996 model year.

The subsequent Pilot Program rulemaking, which will define the certification and enforcement provisions of the clean-fuel vehicle sales requirement, will also define the enforcement provisions for both reporting requirements and credit shortfall necessary for this rulemaking. These enforcement provisions are common to both rulemakings and are better handled with all other enforcement provisions in the later rulemaking.

7. Sales Requirements

As discussed earlier, EPA will promulgate the sales requirements under a later rulemaking. However, in order to define the basis for granting credits under this rulemaking, EPA believes it necessary to define the term "sales" at this time. Section 249(c)(1) of the CAA defines the minimum sales requirement in terms of vehicles that are "produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California * * *." EPA proposes that "sales" be defined in terms of the quoted statutory language, but requests comment on how this can be implemented in a manner so as to minimize the burdens on manufacturers while adhering to the statutory requirements.

III. Environmental Impact

EPA believes that the proposed credit program would not result in a negative environmental impact and that we have taken all reasonable means to ensure the environmental neutrality of the credit program. Furthermore, the magnitude of CARB's Low-Emission Vehicle program, which requires clean-fuel vehicle sales that far exceed the sales requirements of the Pilot Program, should insure that all environmental benefits envisioned to result from the Pilot Program are achieved.

IV. Economic Impact

The intent of the credit program is to provide flexibility to the vehicle manufacturers in meeting their clean-fuel vehicle sales requirements, in order to provide an economic benefit with no decrease in environmental benefits. Since CARB's Low-Emission Vehicle program will create greater environmental benefits and economic impacts than the Pilot Program, the proposed credit program should not increase the economic burden.

Given that there are two different, but similar credit programs, it is possible, however, that on a manufacturer specific basis some minor negative economic impacts could result. To the extent a manufacturer chooses to participate in the federal credit program, it will have to track and purchase federal credits in addition to California credits in lieu of the clean-fuel vehicles it otherwise would have produced. The trading of Federal and California credits will likely take place together because a manufacturer who needs to purchase federal credits will also be in need of California credits. The cost to purchase credits will be determined by the free-market, but is likely to be no higher than the cost of producing clean-fuel vehicles since a manufacturer would probably produce a clean-fuel vehicle rather than pay more than its production cost for credits. The cost of producing a clean-fuel vehicle is independent of whether there is a federal credit program or not. As a result, whether the manufacturers must purchase only California credits or both federal and California credits, the cost is expected to be the same.

As a result, EPA believes that the proposed credit program is such that negative economic impacts should not occur. Therefore, the cost of clean-fuel vehicles to the consumer is expected to be no different than what will result from the implementation of CARB's program.

V. Energy Impact

The implementation of a credit program for the Pilot Program should have a minimal energy impact. Because manufacturers can earn more credit for vehicles which meet more stringent standards, fewer clean-fuel vehicles could theoretically be sold. The result would be a smaller fleet of clean-fuel vehicles than if no credit program was available. This reduction in fleet size would also reduce the volume of each particular clean-fuel.

The more stringent the vehicle standards, however, the more likely the vehicles are to be powered by a fuel other than gasoline. EPA is currently unaware of any reliable projections of the type of vehicles, the fuel used, or the energy efficiency of the clean-fuel vehicles that will be sold.

As discussed in the environmental and economic impact sections, due to the size CARB's program, no fuel volume changes resulting from this credit program should occur. The Pilot Program should not affect the choice of clean-fuel vehicles and the choice of fuels used beyond what CARB's program will require. EPA, therefore, believes there will be no adverse energy impact associated with this NPRM.

VI. Public Participation

EPA desires full public participation in arriving at its final decisions, and therefore solicits comments on all aspects of this proposal. Wherever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific

suggestions for changes to any aspect of the regulations that they believe need to be modified or improved. All comments should be directed to EPA Air Docket, Docket No. A-91-23 (See "ADDRESSES"). The official comment period will last for 30 days following the public hearing for this rulemaking.

Any person desiring to testify at the public hearing [see "DATES"] should notify the contact person listed above of such intent at least 7 days before the hearing date. Persons wishing to testify at the hearing should also provide an estimate of the time required for their presentation and notification of any need for audio/visual equipment. It is suggested that sufficient copies of the statement of material to be presented be brought to the hearing for distribution to the audience. In addition, a sign-up sheet will be available at the registration table the morning of the hearing for scheduling of the order of testimony.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA Air Docket, Docket No. A-91-23 (see "ADDRESSES").

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

VII. Statutory Authority

The statutory authority for today's proposal is granted to EPA by sections 241, 246, 249, and 301(a) in title II, part C of the Clean Air Act, as amended; 42 U.S.C. 7581, 7586, 7589, and 7601(a).

VIII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. The elements of this rulemaking package do not constitute a major rule according to the established criteria. The implementations of this credit will not increase the cost of clean-fuel vehicles, but will instead allow manufacturers another option which will help produce clean-fuel vehicles at lower costs. Therefore, it has been determined that this proposal does not constitute a "major" regulation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments have been placed in the public docket for this rulemaking.

IX. Compliance with Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, the Administrator is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. There will not be a significant impact on a substantial number of small business entities due to the credit program for the Pilot Program. The credit program will be beneficial for small volume manufacturers in meeting any sales requirement issued against them due to the option of purchasing credits in lieu of undertaking the financial investment to develop clean-fuel vehicles. For this reason, the rules contained in this NPRM will not have a significant adverse economic impact on a substantial number of small entities.

X. Reporting and Recordkeeping Requirements

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1590.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM-223Y); Washington, DC 20460 or by calling (202) 260-2740.

Public reporting burden for this collection of information is estimated to be 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

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; EPA; 401 M St., SW. (PM-223Y); 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." The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 88

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 4, 1991.

William K. Reilly,

Administrator.

Appendix to Preamble—Tables

TABLE 1.— EXHAUST EMISSION STANDARDS FOR CLEAN-FUEL VEHICLES 50,000 MILE STANDARDS

Vehicle emission *category* standards (g/mi)	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT <6000 gvwr >3750 lvw <5750 lvw	LDT [2] >6000 gvwr ≤3750 tw	LDT [2] >6000 gvwr >3750 tw <5750 tw	LDT [2] >6000 gvwr ≤5750 tw
CV:					
NMHC	0.25	0.32	0.25	0.32	0.39
CO	3.4	4.4	3.4	4.4	5.0
NOx	0.4	.7	.4	.7	1.1

TABLE 1.— EXHAUST EMISSION STANDARDS FOR CLEAN-FUEL VEHICLES 50,000 MILE STANDARDS—Continued

Vehicle emission *category* standards (g/mi)	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT <6000 gvwr >3750 lvw <5750 lvw	LDT [2] >6000 gvwr ≤3750 tw	LDT [2] >6000 gvwr >3750 tw <5750 tw	LDT [2] >6000 gvwr ≤5750 tw
HCHO					
TLEV:			(1)	(1)	(1)
NMOG	.125	.160			
CO	3.4	4.4			
NOx	.4	.7			
HCHO	.015	.018			
LEV:					
NMOG	.075	.100	.125	.160	.195
CO	3.4	4.4	3.4	4.4	5.0
NOx	.2	.4	.4	.7	1.1
HCHO	.015	.018	.015	.018	.022
ULEV:					
NMOG	.040	.050	.075	.100	.117
CO	1.7	2.2	1.7	2.2	2.5
NOx	.2	.4	.2	.4	.6
HCHO	.008	.009	.008	.009	.011
ZEV:					
NMOG	.0	.0	.0	.0	.0
CO	.0	.0	.0	.0	.0
NOx	.0	.0	.0	.0	.0
HCHO	.0	.0	.0	.0	.0

[1] There is no TLEV category for this vehicle class.
[2] The clean-fuel vehicle standards are not effective until the 1998 model-year.
CV=Conventional gasoline vehicle.

TABLE 2.—CREDIT TABLE FOR PHASE I

VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

PHASE I: EFFECTIVE THROUGH 2000 MODEL-YEAR

TABLE 2.1—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT [2] >6000 gvwr ≤3750 tw	LDT [2] >6000 gvwr >3750 tw ≤5750 tw	LDT [2] >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	1.40	1.76	1.00	1.28	1.56
ULEV	1.68	2.16	1.40	1.76	2.18
ZEV	2.00	2.56	2.00	2.56	3.12

TABLE 2.2—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT [2] >6000 gvwr ≤3750 tw	LDT [2] >6000 gvwr >3750 tw ≤5750 tw	LDT [2] >6000 gvwr >5750 tw
TLEV	0.00	0.00	(1)	(1)	(1)
LEV	.40	.48	0.00	0.00	0.00
ULEV	.68	.88	.40	.48	.62
ZEV	1.00	1.28	1.00	1.28	1.56

TABLE 2.3—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT [2] >6000 gvwr ≤3750 tw	LDT [2] >6000 gvwr >3750 tw ≤5750 tw	LDT [2] >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV			1.00	1.28	1.56

[1] There is no TLEV category for this vehicle class.
[2] The clean-fuel vehicle standards are not effective until the 1998 model-year.

TABLE 3.—CREDIT TABLE FOR PHASE II

VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

PHASE II: EFFECTIVE 2001 AND SUBSEQUENT MODEL-YEARS

TABLE. 3.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvw >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.83	1.43	1.83	2.23

TABLE 3.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	.20	.28	.29	.34	.45
ZEV	.43	.57	.71	.91	1.11

TABLE 3.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11

For reasons set forth in the Preamble, a new Part 88 of title 40 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 88—CLEAN FUEL VEHICLES

Subpart A—Emission Standards for Clean Fuel Vehicles

Sec.
88.101–94 Definitions.
88.102–94 Abbreviations.

Subpart B—California Pilot Test Program

88.201–94 Scope.
88.202–94 Definitions.
88.203–94 Abbreviations.
88.205–94 California Pilot Test Program Credits Program.

Tables to Subpart B of Part 88

Authority: Secs. 241, 246, 249, 301(a), Clean Air Act as Amended; 42 U.S.C. 7581, 7589, 7586, and 7601(a).

Subpart A—Emission Standards for Clean-Fuel Vehicles

§ 88.101–94 Definitions.

The definitions in 40 CFR part 86 also apply to this subpart. The definitions of this section apply to all of part 88.

Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Low-Emission Vehicle standard, or any heavy-duty vehicle with an engine conforming to the applicable Low-Emission Vehicle standard.

Non-methane Organic Gas is defined as in section 241(3) Clean Air Act as amended (42 U.S.C. 7581(3)).

Transitional Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Transitional Low-Emission Vehicle standard.

Ultra Low-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the Ultra Low-Emission Vehicle standard, or any heavy-duty vehicle with an engine conforming to the Ultra Low-Emission Vehicle standard.

Zero-Emission Vehicle means any light-duty vehicle or light-duty truck conforming to the applicable Zero-Emission Vehicle standard, or any heavy-duty vehicle conforming to the applicable Zero-Emission Vehicle standard.

§ 88.102–94 Abbreviations.

The abbreviations of Part 86 of this chapter also apply to this subpart. The abbreviations in this section apply to all of part 88.

LEV—Low-Emission Vehicle.
NMOG—Non-Methane Organic Gas.
TLEV—Transitional Low-Emission Vehicle.
ULEV—Ultra Low-Emission Vehicle.
ZEV—Zero-Emission Vehicle.

Subpart B—California Pilot Test Program

§ 88.201–94 Scope.

Applicability. The requirements of this subpart shall apply to the following:

(a) State Implementation Plan revisions for the State of California pursuant to compliance with section 249 of the Clean Air Act, as amended in 1990 (40 CFR part 52, subpart F).

(b) Vehicle manufacturers with sales in the State of California.

§ 88.202–94 Definitions.

(a) The definitions in subpart A of this part also apply to this subpart.

(b) The definitions in this section shall apply beginning with the 1994 model year.

Averaging for clean-fuel vehicles means the sale of clean-fuel vehicles that meet more stringent standards than required, which allows the manufacturer to sell fewer clean-fuel vehicles than would otherwise be required.

Banking means the retention of credits, by the manufacturer generating the emissions credits, for use in future

model-year certification as permitted by regulation.

Sales means vehicles that are produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in the State of California, including owners of covered fleets.

Trading means the exchange of credits between manufacturers.

§ 88.203-94 Abbreviations.

The abbreviations in Subpart A of this part and in 40 CFR Part 86 apply to this subpart.

§ 88.205-94 California Pilot Test Program Credits Program.

(a) *General.* (1) The Administrator shall administer this credit program to enable vehicle manufacturers who are required to participate in the California Pilot Test Program to meet the clean-fuel vehicle sales requirements through the use of credits. Participation in this credit program is voluntary.

(2) All credit-generating vehicles must meet the applicable emission standards and other requirements contained in Subpart A of this part.

(b) *Credit generation.* (1) Credits may be generated by any of the following means:

(i) Sale of qualifying clean-fuel vehicle earlier than required. Manufacturers may earn these credits starting with the 1994 model year.

(ii) Sale of a greater number of qualifying clean-fuel vehicles than required.

(iii) Sale of qualifying clean-fuel vehicles that meet more stringent emission standards than those required.

(2) For light-duty vehicles and light-duty trucks, credit values shall be determined in accordance with the following:

(i) For model-years through 2000, credit values shall be determined in accordance with table B-1 of this subpart.

(ii) For the 2001 and subsequent model-years, credit values shall be determined according to table B-2 of this subpart. The sale of light-duty vehicles classified as Transitional Low-Emission Vehicles shall not receive credits starting in model year 2001.

(iii) For the calculation of credits for the sale of more clean-fuel vehicles than required, the manufacturer shall designate which sold vehicles count toward compliance with the sales requirement. The remaining balance of vehicles will be considered as sold beyond the sales requirement for credit calculations.

(3) Vehicles greater than 8500 lbs. gvwr may not generate credits.

(c) *Credit use.* (1) All credits generated in accordance with these provisions may be freely averaged, traded, or banked for later use. Credits may not be used to remedy any nonconformity determined by enforcement testing.

(2) There will be one averaging and trading group containing light-duty vehicles and light-duty trucks.

(3) A vehicle manufacturer desiring to demonstrate full or partial compliance with the sales requirements by the redemption of credits, shall surrender sufficient credits, as established in this paragraph (c). In lieu of selling a clean-fuel vehicle, a manufacturer shall surrender credits equal to the credit value for the corresponding vehicle class and model year found in table B-1.3 or table B-2.3 of this subpart.

(d) *Participation in the credit program.* (1) During certification, the manufacturer shall:

(i) Declare its intent to participate in this credit program.

(ii) Calculate the projected credits, if any, based on quarterly sales projections.

(2) Based on information from paragraph (d)(1) of this section, each manufacturer's certification application under this section must demonstrate:

(i) That at the end of the model-year production, there is a net vehicle credit balance of zero or more with any credits obtained from averaging, trading, or banking.

(ii) It is recommended that the source of the credits to be used to comply with the minimum sales requirements be stated. All such reports should include all credits involved in averaging, trading, or banking.

(3) During the model year, manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the sales requirement is achieved at the end of the model year.

(ii) Provide the end of model year reports required under this subpart.

(iii) Maintain the quarterly records required under this subpart.

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other verification steps deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be adjusted by EPA.

(i) If EPA review of a manufacturer's end-of-year report indicates an inadvertent credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance to zero.

(ii) If within 90 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (i.e., resulting in a positive credit balance) or if the manufacturer discovers such an error within 90 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(e) *Averaging.* Averaging will only be allowed between clean-fuel vehicles under 8500 lbs gvwr.

(f) *Banking*—(1) *Credit deposits.* (i) Under this program, credits can be banked starting in the 1994 model-year.

(ii) Manufacturers may bank credits only after the end of the model year and after EPA has reviewed their end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdrawals.* (i) After being generated, banked/reserved credits shall be available for use and shall maintain their original value.

(ii) Manufacturers withdrawing banked credits shall indicate so during certification and in their credit reports.

(3) Banked credits may be used in averaging, trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but unreviewed by EPA may also be used. However, they may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

Tables to Subpart B of Part 88

TABLE B-1.—CREDIT TABLE FOR PHASE I

VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

PHASE I: EFFECTIVE THROUGH 2000 MODEL-YEAR

TABLE B-1.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV	1.40	1.76	1.00	1.28	1.56
ULEV	1.68	2.16	1.40	1.76	2.18
ZEV	2.00	2.56	2.00	2.56	3.12

TABLE B-1.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
TLEV	0.00	0.00	(1)	(1)	(1)
LEV	.40	.48	0.00	0.00	0.00
ULEV	.68	.88	.40	.48	.62
ZEV	1.00	1.28	1.00	1.28	1.56

TABLE B-1.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
TLEV	1.00	1.28	(1)	(1)	(1)
LEV			1.00	1.28	1.56

[1] There is no TLEV category for this vehicle class.

TABLE B-2.—CREDIT TABLE FOR PHASE II

VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

PHASE II: EFFECTIVE 2001 AND SUBSEQUENT MODEL-YEARS

TABLE B-2.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11
ULEV	1.20	1.54	1.00	1.26	1.56
ZEV	1.43	1.83	1.43	1.83	2.23

TABLE B-2.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT ≤6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	0.00	0.00	0.00	0.00	0.00
ULEV	.20	.28	.29	.34	.45
ZEV	.43	.57	.71	.91	1.11

TABLE B-2.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

Vehicle emission category	LDV & LDT ≤6000 gvwr ≤3750 lvw	LDT <6000 gvwr >3750 lvw ≤5750 lvw	LDT >6000 gvwr ≤3750 tw	LDT >6000 gvwr >3750 tw ≤5750 tw	LDT >6000 gvwr >5750 tw
LEV	1.00	1.26	0.71	0.91	1.11

[FR Doc. 91-22624 Filed 9-24-91; 8:45 am]

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federal register

Wednesday
September 25, 1991

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia; Final Rule

14 CFR Part 161

Notice and Approval of Airport Noise and Access Restrictions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26433; Amendment No. 91-225]

RIN 2120-AD96

Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airplane operating rules to require a phased transition to an all Stage 3 fleet operating in the 48 contiguous United States and the District of Columbia by December 31, 1999. These revisions implement sections 9308 and 9309 of the Airport Noise and Capacity Act of 1990. This rule places a cap on the number of Stage 2 airplanes allowed to operate in the contiguous United States and provides for a continuing reduction in the population exposed to noise from Stage 2 airplanes.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. William Albee, Manager, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3553.

SUPPLEMENTARY INFORMATION:

Availability of NPRM's and Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On November 5, 1990, Congress passed the Airport Noise and Capacity Act of 1990 (the statute). In the statute, Congress recognized that a national aviation noise policy was necessary because of the national and international nature of our aviation system.

A critical part of that national policy was set by Congress when it directed the elimination of Stage 2 airplanes operating in the contiguous United States. Specifically, the statute prohibits the operation of Stage 2 airplanes with a maximum weight of more than 75,000 pounds to or from an airport in the 48 contiguous United States and the District of Columbia after December 31, 1999. The statute provides limited authority to the Secretary of Transportation (the Secretary) to grant waivers to allow operation of a limited number of Stage 2 airplanes until December 31, 2003, if the Secretary finds that granting such waivers is in the public interest. The statute also requires the Secretary to establish a schedule of phased-in compliance with the statutory prohibition.

The Secretary delegated the authority to issue regulations implementing these statutory provisions to the Administrator of the Federal Aviation Administration (FAA).

Subsequently, the FAA published a Notice of Proposed Rulemaking (NPRM) (56 FR 8628, February 28, 1991), inviting all interested persons to submit written comments, data, views, and arguments on the proposed regulations. The comment period closed April 15, 1991.

The FAA held three public meetings to solicit further discussion of the proposed rules. These meetings were held in Washington, DC on March 5 and 6, in Chicago, IL on March 11 and 12, and in Seattle, WA on March 14 and 15, 1991. Transcripts of the proceedings of each meeting were placed in Docket No. 26433 and were considered as comments to this rulemaking.

The FAA received over 300 separate written comments to the NPRM representing a wide range of interests, including the aviation, environmental, and financial communities. In addition, numerous postcards responding to one particular issue were received.

Due to the large number of comments received, not every comment is addressed individually in the preamble, although all comments have been considered. Comments that address the same or related issues are grouped together. Proposals retained in the final rule generally are not discussed in detail so that the reader may focus on provisions that have changed from the proposed rule.

The requirements proposed in the NPRM were designed to provide several alternatives for the FAA to choose among to implement the Congressional mandate to impose an interim compliance schedule.

Changes in this final rule reflect the FAA's and many commenters' concerns that the regulation provide as much flexibility as possible for airplane operators while at the same time achieve noise benefits for communities and individuals. To the extent possible, the final rule is intended to reduce the cost to the aviation industry for the interim compliance requirements and realize the benefits to affected parties, while maintaining air transportation service to all affected communities.

Final Rule—Overview

The Airport Noise and Capacity Act of 1990 states that after December 31, 1999, no person may operate a civil subsonic turbojet airplane certificated at more than 75,000 pounds in the contiguous United States unless that airplane meets Stage 3 noise levels. That statute also requires that a schedule of phased-in compliance be established.

Following its review of the comments, the FAA has determined that it is necessary to make a number of significant modifications to the compliance method proposed in the NPRM. These changes respond to suggestions made by commenters and, in general, are intended to increase the flexibility of Stage 2 airplane operators in finding the best means to comply with the transition to an all Stage 3 fleet required by this final rule. The following is a summary of the major changes incorporated in the final rule.

Additional Compliance Flexibility

The NPRM proposed to require a phaseout of Stage 2 airplanes with a maximum certificated weight of more than 75,000 pounds. As proposed, U.S. operators would reduce their Stage 2 fleets by 25 percent after December 31, 1994, 50 percent after December 31, 1996, and 75 percent after December 31, 1998. These reductions could take place through elimination or noise abatement retrofitting of Stage 2 airplanes. By statute, all Stage 2 operations in the United States must end by December 31, 1999, although U.S. air carriers are authorized to request waivers under specified conditions. The gradual phaseout of Stage 2 airplanes proposed in the NPRM would provide an increasing percentage of the fleet being composed of quieter Stage 3 airplanes, and a corresponding reduction in the number of people living in areas adversely affected by Stage 2 airplane noise.

A large percentage of air carriers, however, argued that the proposed rule should be modified to permit substantially greater flexibility in making the transition to an all-Stage 3 fleet. After further consideration of all

the comments and the economic condition of the aviation industry, the FAA is persuaded that greater flexibility is needed, particularly by carriers with limited current financial resources. Accordingly, this final rule incorporates three provisions to improve compliance flexibility, thereby reducing the compliance costs for airlines and other Stage 2 operators. These three provisions are discussed below.

Compliance Schedule—First and most important, operators will have the choice of complying with either the phaseout schedule proposed in the NPRM or an alternative based upon achieving a minimum number of Stage 3 airplanes to meet certain fleet mix percentages. Specifically, after December 31, 1994, each operator must either reduce the number of Stage 2 airplanes it operates by 25 percent or operate a fleet composed of not less than 55 percent Stage 3 airplanes. After December 31, 1996, each operator must either reduce its Stage 2 airplanes by 50 percent or operate a fleet composed of not less than 65 percent Stage 3 airplanes. After December 31, 1998, at least 75 percent of an operator's Stage 2 airplanes must be eliminated, or its overall fleet must be 75 percent Stage 3 airplanes. Some operators will find the NPRM's phaseout schedule less costly; others, particularly those that are growing, are likely to choose the fleet mix method that is included in the final rule. The FAA has found that this combination of methods will result in significant cost savings for the industry while still preserving environmental gains. Since the greatest environmental gains occur near the end of the phaseout period, there is no ultimate difference in the two approaches, and under both approaches, steady progress toward an all Stage 3 fleet is achieved throughout the decade.

Substantial flexibility is achieved by allowing each U.S. operator and foreign air carrier to determine the date it uses to establish its base level of Stage 2 airplanes from which to reduce, and to choose the Stage 2 airplanes that will continue to operate past each compliance date. These provisions allow for variances in fleet planning and for fleet composition that is affected by seasonal operations and such circumstances as the war in the Persian Gulf.

Carry-Forward Credits for Early Compliance—The final rule provides a carry-forward credit system for early compliance. An operator that exceeds the requirements of the rule at one of the earlier compliance dates may earn a credit for its own use at a later interim compliance date. For example, if an operator would be required to eliminate 25 Stage 2 airplanes by December 31, 1994, but instead eliminates 35, it may claim a 10-airplane credit against its compliance with the 1996 or 1998 requirements. This will allow each operator to better manage the transition period in accordance with its individual fleet needs. Because no transfers of such credits between operators will be allowed, the concerns expressed in the comments that transfers of noise credits between operators will result in noise "dumping" in some areas of the country is eliminated. This is a limited version of the credit system contemplated in one part of the NPRM. No credits may be applied to the 1999 statutory deadline.

Waivers—The final rule provides that an operator may apply to the Secretary for a waiver from an interim compliance requirement when it can show that such a waiver is in the public interest. Waivers from interim compliance requirements may be granted based on technological or financial constraints that make compliance onerous for individual operators or that adversely affect competition or service to small communities. The final rule describes the standards for these waivers and for waivers from the final compliance date. Waivers from the final compliance date are expressly provided for by the statute.

Because the waivers would be granted upon individual request, the system is able to respond to the comments of airports and their neighbors that there be no broad exemption from the compliance requirements. Individually requested waivers should also reduce concerns that the proposed transfer of Stage 2 operating rights could have shifted the noise burden from one area of the country to another, or cause an anticompetitive transfer of resources from the "have nots" to the "haves." The transfer of Stage 2 operating rights was not adopted in the final rule.

Treatment of Foreign Air Carriers

The NPRM proposed that each U.S. operator would reduce the number of Stage 2 airplanes in its fleet, while each foreign air carrier would reduce the number of its Stage 2 operations to the United States, irrespective of the number of Stage 2 airplanes on its U.S. operations specifications. Some foreign air carriers objected, noting that this system discriminates against them. As discussed in detail in this document, the final rule incorporates as much equality of treatment as possible, including the requirement that both U.S. operators and foreign air carriers comply with the transition by modifying the composition of their fleets.

Nonaddition Rule

The statutory nonaddition rule essentially prohibits the operation in the contiguous United States of any Stage 2 airplane that was purchased by a U.S. person after November 5, 1990, the date of the statute. The statutory nonaddition rule is codified into these regulations as a rule that describes those Stage 2 airplanes that are eligible for operation in the contiguous United States. All Stage 2 airplanes that were owned by U.S. parties on and since November 5, 1990, are eligible for operation. Foreign-owned Stage 2 airplanes that were leased to U.S. persons on September 25, 1991 may also be operated through the term of their leases. U.S.-owned airplanes that were leased to foreign airlines have 6 months to return to the U.S. after the expiration of those leases. Foreign air carriers and foreign operators may also continue to operate their owned or leased Stage 2 airplanes. All Stage 2 airplanes, of course, are subject to the transition rules.

Discussion of Comments—General

Part 36 Noise Levels

NPRM: The proposed rule stated noise criteria in terms of those found in 14 CFR part 36.

Comments: Several groups of citizens concerned about airplane noise state that not all Stage 3 airplanes are equal, in that some Stage 3 airplanes may be noisier than some Stage 2 airplanes during certain operations. A commenter requests that Stage 3 airplanes be further classified as to their noise output, and that the regulation contain quieter design standards for future airplane production and standards that measure the effect of noise on people. A group asserts that the use of the term "Stage 3 noise levels" in the statute means Stage 3 without any of the tradeoffs allowed in part 36, and that the proposed regulations are therefore less strict than the statute. One locality states that the FAA should insist on the accelerated development of Stage 3 airplane noise reduction equipment. Several operators comment that the final rule should include specific reference to part 36 as it existed on November 5, 1990, the date of the statute.

Final Rule: Section 9308(h)(2) of the statute defines "Stage 3 noise levels" as those set out in 14 CFR part 36 in effect on November 5, 1990. The definition of "Stage 3 noise levels" as it is used in these regulations reflects this provision

of the statute. Since the tradeoff provisions are part of part 36, the FAA does not agree that the statute is stricter than the regulation. Both the statute and the regulation cite part 36 as a whole.

Accordingly, the FAA cannot use any stricter standards than those contained in part 36 for this regulation, nor can it "distinguish" between Stage 3 airplanes that all meet the criteria of part 36. Further, part 36 is an aircraft certification standard. These regulations represent a change in the airplane operating rules, and it is beyond the scope of the NPRM to address requested changes to the noise certification standards of part 36.

While the FAA encourages and supports the development of noise reduction technology for all airplanes, it cannot mandate that such technology be produced by the aviation industry. As required by section 611 of the Federal Aviation Act (FAAct) the FAA will continue to establish noise certification standards that are economically reasonable and technologically practicable.

Weight Criteria

NPRM: The NPRM proposed to limit the applicability of the phaseout and nonaddition requirements to civil subsonic turbojet airplanes with a maximum certificated weight of more than 75,000 pounds.

Comments: Several commenters request that the rule be expanded to include all Stage 2 airplanes regardless of certificated weight. These commenters state that a comprehensive noise policy must include and regulate all airplanes. They contend that smaller Stage 2 airplanes are part of the noise problem. Some commenters request that smaller Stage 2 airplanes remain exempt from the rule because they are a small part of the problem and because compliance with a phaseout would place undue economic hardship on the operators of these airplanes.

Final Rule: The statute set out the intent of Congress and describes the airplanes that are subject to the rule as those that have a maximum certificated weight of more than 75,000 pounds. This final rule reflects Congress' intent.

Violations

NPRM: The proposed rule restated the statutory provision:

> Violations of (sections 9308 and 9309) and regulations issued to carry out such sections shall be subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958 for violations of title VI.

The NPRM stated that the final regulations would be enforced in accordance with FAR part 13, Investigations and Enforcement Procedures.

Comment: A few commenters request that specific enforcement plans be included for enforcement of the nonaddition rule, including prohibiting aircraft purchased after November 5, 1990, from being registered in the United States.

Final Rule: The nonaddition rule does not prohibit a U.S. person from owning a Stage 2 airplane purchased from a non-U.S. person after November 5, 1990. The rule limits only the operation of such airplane in the contiguous United States. Section 501(b) of the FAAct requires that if the owner of an aircraft meets certain criteria, that aircraft will be added to the U.S. registry; the statute did not amend the FAAct to prohibit such registration. Registration alone does not permit these aircraft to operate in the United States; all airplanes are subject to the operating rules of part 91. The operational restrictions implementing the nonaddition rule have been added as § 91.855.

Comment: A commenter cites section 9307 of the statute as support for the fact that an airport operator may be denied federal funds and the eligibility to impose passenger facility charges if it imposes any noise restrictions not in compliance "with this subtitle." The commenter states that since the phaseout and nonaddition provisions of sections 9308 and 9309 are part of the same subtitle as section 9307, the imposition of any noise restrictions inconsistent with those provided in the final rule must be considered violations of the regulations and sanctioned accordingly.

Final Rule: The regulations adopted in this final rule are amendments to the aircraft operating rules of part 91 and are applicable to operators of Stage 2 airplanes, not airport proprietors. The FAA does not interpret the statute to mean that the imposition of a noise restriction by an airport proprietor is a violation of an aircraft operating rule. Airport operating restrictions imposed by airport proprietors must be considered under the regulations established under new part 161.

Comment: Several commenters request that a separate enforcement plan be included for the operating noise limit amendments, similar to that proposed for the airport noise restrictions in a separate rulemaking action. Other commenters ask that the specific penalties be included in the regulations.

Final Rule: No separate enforcement plan is necessary. The same actions that have been used to enforce the noise regulations of part 91 subpart I will be used for the new regulations added to that subpart. The FAA aggressively enforced the operating noise limits in 1985 when Stage I airplanes were eliminated from operation, and anticipates a similar aggressive campaign to enforce the Stage 2 regulations. The FAA used the experience gained in 1985 in developing the new regulations.

The specific sanctions for violations of these regulations are set by section 901 of the FAAct; that is, suspension of an operating certificate and a penalty of up to $10,000 for each violation of the regulation. The application of these provisions is included in section 9308(e) of the statute, as quoted above.

Accordingly, the requirements of this final rule will be enforced in accordance with title IX of the FAAct and part 13 of the FAR.

Entry and Nonaddition

NPRM: As addressed in the NPRM, the nonaddition rule, section 9309 of the statute, was effective on November 5, 1990. The intent of the statute, including some of the language of the statute, was retained in proposed § 91.805. The nonaddition rule limits the pool of Stage 2 airplanes over 75,000 pounds that are owned by U.S. persons and eligible to operate in the contiguous United States to the number that existed on November 5, 1990. The rule seeks to protect the interests of U.S. owners of those airplanes on that date, including those that are leased for operation outside the United States. The NPRM echoed many of the statutory provisions and stated them as proposed conditions for operation of Stage 2 airplanes in the contiguous United States on and after November 5, 1990.

The NPRM set out definitions for the words "owner" and "imported," with the latter tied to a change in ownership of a Stage 2 airplane from a non-U.S. person to a U.S. person. Importation was tied to U.S. ownership because the FAA has no way of determining the acquisition date of a foreign-owned Stage 2 airplane to decide whether it may be allowed to operate in the contiguous United States.

Proposed § 91.805 also sought to limit the operation of Stage 2 airplanes leased from non-U.S. persons. If U.S. operators were permitted to lease Stage 2 airplanes from foreign persons and operate them in the United States, the purposes of the nonaddition rule would be thwarted and noise from Stage 2 airplanes in the United States could increase dramatically.

Comment: Some commenters express concern with the FAA's interpretation of the statutory provisions regarding the return of leased Stage 2 airplanes. A commenter is concerned that a statement in the NPRM preamble regarding the return of leased airplanes interprets the statute to require that, to be eligible to return, the airplane must have been leased to a foreign air carrier on November 5, 1990. Another commenter requests clarification of the rule's provision with respect to leasing of U.S.-owned airplanes to foreign operators after November 5, 1990.

Final Rule: The FAA agrees with the comment that the language of the preamble of the NPRM inadvertently overstated the statute with regard to the November 5, 1990, date. The nonaddition rule uses November 5, 1990, as the test date only for ownership of a Stage 2 airplane and does not require that a U.S.-owned Stage 2 airplane had to have been leased to a foreign air carrier on that date to return.

Accordingly, the FAA interprets the statute and the regulation as allowing for the lease of U.S.-owned Stage 2 airplanes to foreign air carriers at any time. To gain valid return privileges under the regulation, the airplane must return to the United States within 6 months of the expiration of a foreign lease. This provision does not prevent subsequent leasing of an airplane to other foreign air carriers.

Furthermore, any airplane that is leased to a foreign person is subject to those provisions of §§ 91.861 through 91.867 if the airplane is operated in the contiguous United States.

Comment: An operator requests that the term "importer" be interpreted to include lessors and that the word "purchase" be interpreted to include the term "lease." The operator is concerned that there will not be enough airplanes available for lease if non-U.S. sources are foreclosed.

Final Rule: The FAA will not extend the meaning of the terms "import" and "purchase" to include leasing. To do so would dramatically alter the common understanding of the terms. The effect of such an interpretation would be to alter the intent of the nonaddition rule and allow an unacceptable increase in the level of Stage 2 noise. Proof has not been submitted that there is an insufficient supply of airplanes available from U.S. sources to accommodate leasing interests.

Comment: A commenter requests that the FAA clarify the definition of "importer," including a reference to a provision using the word "owner."

Final Rule: After further consideration, the FAA has decided that it would be clearer to define the term "import." A definition of import is included in the new definitions section (§ 91.851), and the cross reference that caused the confusion is removed.

Comment: Several commenters express concern with the term "foreign air carrier" in the leased airplane return rule. They assert that Congress did not mean to limit the return of leased airplanes to those that are leased to "foreign air carriers" as defined by the FAAct, but that the intent was to include airplanes leased to any foreign operator regardless of whether the operator qualifies as a foreign air carrier.

Final Rule: The FAA agrees that the FAAct definition of "foreign air carrier" is an inappropriate interpretation of the legislative intent. If Congress intended the FAAct meaning, it could have specified that meaning, as it did for other terms under section 9308 of the statute. Since the intent of the statute is to protect U.S. interests that existed on November 5, 1990, there is no apparent reason to limit the return provision to those Stage 2 airplanes that were leased to foreign air carriers that operate into the United States while excluding those that do not conduct such operations. The nature of the operation does not affect the status of the owning U.S. person's interest in its airplane. Accordingly, § 91.655(f)(2) has been revised to include the term *foreign airline*, meaning any foreign person that operates the subject airplane for compensation or hire.

Comment: An operator raises the concern that the NPRM provision that speaks to acquiring airplanes "from any U.S. operator" unnecessarily limits the field of available airplanes.

Final Rule: The FAA agrees that the proposed language regarding acquisitions from other U.S. operators unnecessarily limits the pool of available airplanes. The final rule language of § 91.855(b) has been revised to allow the operation of any U.S.-owned Stage 2 airplane.

Comment: A commenter requests that there be no "grace period" for the noise abatement retrofit equipment exemptions allowed by the statute.

Final Rule: The FAA agrees. Section 9309(b) of the statute does not allow for any grace period for noise abatement retrofit exemptions and the FAA has not taken any action inconsistent with this interpretation.

Comment: An operator requests that there be a limited exception to the nonaddition rule to allow for the transfer of airplanes from a U.S. carrier that is involved in Chapter 11 proceedings to another U.S. carrier. This commenter reads the proposed rule to prohibit such transfers because it would increase the base level of the acquiring carrier.

Final Rule: No exception to the nonaddition rule is necessary to protect the transfer of U.S.-owned airplanes between a U.S. air carrier acting under bankruptcy protection and any other U.S. operator. It is possible that the proposed rule caused some confusion on this point. Final rule § 91.855(b) states that any U.S.-owned airplane may be operated in the contiguous United States and puts no restriction on transfers between U.S. persons. The final rule language of § 91.863 has also been revised to clarify the fact that transfers of airplanes may occur and be accounted for in the transferring and acquiring operators' base levels.

Comment: A commenter desires a clarification of the status of contractual assignments made before November 5, 1990.

Final Rule: If a U.S. person holds a valid contractual assignment for the purchase or lease of a Stage 2 airplane from a foreign person, and that assignment was made before November 5, 1990, the FAA will consider the U.S. person to be the owner of the airplane on November 5, 1990, for the purposes of this rule. Contractual assignments made by foreign persons after November 5, 1990, are valid only if the Stage 2 airplane is restricted to operations outside the contiguous United States. If, on November 5, 1990, the owner was a foreign person, then any change of ownership after that time would constitute an importation of a Stage 2 airplane by the acquiring U.S. person. Contractual assignments between U.S. persons are not affected because the transfer of airplanes between U.S. persons is not prohibited.

Comment: A commenter requests that the FAA interpret the term "contract executed" in section 9309(a)(2) of the statute to include executory contracts.

Final Rule: In the NPRM, the FAA indicated that it intended the terms "contract" and "written contract executed" to have the standard legal interpretation and meanings as accepted in the field of contract law. The meaning of the term "executed contract" is one that is complete, while an "executory contract" is one that is incomplete. The FAA will not adopt an interpretation that makes the word "incomplete" mean "complete."

The FAA interprets the inclusion of this provision in the statute as intended to cover a situation under which, on November 5, 1990, the contract for the purchase of an aircraft was complete except, perhaps, for actual delivery or

presence of the airplane in the United States. Any other circumstances concerning an executory contract for the purchase of a Stage 2 airplane that a contracting party thinks meet the intent of the nonaddition rule will be considered on an individual basis, as are all questions of ownership under part 47 of the FAR. The final rule continues to reflect the terms used in the statute and the standard legal interpretation anticipated in the NPRM.

Comment: An aircraft leasing organization reads the proposed rule as containing an ambiguity between proposed §§ 91.805(a)(5)(ii) and 91.805(a)(6). The commenter notes that if an airplane was validly purchased before November 5, 1990, and is leased to a foreign carrier, it is unclear whether the 6-month limit on returns of foreign-leased airplanes applies, or whether the unlimited return provision for purchased airplanes applies. The situation is complicated by the statute's use of the term "foreign air carrier."

Final Rule: An airplane leased by its U.S. owner to a foreign airline would have to be returned within 6 months of the end of the foreign lease to return validly under the rule. The change in the final rule from the term "foreign air carrier" to "foreign airline" means that only two situations are possible: A Stage 2 airplane that is leased to a foreign airline on or after November 5, 1990; or a Stage 2 airplane that is owned by a U.S. person, is not in the contiguous United States, and is not leased to a foreign airline. Where a Stage 2 airplane is or has been leased to a foreign airline, it has 6 months from the end of the lease to return; where a Stage 2 airplane has not been so leased, it may return at any time. Including the term "foreign airline" rather than "foreign air carrier" in the return provision for leased airplanes in the final rule removes any remaining confusion. When returned, leased airplanes are subject to the provisions of § 91.865.

Regarding the leasing of foreign airplanes, § 91.855(c) includes a provision that allows the operation of foreign-owned Stage 2 airplanes in the contiguous United States for the term of any lease that was legally binding before September 25, 1991, including any extensions allowed by the lease agreement in effect on that date. This is a clarification from the NPRM, which did not specify foreign-leased airplanes as one of the provisions of the operating rule.

Comment: A foreign airplane lessor interprets proposed § 91.805 to allow for the repeated short-term leases of foreign airplanes to U.S. operators. Some of these leases are for as short a time as 4 months. The commenter reads proposed § 91.805(a)(2) to mean that as long as the U.S. operator's base level included the leased Stage 2 airplanes when the base level was established, then subsequent leases are allowed (either of the same airplanes or other Stage 2 airplanes of that type).

Final Rule: The interpretation suggested by the commenter cannot be sustained under the nonaddition rule. Proposed § 91.805(a)(2) cannot fairly be read to allow the operation of foreign-owned airplanes once they leave the fleet of the leasing U.S. operator. Although the addition of foreign-owned leased airplanes to an operator's fleet is not an "import" under these regulations, it constitutes an increase in Stage 2 airplane operations in the contiguous United States by a method not provided for in the statute. The goal of the nonaddition rule was to halt the proliferation of Stage 2 airplane noise in the contiguous United States without unnecessarily damaging the interests of U.S. owners. Restricting the subsequent leasing of foreign-owned Stage 2 airplanes once the term of the original lease expires meets both concerns of the nonaddition provisions of the statute.

The commenter is correct that the provisions of proposed § 91.805(a) are to be read in the disjunctive, i.e., that an operator need satisfy only one of the provisions to operate a Stage 2 airplane. However, the intent of the statute and these regulations does not support the commenter's interpretation that proposed § 91.805(a)(2) applies to its circumstances and allows the subsequent lease of foreign-owned airplanes. The language of proposed § 91.805(a)(2) appears to be the source of some confusion. Section 91.855(b) of the final rule is stated in terms of U.S.-owned airplanes. Together with § 91.855(c), the two provisions account for all of the airplanes meant to be covered by proposed § 91.805(a)(2). The inclusion of § 91.855(c) in the final rule makes it clear that foreign-owned airplanes leased to U.S. operators are covered under that provision, and may not be read into other provisions of § 91.855.

Modification and Maintenance

NPRM: The nonaddition rule, section 9309 of the statute, provides for the operation of otherwise prohibited imported Stage 2 airplanes in the contiguous United States if those airplanes are operated for the purpose of obtaining modifications to meet Stage 3 noise levels. The FAA intends that such operations will be the subject of special flight authorizations requested pursuant to § 91.859 and a Special Federal Aviation Regulation (SFAR). Until the SFAR is adopted, anyone wishing to take advantage of the statutory exemption may do so by applying to the Administrator for an exemption as provided in 14 CFR part 11. As it has for all previous authorizations regarding modifications to meet noise criteria, the FAA intends to require that applicants for special flight authorizations or exemptions provide proof that such modifications will be made. Generally, this has taken the form of a contract for noise abatement retrofit equipment that has been certificated for the subject airplane.

Final Rule: This exemption was proposed as § 91.805(c). No comments were received regarding this provision, and the exemption is adopted in the final rule as § 91.859.

NPRM: Although not explicitly stated, proposed § 91.805 would preclude the operation of a Stage 2 airplane into the contiguous United States for maintenance if the airplane did not meet one of the explicit provisions of that section. This would preclude the operation of Stage 2 airplanes imported into a point outside the contiguous United States from operating into the contiguous United States for maintenance.

Comment: Several commenters note that an interpretation of the statute that prohibits non-revenue operations for maintenance would have serious adverse consequences both for affected operators and the repair industry in the United States. A commenter notes that operations for modifications to Stage 3 may also call for other modifications or maintenance, and should be provided for in the regulations.

Final Rule: Upon further review, the FAA interprets the statute to allow the operation in the contiguous United States of an airplane imported into the noncontiguous United States after November 5, 1990, for purposes of maintenance. Section 9308(d) of the statute indicates that Stage 2 airplanes imported into the noncontiguous United States after November 5, 1990, may not be used to provide air transportation into the contiguous United States. Congress also specified that the definition of air transportation to be used is the one that exists in the FAAct. As long as maintenance flights are conducted on a ferry (non-revenue) basis, they are not flights that provide air transportation. This situation is provided for in § 91.857(b) of the final rule. Maintenance flights will not be allowed after the statutory prohibition of December 31, 1999.

Base Level

NPRM: The NPRM proposed a concept referred to as a "base level" for operators of Stage 2 airplanes. The NPRM proposed that the base level would be the number of owned or leased Stage 2 airplanes that were listed on an operator's operations specifications on any one day in 1990. In addition, the base level would include those Stage 2 airplanes returned to service after lease to a foreign airline, as defined in the statute and proposed § 91.805(a)(5), and those Stage 2 airplanes purchased by an eligible entity, as defined in the statute and proposed § 91.805(a)(6).

The NPRM also proposed that base level of foreign air carriers would be the total number of Stage 2 operations it conducted into the contiguous United States during calendar year 1990.

Comment: Several commenters recommend that the final rule provide for Stage 2 airplanes purchased or leased during 1990 to be included in the base level of the acquiring operator. They point out that, in certain instances, purchased airplanes were not formally added to the operations specifications by year-end even though possession of those airplanes was taken in 1990.

Final Rule: To accommodate this concern, the final rule extends the cutoff date for determining the single day on which an operator determines its Stage 2 base level to July 1, 1991. This provides time for operators who contracted for the acquisition of Stage 2 airplanes near the date of the statute to have included such airplanes on its operations specifications.

Comment: Some commenters express concern that the 1-year period for selecting the base level day in the NPRM could provide a windfall, and recommend November 5, 1990, as the one date to establish base levels.

Final Rule: The FAA does not agree with the recommendation that November 5, 1990, be the date for establishing a base level; it would not take into account the effects of the Gulf War or peak season increases of many carriers' fleets each year. Any windfall effect of allowing an operator to choose the date will be minimal.

Comment: Many commenters perceive an inequity in basing the proposed phaseout on airplanes for U.S. operators and operations for foreign air carriers.

Final Rule: After further consideration, the FAA has decided that foreign operators' U.S. operations specifications could be used as the basis for gauging the number of airplanes operated by a foreign air carrier. Accordingly, the final rule provides for an airplane-based transition for both U.S. operators and foreign air carriers.

Comment: A commenter suggests that the final rule include special provisions for foreign air carriers operating Stage 2 airplanes to the U.S. only part of the year in which the base level is to be determined.

Final Rule: The FAA does not agree. Basing the final rule compliance on airplanes rather than operations for all U.S. operators and foreign air carriers provides the same opportunities to foreign air carriers that it does for U.S. operators in similar circumstances. Extending the cutoff date for selecting a base level day to July 1, 1991, also provides additional latitude for growing operators to establish their base levels. Partial-year operations would not cause a different outcome under this system since each operator may choose its own date to establish its base level.

New Entrants

NPRM: The NPRM proposed a compliance alternative for new entrants. By definition, they would not have a base level established between the dates specified from which to reduce. The proposed rule specified a minimum percentage of a new entrant's airplanes that must be operated as Stage 3. This percentage is based on the timing of entry. No provision was offered for foreign new entrants.

Comment: A commenter suggests that new entrants should use the same base level concept as all other operators subject to the proposed phaseout.

Final Rule: The FAA finds it impossible to accommodate this comment. Base level determination is a function of reducing from a starting point established during a time frame at the beginning of the reduction period. New entrants, by definition, did not operate any Stage 2 airplanes during the base level establishment period, and thus cannot have base levels established under the same concept as operators that operated Stage 2 airplanes during that time.

Comment: A commenter recommends that the base level of a U.S. operator that tranfers airplanes to a new entrant be reduced accordingly.

Final Rule: New entrants do not have base level and do not calculate their compliance with regard to that base level. However, if an operator with established base level chooses to transfer airplanes and base level to a new entrant, it may do so in accordance with § 91.863. The new entrant may hold that base level for subsequent sale with the corresponding number of Stage 2 airplanes. New entrants must meet the compliance schedule in § 91.867, without regard to their base level holdings.

Comment: Based on the statute's direction to provide special consideration for new entrants, a commenter recommends that new entrants with only one or two Stage 2 airplanes be exempt from interim compliance requirements, and another commenter recommends an exemption of up to 30 airplanes.

Final Rule: The statute requires that consideration be given to the "impact on new entry into the airline industry." The final rule provides for new entrants to become established and grow using a fleet mix of Stage 2 and Stage 3 airplanes.

The percentages chosen for the new entrant fleet mix are the same as proposed in the NPRM and differ from those required for established operators. The new entrant percentages take into account the difficulties associated with new operations. To encourage increased competition, new entrants are allowed slightly more fleet mix flexibility through 1996.

Comment: Several commenters request that the final rule provide equal treatment for foreign new entrants and U.S. new entrants.

Final Rule: The FAA agrees. Accordingly, the final rule contains equivalent provisions for both foreign and U.S. new entrants.

Mergers

NPRM: The NPRM acknowledged that significant transfers of airplanes may occur during the compliance period, and the FAA solicited comments on how such transactions should be accommodated in the final rule, particularly with regard to base level adjustments.

Comment: Several commenters recommend that, in the event of a cessation of operations, corporate dissolution, or corporate restructuring where assets are sold, base level transfers should also occur to reflect the relative gains and losses of the parties to the airplane transfers.

Final Rule: Section 91.863 of the final rule includes appropriate provisions to accommodate such transactions. The base level transfer provisions afford operators the flexibility to transfer base level with Stage 2 airplanes. The rule accommodates the transfer of any number of Stage 2 airplanes.

Compliance Schedule

NPRM: Proposed § 91.807(d) presented the compliance schedule for the reduction of U.S. Stage 2 airplanes. Each operator would be required to

reduce the number of Stage 2 airplanes it operates to a level 25 percent below its base level after December 31, 1994, to a level 50 percent below its base level after December 31, 1996, and to a level 75 percent below its base level after December 31, 1998.

Each foreign air carrier would calculate its required percentage reduction in Stage 2 operations for each compliance date under the schedule provided in proposed § 91.807(d)(4).

Comment: A large number of commenters state that the compliance schedule proposed by the FAA is acceptable. Many other commenters state that the compliance schedule is either too aggressive or too slow. Another commenter expresses concern that the FAA's proposed schedule will severely affect small and economically fragile carriers, especially international air cargo operators. That commenter supports Schedule Four of the NPRM which calls for a 50 percent reduction in Stage 2 operations by December 31, 1996, but does not include a 1994 compliance date.

Final Rule: In this final rule, operators will have the choice of complying with either the phaseout schedule proposed in the NPRM or an alternative that incorporates the addition of Stage 3 airplanes to meet certain fleet mix percentages. This choice of options was selected after careful economic analysis of five alternatives. The FAA finds that the selected schedule, with its two options for compliance, will achieve an appropriate balance between environmental and economic concerns.

Comment: Several commenters state that some carriers may be forced to cut back service if they are unable to meet the compliance schedule and that those cutbacks will greatly affect small communities.

Final Rule: The FAA has concluded that the compliance schedule will not interfere with an operator's decision to provide service to small communities. While the majority of small communities are served by airplanes that are not subject to the Stage 2 reduction requirements, some are served by carriers that operate Stage 2 airplanes covered by this rule, such as DC–9's and Boeing 737's. Development of noise abatement retrofit equipment for many Stage 2 airplanes is ongoing. Currently, certificated noise abatement retrofit equipment is available for DC–9–10 and DC–9–30 airplanes, and the FAA anticipates that this rule will spur further development of noise abatement retrofit equipment. Such equipment for Boeing 737–100 and 737–200 airplanes, assuming no unexpected developments, is expected to be approved within 1 year. In addition, the new provision allowing waivers from interim compliance requirements is designed to account for delays in acquiring such equipment, especially where the delay would affect service to small communities. Finally, most small communities are offered service to connecting hubs by more than one U.S. operator. If service is discontinued by one carrier, the remaining operators would be expected to compete for the discontinued carrier's passengers.

Comment: Regarding the availability of Stage 3 noise abatement retrofit options, some commenters state that an operator's future fleet plans must consider all possible alternatives, and that the availability of Stage 3 noise abatement retrofit equipment could become a major problem.

Final Rule: At this time, certificated noise abatement retrofit equipment is available for several airplane types. Approximately 60% of the Stage 2 fleet has retrofit equipment type certificated to meet Stage 3 standards. Certification for another 30% is expected in the near term. According to manufacturers contacted by the FAA, most airplanes that will be affected by the transition to Stage 3 either have Stage 3 noise abatement retrofit options available now or have such equipment under development. There are more than 2,100 Stage 2 airplanes in the U.S. fleet powered by Pratt & Whitney JT8D engines. Pratt & Whitney is working with airframe manufacturers and others to develop Stage 3 retrofit equipment. As noted above, Stage 3 retrofit equipment is available for two DC–9 series airplanes, and type-certificated equipment is anticipated within the next 12 months for other DC–9 airplanes and Boeing 737–100 and 737–200 series airplanes. Pratt & Whitney anticipates that within 5 years there will be enough equipment to retrofit the worldwide fleet powered by Pratt & Whitney JT8D engines. This figure is well within the time frame established by the compliance schedule in the final rule.

Airplanes that were originally type-certificated to Stage 1 noise levels present more of a challenge in the development of Stage 3 equipment. However, noise abatement retrofit equipment is in development for DC–8 and Boeing 707 airplanes.

Comment: A number of commenters recommend a phaseout of operations rather than airplanes. Commenters concerned about noise levels note that one airplane may conduct a number of operations, thus creating more noise than accounted for as a single event.

Final Rule: The FAA has not adopted this recommendation. While the statute refers to operations rather than numbers of airplanes, in the sense that it prohibits the operation of Stage 2 airplanes in the contiguous United States after 1999, the required transition to an all-Stage 3 fleet can be most readily controlled through changes in each operator's fleet. Monitoring the actual numbers of Stage 2 and Stage 3 operations would greatly increase the FAA's costs and diminish flexibility for operators.

The FAA's decision to promulgate an airplane-based transition is predicated on the expectation that a change in fleet composition will correlate closely with a change in numbers of Stage 2 operations. Indeed, if there is any significant difference, there is reason to think that Stage 2 operations may decline even more quickly than the numbers of Stage 2 airplanes. New Stage 3 airplanes offer significant advantages over older Stage 2 designs, wholly apart from their quieter operation. Therefore, as operators add Stage 3 airplanes to their fleets, these airplanes are likely to have relatively high utilization rates as compared to the operator's older Stage 2 airplanes.

Nevertheless, the FAA intends to monitor the transition period closely, and one of the factors that will be evaluated is whether changes in the airplanes listed on operator's operations specifications parallel changes in operations. If Stage 2 airplane operations do not decline as expected, the FAA may undertake further rulemaking under which operations rather than airplanes would form the basis for determining compliance with the transition.

Transferable Rights

NPRM: The NPRM proposed two fundamentally different approaches for structuring the phaseout of Stage 2 airplanes and asked for comments on each. The first approach, called Option 1, would have been a simple phaseout; each operator of Stage 2 airplanes would have been required to reduce its Stage 2 fleet by specific percentages on or before each of the three interim compliance dates: December 31, 1994, December 31, 1996, and December 31, 1998. As an example, under Option 1, if the largest number of Stage 2 airplanes for which a U.S. operator held operations specifications during any day between January 1, 1990, and December 31, 1990, was 40, the operator would need to reduce the number of Stage 2 airplanes it operates by 10 no later than December 31, 1994. If before that date the operator added to its base level 3 airplanes that were leased to foreign

carriers and one that was purchased, its base level would be increased to 44, and it would be authorized to operate a maximum of 33 Stage 2 airplanes after December 31, 1994.

Proposed Option 2 was a market-based system. In essence, it would have enabled an airline to be given credit for eliminating its Stage 2 airplanes, including modifying them to Stage 3 with noise abatement retrofit equipment, more quickly than required by the schedule. Under Option 2, an operator would have had the choice of reducing its Stage 2 airplanes exactly as described in Option 1 or attempting to acquire additional operating rights from another operator. Under the proposal, such rights would have been available only if the second operator already had exceeded its required reduction. That is, only "extra" reductions could have been transferred. In the above example, if the operator installed noise abatement retrofit equipment on 15 airplanes rather than 10 before 1994, Option 2 would have permitted it to sell 5 Stage 2 rights. If those rights were sold to a second operator that also had forty Stage 2 airplanes at the start, the second operator would have had to convert only 5 airplanes to Stage 3 by 1994. By statute, all Stage 2 airplanes have to be eliminated by December 31, 1999, regardless of the approach taken during the phaseout period. Since no rights would be generated without some operator moving faster than required, and since preexisting Stage 3 purchases or conversions would not count, Option 2 was intended to ensure that noise was still reduced according to the overall schedule. It was also intended to provide individual operators with increased flexibility in meeting the rules' deadlines. As no operator would ever have been forced to purchase an operating right, the FAA stated in the NPRM that transferability would be the preferred option, unless the comments showed that the desirable features of transferability are offset by other compelling public policy concerns.

Comment: A significant number of commenters oppose Option 2 as it was proposed. Their comments generally fall into three categories: (1) Transferable rights perpetuate noise; (2) Option 2 would not work as intended because rights would be hoarded or used as a competitive tool by the "haves" against the "have nots"; or (3) transferable rights are not an answer to the "real" problem, which is an expensive and inflexible phaseout at a time when the industry is in poor financial condition.

Almost without exception, individual commenters, citizen groups, airports, and municipalities favor Option 1. Generally, those comments are based on the premise that the flexibility provided by transferable rights would work to the detriment of airport neighbors by lessening noise reduction. For example, some operators will, for their own reasons, convert to Stage 3 faster than required, even without regulations. If the faster conversion is allowed to generate transferable rights, however, opponents of transferability argue that the extra noise benefit from early conversion will be lost because some other operator will use those rights to extend the operating life of another Stage 2 airplane. A similar common position is that the use of transferable rights could lead to excessive and unfair use of Stage 2 airplanes at the airports served by the purchasers of credits.

Air carriers are not in agreement as to the best method of handling transferable rights, with only the largest carriers supporting Option 2 in its present form. Another carrier favors a limited version of transferable rights, in which an individual carrier could take credits earned before an earlier interim compliance date and use them internally to meet future interim requirements. Under this commenter's proposal, transfers would not be permitted among operators. Airplane owners/lessors favor a market mechanism and transferable rights, but are concerned with who would have those rights—operators/lessees or owners/lessors. The owners/lessors have put forth varying proposals that are intended to protect their interests. Before the NPRM was published, the FAA received a proposal for a single phaseout requirement that would credit all Stage 2 airplanes with 6 operating years (roughly the average of the three phaseout dates). This commenter called its proposal Option 3. Airplane owners would then be able to use all 6 years for each plane and convert fully to Stage 3 about 1997, or they could retire or convert some airplanes early and sell or use the remaining operating rights for other airplanes. The key element of this proposal was that owners rather than operators would have these rights and the benefits of selling them. A write-in campaign was organized among investors in airplane leasing programs. As a result, the docket contains numerous postcards favoring this proposal.

Subsequently, the commenter that proposed Option 3 joined with other airplane lessors and several carriers in a different proposal. A joint comment submission from owners, lessors, a financial institution, and carriers (the "joint submission") reemphasized flexibility as the goal, and included three basic elements: (1) Transferable rights to be created for early phaseout of Stage 2 airplanes, using a system of operating years similar to the original commenter's proposal, but with rights accruing to operators; (2) additional credit for early acquisitions of Stage 3 airplanes, such that a carrier that buys a Stage 3 airplane in 1993 rather than 1994 would earn a transferable right worth 1 operating year, which could be sold or used to support 1 extra year of operation for a Stage 2 airplane; and (3) limited additional transferable rights for owners. While an operator that converts to Stage 3 earlier than required would get 1 year's credit for each year prior to the deadline, nonoperator owners that install noise abatement retrofit equipment or retire their Stage 2 airplanes early would earn a maximum of 2 credit years for the conversion.

The joint submission thus raises additional issues that go beyond the scope of transferable rights: Whether non-operators should have rights or duties during the compliance period and whether adding new Stage 3 airplanes should accrue additional credit. These other issues are addressed below.

Final Rule: The FAA has decided not to adopt Option 2 because the comments that it generated contained substantial opposition to this option and very little support. The FAA included Option 2 in the NPRM with the view toward providing flexibility and facilitating compliance with the proposed phaseout, particularly for those airlines with limited current financial resources (56 FR 8633). However, no currently operating airline facing such circumstances supports Option 2 as proposed.

The FAA is aware of the joint submission request for additional flexibility. The request to permit a fleet mix method of compliance has been incorporated in the final rule and is discussed elsewhere in this document.

The FAA is unwilling to accept the joint submission request to switch from a reduction method based on the number of Stage 2 airplanes eliminated to one based primarily on the year of elimination. Under this proposal, an airline would be free to designate each of its airplanes as scheduled for reduction in a particular year, with credits to be generated for eliminating a particular Stage 2 airplane or adding an extra Stage 3 airplane earlier than the operator's chosen schedule date. For example, if an operator's maximum number of Stage 2 airplanes on any one day during January 1, 1990, through July

1, 1991, was 200, to comply with the phaseout option, the operator would designate 50 airplanes to be phased out in 1994, 50 in 1996, and 50 in 1998.

Thus, if the operator eliminated the 50 airplanes designated for 1994 in that year, it would be in compliance but would generate no credits. If the operator instead eliminated the 50 airplanes designated for 1999 elimination, the operator would earn 250 operating years of credits, 50 each for 1995, 1996, 1997, 1998, and 1999. The joint submission contains a similar credit-year proposal for operators that choose to comply with the fleet mix option. Under the joint submission proposal, these credit-years could be used internally or sold to others. The problem is that the same number of airplanes, 50, would be eliminated in 1994, and it would be solely up to the operator as to whether the action constituted an "early" reduction.

The proposal for airplane owners to gain credits in addition to those given to operators poses a somewhat different problem. The joint submission asks that the rule give 2 years credit for each leased Stage 2 airplane eliminated or modified to meet Stage 3 standards by a non-operator owner. These credits would be in addition to those accruing to the operator. As a result, leased airplanes would be counted twice for the purpose of credits when they are eliminated or converted to Stage 3, while airplanes operated by their owners would count only once. The FAA considers this approach inequitable and discriminatory. In addition, it would lead to an unacceptable perpetuation of Stage 2 airplane noise, inconsistent with the reduction mandated by the statute.

Accordingly, the final rule allows an operator to choose between a modified version of Option 1 (§ 91.865(b)) and a fleet mix as an alternative method of compliance (§ 91.865(d)). The final rule also contains one aspect of Option 2: Operators that exceed the requirements on an interim compliance date will be authorized to carry forward the extra compliance to a later interim compliance date. These credits may be used by the operator at a subsequent interim compliance date, but the credits may not be transferred to other operators.

The FAA also recognizes that the financial condition of much of the airline industry means that it may be difficult for some individual operators to comply with the interim compliance schedule. Therefore, as discussed in the waiver section, waivers from interim compliance requirements will be granted in specific cases where there is an adequate showing that compliance is financially onerous, physically impossible, technologically infeasible, or that it would have an adverse effect on competition or service to small communities. A system of waivers from interim compliance requirements should reduce substantially the regulatory burden of this rule and should meet the needs of operators for flexibility. At the same time, this waiver system is able to respond to the requests of airports and their neighbors that there be no broad exemption from the compliance requirements. Waivers should also reduce concerns that the transfer of operating rights could shift the noise burden from one section of the country to another, or cause an anticompetitive transfer of resources from the "have nots" to the "haves."

Phasein of Stage 3 Airplanes as an Alternative to the Phaseout of Stage 2 Airplanes

NPRM: The FAA discussed an alternative that would allow operators to meet interim goals through increases in Stage 3 airplanes as well as reductions in Stage 2 airplanes.

Comment: Several commenters favor the adoption of a phasein of Stage 3 airplanes rather than a phaseout of Stage 2 airplanes. These commenters claim that this approach would not only enable carriers to increase their fleet capacity by giving credit for the acquisition of Stage 3 airplanes, but that this is also the intent of the statute. Some carriers claim they will face additional economic hardship if they are unable to receive credit for adding Stage 3 capacity to their fleets. The joint submission favors this fleet mix approach and presents a percentage-based schedule for compliance.

Some airport authorities express partial support for this approach because they claim that the phaseout of Stage 2 airplanes does not address situations at individual airports and that service to smaller communities might be affected.

Similarly, some airport authorities and associations support the concept of a fleet mix by noting that much of the conversion depends on the availability of noise abatement retrofit equipment. These commenters claim that the NPRM overestimates the availability of such equipment, making the financial estimates unrealistic. Many commenters express concern that this approach would add rather than reduce noise, and a carrier comments that such an approach would provide no benefit for small carriers that have no Stage 3 airplanes.

Final Rule: The FAA has decided that the current financial condition of the industry warrants the adoption of a final rule that allows each operator the flexibility to choose to reduce the number of airplanes in its base level by a specified percentage, as was proposed in the NPRM, or to acquire and/or reduce airplanes as necessary to achieve a fleet mix of Stage 2 and Stage 3 airplanes that meets the percentages given in the regulation.

To maximize flexibility, operators are allowed to choose the method that best suits its circumstances at each compliance date. The schedule for an operator choosing to eliminate Stage 2 airplanes is the same as that proposed in the NPRM: 25 percent reduction by the end of 1994, 50 percent reduction by the end of 1996, and 75 percent reduction by the end of 1998.

The schedule for an operator that chooses the fleet mix option is based on the comments and considerable analysis of the costs and benefits associated with fleet mix percentages on the compliance dates. The FAA considered the equipment delivery positions of many operators, the current availability of noise abatement retrofit equipment and the status of such equipment under development, projected growth of operators, financial resources of operators, and the effect on competition in the industry. These are discussed more fully elsewhere in this document. The schedule requires that operators choosing this option achieve a fleet mix that includes at least 55 percent Stage 3 airplanes after December 31, 1994, 65 percent Stage 3 airplanes after December 31, 1996, and 75 percent Stage 3 airplanes after December 31, 1998.

The Stage 2 reductions from base level and the fleet mix options have one fundamental difference. Base level is not relevant to the fleet mix method. As such, the final rule incorporates a provision indicating that the FAA will scrutinize transactions involving transfers of base level to determine whether they have been accomplished solely to show compliance with § 91.865. While the transactions themselves would never be at issue, the transactions will not be valid for compliance if they reflect no real increase or reduction of Stage 2 airplanes by the parties to the transactions. An example of the situations anticipated by this provision is set forth in the section-by-section analysis of § 91.863(d).

The final rule also incorporates the request by some operators to allow additional compliance at the earlier compliance date to count as compliance later. This carry-forward compliance credit can be accrued by operators that

choose to achieve compliance by phasing out Stage 2 airplanes. Later use of carry-forward compliance credit is discussed in full in the section-by-section analysis of § 91.869.

The FAA has not adopted the requested system under which Stage 2 elimination would be based on airplane life-years of credit, or the system that accrues extra credit based on the year of elimination. Those concepts are addressed more fully in the disposition of comments on transferable rights in this document.

International Issues

NPRM: The NPRM preamble includes foreign air carriers in the section-by-section discussion of the proposed rule language concerning base level and compliance schedules.

Most of the comments received on the international issues focus on differences between a resolution adopted by the International Civil Aviation Organization (ICAO) and the proposed rule.

Comment: ICAO encourages member States to begin Stage 2 phaseouts no sooner than April 1, 1995.

Final Rule: The U.S. implementation of a compliance schedule must begin by statute on the date of enactment, November 5, 1990. However, the first compliance date has been set as December 31, 1994, only 3 months before the ICAO suggestion.

Comment: ICAO urges member States to set final compliance dates no earlier than April 1, 2002.

Final Rule: The U.S. final compliance date of December 31, 1999, is mandated by section 9308 of the statute and is so reflected in the final rule.

Comment: ICAO encourages exempting wide-body airplanes with high bypass ratio engines from the interim compliance schedule.

Final Rule: The statute makes no provision for such exemptions and the final rule treats all Stage 2 airplanes over 75,000 pounds as equal.

Comment: ICAO uses an airplane life cycle of 25 years as the standard for Stage 2 airplane retirement.

Final Rule: While the FAA uses the 25-year useful life standard in its economic analysis, it considers the chronological age of an airplane to be an inappropriate standard for elimination. The decision as to which airplanes an operator removes from service in order to comply with this rule is solely that of the individual operator.

Comment: Several comments from foreign airline representatives request that foreign air carrier compliance be based on airplanes rather than operations.

Final Rule: After review of these comments and verification of enforcement considerations, the final rule reflects this change. The FAA has determined that a reduction of foreign Stage 2 airplanes is feasible by removing them from foreign air carriers' U.S. operations specifications.

Comment: Several commenters focus on the need for consistency with the Stage 2 reduction policies of ICAO and general agreement with the Chicago Convention. An international airline association, individual airlines, airport operators, and aviation regulatory authorities all refer to specific terms of ICAO Resolution A28–3, which was ratified on October 26, 1990.

Final Rule: The FAA recognizes the importance of a worldwide policy and the efforts of ICAO. The FAA has determined that by basing the compliance on airplanes, rather than operations, variations between the U.S. and ICAO policies will be minimized. The FAA does not find that the other differences can be accommodated under the statute.

Comment: A commenter proposes that the final rule should exempt foreign operations from interim compliance, on the presumption that the noise benefits associated with the elimination of a relatively low number of foreign operations do not justify the economic costs to the foreign operators.

Final Rule: The FAA disagrees. Section 9308 of the statute requires that a compliance schedule be established to achieve the prohibition of section 9308(a) which states:

> After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels . . . .

Further, because foreign operations are concentrated at a limited number of U.S. airports, noise benefits from reduced foreign operations on the interim compliance dates will be considerable for nearby communities.

Comment: Several comments were received regarding the NPRM proposal that foreign operators with two or fewer Stage 2 airplanes on U.S. operations specifications be exempt from the interim compliance requirements. A commenter states that there is no basis for providing foreign air carriers with privileges not provided to U.S. operators. Also, the commenter explains that the two or fewer airplane measure is inconsistent with the NPRM approach that bases the Stage 2 phaseout for foreign carriers on the number of operations conducted. Another commenter suggests that the FAA expand the exemption from the interim compliance requirements for all foreign operators that had five or fewer Stage 2 airplanes, rather than the two airplanes proposed. This commenter states that by changing the cutoff point under this exemption from two airplanes to five, the public interest objectives of preserving economically beneficial international air service and avoiding undue restriction of the competitive service offered by small- and medium-sized international carriers can be achieved to an even greater degree. Another commenter suggests that an alternative be added that would also exempt an operator from the interim compliance requirements whenever its operations are limited to no more than one daily round trip flight. The commenter states that seven weekly operations could in fact produce much less noise than would multi-frequency operations conducted with just two airplanes in, for example, a transborder market.

Final Rule: As stated previously, the compliance schedule for U.S. operators and foreign air carriers will be based on airplanes; the provision exempting foreign operators with two or fewer airplanes is no longer applicable. In the final rule, the compliance schedule and the airplane-based approach spread the burden among all operators and provide for continuing noise abatement.

Comment: Many commenters request that the waiver from the final compliance date be extended to include foreign air carriers. A commenter states that the foreign waiver issue, as handled in the NPRM, is in clear contradiction to the ICAO Chicago Convention, Articles 11 and 15. This commenter acknowledges that U.S. legislative action may be required to extend waivers from the final compliance date to foreign operators. Community groups support denial of waivers from the December 31, 1999, deadline for foreign air carriers.

Final Rule: Waivers from the final compliance date are limited to U.S. air carriers by the statute. As to the issue of U.S. international obligations, the FAA recognizes the concerns raised by commenters concerning various provisions of this rule. It is the intention of the United States Government to resolve these concerns in a manner consistent with the international obligations of the United States.

The final rule allows foreign air carriers to petition for a waiver from any interim compliance requirement. Such petitions would have to be accompanied by the same financial or

other supporting data that would be required of a U.S. air carrier.

Owner-based Compliance Versus Operator-based Compliance

NPRM: In the proposed rule, the FAA acknowledged that unsolicited comments were received before the publication of the NPRM, including a request from airplane lessors that the FAA protect owners' interests during the phaseout. Specifically, they express concern that focusing the phaseout methodology on the operators of Stage 2 airplanes rather than on owners could lead to results they consider inequitable. The FAA asked for comments on the appropriate roles and responsibilities for operators and lessors of leased airplanes.

Comment: The unsolicited comments contain the Option 3 proposal, explained above in the transferable rights comment disposition, which many commenters refer to as if it had been part of the proposed rule. A postcard campaign to the docket in support of Option 3 was initiated during the comment period. Later in the comment period, Option 3 was supplanted by a joint submission from 13 parties, including the original proposers of Option 3. The new submission significantly modified the original proposal and is discussed below.

Many of the commenters suggest that the operator-based approach is too limited and is inherently unfair to owners or lessors. These commenters assert that not allowing the owners/lessors of airplanes to have a role in the compliance process would have a negative impact on the economic health and competitiveness of those operators that lease large percentages of their fleets. These same commenters also suggest that allowing the operators to make the decisions concerning which airplanes to eliminate puts the leasing companies in the position of having their business destiny in the hands of others. Some commenters express concern that the economic analysis in the NPRM did not include the economic impact of the proposed phaseout on the leasing industry. The non-operator commenters contend that owners/lessors should receive the same consideration as operators in the final rule, and that a final rule cannot be legally issued unless the FAA has ensured that it is equitable.

Some comments propose that the leasing companies and owners—and not the operators—be the parties exclusively responsible for compliance with the statute and the rule because their interests will not otherwise be protected. They contend that operators merely perform the mechanical function of operating the airplane and that the operators have no legal obligation to purchase and install noise abatement retrofit equipment on leased airplanes.

Comments were also received supporting the concept of operator-based compliance. Several commenters state that the operators should be solely responsible for compliance because the statute specifically refers to the operations of airplanes. These commenters assert that the owners/lessors will be able to protect their interests during the compliance period. They are also not persuaded that Option 3 would, in fact, provide the stated benefits or that it can be administered readily. A commenter specifically states that leasing companies should receive no other benefits from this rulemaking that would further increase the operating costs of carriers.

The joint submission asserts that the FAA violated section 9308(c) of the statute, which requires the FAA to consider competition and the ability to achieve capacity growth, by ignoring the existence and interests of the leasing industry. It asserts that continuing the current level of competition in the airline industry depends on the existence of a strong, healthy leasing industry. These commenters also assert that because the FAA had failed to consider the leasing industry, the economic analysis was "fatally flawed" and must be substantially revised before the final rule is issued. They propose that a limited non-operator credit system be included in the final rule. Such a system would allow non-operator owners to generate a limited number of credits for Stage 2 airplanes registered in their name that they certify to the FAA have been converted to meet Stage 3 requirements.

Final Rule: The final rule specifies that operators are the parties responsible for complying with the statute and the regulation. This decision is based on the FAA's interpretation of the statute and the history of part 91 and other FAA rules.

In setting the prohibition on the operation of Stage 2 airplanes, the statute specifically focuses on the operation by any person rather than on the ownership of an airplane. Nowhere does the statute prohibit the ownership of Stage 2 airplanes nor would such action be consistent with the underlying purpose of the statute—the lessening of noise through the gradual elimination of Stage 2 operations. The final rule language tracks the statute by regulating Stage 2 operators.

The final rule language is also consistent with the manner in which the FAA has handled all its rules dealing with the operations of aircraft. Such rules are imposed on the operator of the aircraft rather than the owner for several reasons. First, the FAA has a direct relationship and regular contact with the operator. Second, the operator is an easily defined entity. Both of these facts support the third reason for adoption of an operator-based rule which is the enforceability of the rule. Airplane ownership can be a highly complex financial arrangement involving individuals, groups of individuals, or corporations with which the FAA has little or no regular contact, and over which the FAA has limited direct authority. Finally, there would be additional costs for monitoring a complex, non-operator rule given the fact that there would be a significantly larger pool of individuals subject to the rule.

Another basis for the FAA's decision not to adopt an owner-based final rule is the questions resulting from the lack of information in this area. The FAA is not prepared to determine who is the owner for purposes of this rule if there is a dispute between parties. Furthermore, it is practically impossible for the FAA to verify from publicly available or commenter-provided information the economic harm that the commenters allege will result from this operator-based rule. It also is practically impossible for the FAA to determine the owner/investor configuration for each airplane, know their financial circumstances, and determine how those financial circumstances would be affected.

The FAA is also convinced that the symbiotic relationship between owners and operators will act to balance the interests of each in the negotiation of airplane leases. The nonaddition rule prohibition against new leases of foreign-owned Stage 2 airplanes also protects the market for U.S.-owned and leased airplanes.

Finally, the FAA is concerned that if such a rule were adopted with the above enforcement weaknesses, local airports would question its efficacy and take more aggressive steps to impose their own local restrictions. In addition, since such local rules would be directed toward operators, it would ensure significant differences between federal and local rules and defeat any alleged protection to the owners offered by the adoption of such a final rule on a federal level.

Waivers

Comments concerning waivers fell into two categories. Several commenters request that the final rule include

provisions for waivers from the interim compliance requirements of the phaseout schedule. Other comments concerned the FAA's statements in the preamble regarding waivers from the compliance date that are provided for by the statute. The two waiver provisions are discussed separately below.

Waivers From Interim Compliance Requirements

NPRM: The proposed rule did not include any separate provisions for waivers from the interim compliance requirements.

Comment: Several commenters note that it is unrealistic to presume that there will not be circumstances that prevent an operator from complying fully with an interim compliance requirement. Commenters request that a separate provision be included in the final rule and that the criteria under which such waivers will be granted be stated clearly.

Final Rule: The FAA agrees. The lack of a separate waiver provision in the NPRM did not mean that the FAA did not foresee circumstances under which relief from the interim requirements might be in the public interest. The FAA is persuaded, however, that orderly compliance with this rule warrants its own waiver procedure with application and approved criteria defined in advance. Section 91.871 has been added to include such provisions.

The existence of a waiver provision should not be viewed as an automatic entitlement to relief from an interim compliance requirement. Waivers will be granted only after consideration of these and other criteria: (1) The balance sheet and cash flow position of the applicant; (2) the current composition of the applicant's fleet; (3) the applicant's plans and activities for fleet modification, including its good faith efforts to comply with the transition rules; (4) the applicant's delivery position with regard to new airplanes or noise abatement equipment; and (5) the effect on competition if such a waiver is granted. It is anticipated that waivers will be granted if an operator is able to show that compliance with the interim requirement is financially onerous given its economic status when compliance is due, physically impossible because of equipment availability and delivery schedules, infeasible because noise reduction technology has not been certificated for the airplanes under consideration for a waiver, or that it would have an adverse effect on competition or on service to small communities.

All applications will be considered under the standards of good faith efforts of the operator to achieve compliance with the interim requirements and whether a grant of the waiver would be in the public interest. Interim compliance waivers will be granted only for the period of time necessary for compliance by the individual operator, and in no case beyond the next interim compliance date. To gain waiver relief from a later interim compliance date, an operator would have to reapply.

Comment: Many groups of noise-affected citizens request that any application for waivers be made subject to public process.

Final Rule: The FAA agrees. The process of granting waivers is an integral part of rulemaking and the participation of the public is inherent. To this end, the final rule contains a provision that a notice of an application for a waiver from any interim compliance requirement will be published in the **Federal Register** and be open for public comment. Unless the Secretary determines otherwise, a minimum of 14 days will be given for public comment.

Waivers from the Final Compliance Date

NPRM: The NPRM provided for waivers from the final compliance date in accordance with section 9308(b) of the statute. The statute limits the availability of such waivers to U.S. air carriers, and sets out criteria to be followed, including the requirement that any grant of a waiver must be in the public interest. The statute also requires that in evaluating a request for a waiver from the final compliance date, the Secretary consider the effect of granting a waiver on competition in the air carrier industry and on small community air service. Finally, the statute provides for the conditions and time period under which a U.S. air carrier may file for such a waiver.

Comment: Several commenters object to the provision allowing waivers from the final compliance date, and state that it should be deleted and perhaps replaced with some other incentive. Commenters were in general agreement that some standards for the waivers should be defined, and some request a definition of public interest.

An operator reads the existence of the waiver provision in the statute to mean that waivers should be automatic if the statutory criteria are met. Another commenter considers the FAA's interpretation too restrictive, indicating that the waiver should be automatic and negotiable with the FAA. An organization of operators states that the waiver provision should not go beyond the words of the statute. Some members of Congress state that the NPRM's expectation that waivers will be granted only in exceptional circumstances (as where a carrier indicates that compliance with a final phaseout date would wreak "financial havoc") is contrary to Congressional intent and unnecessarily burdensome.

A group of citizens concerned about airplane noise states that the waiver should be strictly limited, and that to read the statute otherwise would inhibit the effectiveness of any phaseout. Another group states that an unrestricted 4-year waiver from a 7-year phaseout is excessive. The noise-affected public generally urges the FAA to caution operators that the December 31, 1999, phaseout date remains as the statutory mandate, and that the operators should not tailor their plans on the basis of a presumed waiver and an "actual" phaseout date of 2003. A group is concerned that the problems experienced during the phaseout of Stage 1 airplanes will be repeated, and suggests that every applicant for a waiver be required to submit a cost-benefit analysis to support its request. A locality requests that waiver applicants be held to the same burden of proof imposed on airport operators that wish to impose operating restrictions, which was proposed under a separate rulemaking. Other commenters request that the waiver provision restrict operations at airports with more progressive noise goals, that the number of Stage 2 operations permitted under waivers be restricted, and that the approval of airports served by a carrier seeking a waiver be a condition to a grant. Another commenter suggests that the application date for a waiver be moved to January 1, 1995.

Most of the noise-affected citizens and airports state that the waiver process should be public, with notice of requests for waivers published and up to 180 days provided for public comment.

Final Rule: The waiver from the final compliance date is statutory and must be a part of the final rule. The FAA has not changed its basic position from the NPRM that waivers from the final compliance date will not be automatic. The FAA agrees that operators should be cautioned to plan for the final compliance date; if the Congress did not intend the cessation of Stage 2 operations in the contiguous United States by December 31, 1999, that provision would not appear in the statute. The FAA intends the statutory waiver provision to be a relief valve against unforeseen economic and supply

circumstances to be determined based on the circumstances of the individual operators at the time. "Automatic" waivers cannot provide for unique circumstances. Similarly, the length of a waiver from the final compliance date will be determined by the circumstances of the individual applicant. The December 31, 2003, statutory waiver deadline is an outside limit, not a 4-year extension that has no basis in the individual circumstances that warrant the grant of a waiver.

The FAA agrees that more definitive waiver criteria are needed if compliance is to be effected in an orderly fashion. The statute indicates that a waiver may be granted only if the Secretary finds that a grant would be in the public interest. No attempt will be made to define "public interest" here. The Department of Transportation and the FAA are familiar with the public interest standard as a measure of evaluating a request for an exemption or waiver from many regulations and recognize that a critical component of the standard is based on the circumstances that exist at the time a waiver is requested. The FAA will not at this time attempt to define the economic or logistical circumstances that would affect the public interest standard as it will need to be applied when an air carrier applies for a waiver from the final compliance date.

In considering the requests for waivers from interim compliance requirements, the Secretary was able to identify circumstances under which those waivers would most likely be granted, and the Secretary intends to include similar criteria in considering requests for waivers from the final compliance date. Were wholesale grants of waivers anticipated by the statute, it is doubtful that the statute would so specifically direct the Secretary's attention to the effect of a grant on competition in the industry as one of the two waiver considerations that the Secretary must address, for competition would not be affected if every carrier could get a waiver once the 85 percent threshold were met.

The FAA agrees that, as with waivers from the interim compliance requirements, the public should be notified of an air carrier's application for a waiver from the final compliance date and be given an opportunity to comment. The statute makes no provision, however, for the approval of waivers by any airport served by an individual carrier, nor the imposition of a burden of proof on applicants similar to that proposed elsewhere for airport operators that wish to adopt operating restrictions. The FAA cannot extend the statute to include such provisions. The commenter that suggests moving the application date for waivers provided no explanation as to how this would facilitate a reduction of Stage 2 airplanes. Moreover, the application date is set by the statute and cannot be changed by the FAA.

Stage 3 Percentage Provision

NPRM: The proposed rule contained a provision that would allow an operator to discontinue compliance with the phaseout requirements once the operator achieved and maintained a fleet that consisted of 85 percent Stage 3 airplanes. That provision was proposed as § 91.805(d)(3).

Comments: An operator states that it does not understand the NPRM provision that addresses the applicability of the rule to operators that have achieved a 85 percent Stage 3 fleet mix. Other commenters contend that the allowance would serve only the largest, financially healthy carriers and allow them to operate as many Stage 2 airplanes as they want as long as a sufficient number of Stage 3 airplanes were added to retain the fleet mix.

Final Rule: This provision is removed from the final rule. It was originally proposed so that no operator that was phasing out Stage 2 airplanes would be forced to phase out more than necessary to meet the statutory requirement to apply for a waiver of the final compliance date. The provision had no time expectation, as thought by the commenting operator.

The adoption of the optional fleet mix method of compliance obviates the need for this provision. For those operators that use the Stage 2 reduction method to comply, the waiver provisions included in the final rule are available to address the circumstances of operators on a case-by-case basis.

Annual Progress Reports

NPRM: The proposed rule required carriers to submit to the FAA annual phaseout progress reports within 45 days after the end of each calendar year. The reports were to include the airplanes included in the carrier's base level, any additions made to the base level, any Stage 2 airplanes acquired from another U.S. operator, the carrier's progress towards compliance with the interim schedule and the final compliance date, and the carrier's current plan to meet the interim compliance schedule and the final compliance date. Similar information would be required from foreign air carriers.

Comment: The commenters' primary concern is the confidentiality of the reports. Many commenters state that the information submitted will be proprietary. These commenters suggest that the reports be held for 48 months and not be subject to Freedom Of Information Act requests or otherwise be made available to the public.

Final Rule: Much of the information required by annual reports is not considered to be proprietary. The FAA will consider specific requests that certain information identified by the operator be held in confidence.

Comment: A commenter suggests that reports be submitted at 6-month intervals rather than annually.

Final Rule: Annual reports are mandated by the statute, and the FAA does not foresee any use for information submitted at 6-month intervals. Additional reports would add to the administrative costs of the rule with no corresponding benefit.

Comment: The commenters generally agree that the information proposed to be submitted in the annual progress reports is appropriate. A commenter states that the FAA requests too much information and that only plans for compliance with the next interim date should be required. This commenter contends that carriers would be precluded from making plans to incorporate new technologies with respect to later compliance dates if the reports are to cover the entire compliance period.

Final Rule: The final rule requires annual reports to include the operator's expected plans for meeting the interim compliance schedule and the final compliance date. The information requested is essential to the effective monitoring of compliance with this rule. It should be understood that the plans can be revised by an operator for any reason at any time. Because the reports will be submitted annually, any changes from previous annual reports that reflect new plans, new availability of technology, or changing circumstances must be incorporated.

Comment: Some airport operators indicate that they would prefer to see an annual report listing the number of operations of Stage 2 airplanes at individual airports rather than the number of Stage 2 airplanes a carrier has in its fleet.

Final Rule: The annual report required by the statute and regulations will be used to show an individual operator's compliance with the phased elimination of its Stage 2 airplanes, not its operation of Stage 2 airplanes at an individual location. The FAA cannot justify the imposition of the cost to operators to

tabulate such information when the FAA has no need for such information.

Discussion of Comments—Regulatory Impact Analysis

NPRM: The NPRM Regulatory Impact Analysis explored the costs and benefits of requiring the operational phaseout of all Stage 2 airplanes by December 31, 1999. It quantified, to the extent practicable, estimated costs and benefits of sections 9308 and 9309 of the statute, and the regulations proposed thereunder, to the private sector, consumers, Federal, State, and local governments. The FAA estimated that the proposed rule would have minimal impact on international trade and small entities.

Costs

Comment: Several commenters, especially air cargo carriers, argue that the 25-year life-cycle used in the economic calculations is too low and not a realistic representation of an airplane's useful life. One commenter argues that cargo airplanes age at a rate two and a half times slower than passenger airplanes due to the reduced number of flight hours per day. This commenter states that cargo carriers use their airplanes less extensively than passenger air carriers. This commenter as well as others suggest that the life of airplanes should be based on usage rather than age.

Final Rule: The FAA retains the 25-year life-cycle in the final rule because it is based on an age profile of existing industry airplanes. In January 1991, the domestic fleet airplane-age profile showed that only 4 percent of air carriers' airplanes exceeded 25 years of age, while the average age was 18 years. The FAA's review of 75 percent of all-cargo carriers' airplanes indicates that the average age is 19 years. Thus, based on those averages, the FAA contends that the 25-year life-cycle is realistic for the purposes of comparison and analysis of the final rule.

However, the FAA is concerned about whether the chosen scenarios would have been different if a 30-year life for airplanes were assumed, and thus has included a cost sensitivity estimate for the 30-year life in the final cost analysis. Based on the fact that some air carriers have been experiencing a shortage of capital, there may by a brief period when the 25-year life cycle assumption would not be appropriate. This situation is expected to pass because the Gulf war has ended and the U.S. economy is recovering from the recent recession. Therefore, while the FAA is concerned about the near-term economic circumstances of the industry, its long-term viability is not expected to be affected.

Comment: A commenter asserts that the cost of the proposed rule is $90 billion. This estimate differs considerably with the FAA's high-end estimate of $5.7 billion. This disparity arises primarily in the estimation of the per-seat airplane cost. This commenter's average per-seat cost for 1990 is $259,000 with a range from $200,000 to $300,000 (the FAA per-seat costs range from $186,000 to $198,000).

Final Rule: The FAA disagrees with the asserted cost. This commenter uses data for airplanes ordered during 1990 to support its argument. Because much of the replacement cost will be incurred later in this decade, the costs of those replacements must be discounted back to the present. This commenter's cost estimate uses no discounting of future costs and reflects the time of airplane delivery. Hence, the price of the airplane includes a compounded inflation rate for the years between the order and delivery. The FAA costs represent the price paid for airplanes delivered in 1988 as inflated to 1990 dollars. This commenter's estimate of $90 billion attributes all of the normal airplane replacement costs to Stage 2 phaseout costs. Approximately two-thirds of this commenter's cost estimate represents normal replacement costs.

Comment: Some commenters want added flexibility from the costs imposed by the compliance schedules as noted in the NPRM.

Several commenters ask for more leniency because of the current poor financial condition of domestic airlines. Some suggest establishing a schedule with built-in slippage or compliance delays.

Final Rule: The final rule allows operators a choice of compliance methods. The final rule takes into consideration benefits to the public and the cost impact on the airline industry's financial health. To provide additional flexibility for carriers, the final rule provides for carry-forward compliance credits and a waiver from interim compliance requirements.

Comment: Several commenters criticize the inclusion of noise abatement retrofit equipment in the Regulatory Impact Analysis because FAA-certificated noise abatement retrofit equipment is currently not available for some airplanes in their fleets. Another commenter points out that noise abatement retrofit equipment creates additional costs resulting from fuel and load penalties.

Final Rule: The FAA expects to certify noise abatement retrofit equipment for most existing Stage 2 airplane models in the near future, thus allowing airlines to meet the requirements of the final rule without replacing airplanes. The FAA views the inclusion of noise abatement retrofit equipment information in the economic analysis as appropriate. When compared to replacing airplanes or airplane engines, the FAA considers hushkit retrofit equipment to be the least costly alternative for Stage 3 conversion. The Regulatory Impact Analysis calculates the cost impact of phasing out Stage 2 airplanes, phasing in Stage 3 airplanes, and the statute. A summary of that analysis is included in this document.

Comment: Some commenters state that the 10 percent discount rate that the FAA uses to calculate the present value of the costs is incorrect. The commenters state that it is not appropriate to use the 10 percent rate when analyzing the costs imposed on the private sector. One commenter stated that using a high (10 percent) discount rate understates the rule cost.

Final Rule: Pursuant to Circular No. A–94 of the Office of Management and Budget (OMB), Federal agencies are required to use a 10 percent discount rate when evaluating costs incurred over time. Agencies must also evaluate a rule's benefits using the same 10 percent discount rate.

Comment: An airline asserts that waivers from the 1999 final compliance date should be automatic if an airline achieves an 85 percent reduction to its Stage 2 baseline fleet. This commenter states that the waiver will reduce costs by eliminating of unnecessary investment decisions.

Final Rule: The FAA's cost analysis assumes that no waivers will be granted, and thus overstates the costs to the extent waivers are given. Waiver applications will be evaluated on an individual basis. To the extent that applicants meet certain criteria, waivers will be granted. The individual circumstances that will be required to obtain a waiver cannot be estimated effectively, and thus cannot be included in the cost analysis.

Benefits

Comment: Many comments addressing the benefits of the proposed rule are of a general nature. Some commenters assert that the proposed rule provides no significant benefits. A commenter states that few people will benefit from the interim compliance schedule. This commenter claims that these benefits are less than the costs of the proposed rule.

The joint submission uses this same argument of limited benefits until 1999

as support for its advocation of a fleet mix alternative. While the joint submission acknowledges that there are benefits for property values, the number of citizens affected by noise, and the possibility of fewer local restrictions, it also insists that under no circumstances do such benefits outweigh the costs associated with the rule.

A commenter states that the realization of certain benefits of an all Stage 3 fleet is dependent upon local government actions to secure proper land use in an airport's vicinity. This commenter recognizes that the FAA can address these benefits but cannot control actions to achieve the economic gains. An air cargo operator recognizes some additional benefits of the Stage 2 phaseout that go beyond airplane replacement or modification, including the elimination of potential exposure to future noise and emissions regulations, deferral of airplane purchases, improved dispatch reliability based on engine reliability, improved equity in a re-engined airplane, and improved payload performance. Several members of Congress comment that a cost-benefit approach based on quantities often discriminates against the environmental concerns. These representatives state that the FAA's calculations underestimate the importance of reduced noise to an airport's neighbors.

Final Rule: In response to wide-ranging comments on the determination of the benefits of the final rule, the FAA notes that Congress, in passing the Airport Noise and Capacity Act of 1990, determined that the overall benefits of the transition to an all Stage 3 fleet by the year 2000 exceed the costs. The FAA quantified the benefits of the rule to its best ability and as practicable as required by OMB. OMB requires under Executive Order 12291 that the FAA provide "a description of the potential benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms."

Comment: A commenter raises specific concerns about the use of property value variation to determine the benefits of the Stage 2 phaseout. This commenter takes issue with the FAA's assertions that for every decibel decrease in airplane noise there is a corresponding one-half percent increase in property values. While this commenter views this inverse relationship as "convenient", they see no basis in fact. Several commenters claim that the property value studies cited are inconclusive. Some discredit the studies as being too old, while others state that a recently conducted study deserved more attention. A commenter representing municipalities states that the highly simplified formula for measurement of changes in real estate values mentioned in the NPRM is not sufficiently grounded in scientifically or economically acceptable methodology to be given significant weight in the implementation of the important national policy under consideration here. Another commenter proposes eliminating all of the estimated benefits resulting from an increase in residential property values quoted in the NPRM preamble. The commenters did not provide an alternative method of calculating a quantitative measure of the expected property value benefits. The FAA is still convinced that the information provided is useful in understanding the effects of the final rule.

Final Rule: The analysis represents an attempt to provide the public and government officials with a nationwide quantitative estimate of some of the expected property value benefits of this final rule over an extended period of time, within the limitations of available data. The FAA acknowledges that property values may not, in the case of specific properties, always increase as noise decreases. This generalized relationship of noise and property values cannot be automatically applied to specific communities around specific airports, where property values may or may not be affected by noise. Each community adjacent to an airport must be studied through market analysis to determine the impact that noise has on property values in the area. It is easily conceivable that being located near an airport would increase certain property values because of the economic stimulus of air commerce. A community's demographics and real estate activity reflect the quantitative measure of real property value.

Comment: Many commenters claim that the FAA's Regulatory Impact Analysis lacks a critical evaluation of the health benefits generated by the final rule. The issue was controversial, with some commenters alleging adverse health effect due to noise while others questioned whether noise degraded health in any way.

Final Rule: With the exception of the potential of noise-induced hearing loss at severe levels of noise exposure, there currently is no sound scientific basis for making adequate risk assessments of the non-auditory health effects of airplane noise in airport environs. Potential non-auditory health consequences of airplane noise exposure which have been alleged include birth defects, low birth weight, psychological problems, cancer, stroke, hypertension, and cardiac disorders such as myocardial infarction and cardiac arrhythmia. The current state of technical knowledge does not support an inference of a direct, quantitative relationship between airplane noise exposure and health consequences. Current findings, taken in sum, indicate only that further rigorous studies are needed. Therefore, the benefits analysis does not assess the effects of noise reduction on health.

Competitive Impact

Comment: The joint submission states that the draft Regulatory Impact Analysis fails to make a meaningful appraisal of the rule's effect on competition in the airline industry. In particular, the commenters claim that the analysis failed to give adequate consideration to the effect on small or financially weak carriers and the adverse effects on fares and service. The commenters also claim that reliance on the report of the Secretary's Task Force on Competition in the U.S. Domestic Airline Industry should not be the basis for determining the competitive effect of the final rule. The joint submission claims that the report is outdated (based on data from 1984–1988) and was never intended to be used as a predictor of future competition in the U.S. airline industry.

Final Rule: The Regulatory Impact Analysis provides a general and reasonable assessment of the potential effects of this rule on competition and on large and small airlines. In addition, the Secretary's report thoroughly assesses the level of competition in the U.S. airline industry. While the airline industry has changed since 1988, the level of competition in the industry has not changed significantly. The major conclusions in the Secretary's report are still valid today and, in the FAA's estimation, will continue to be valid over the next 10 years. More current data placed in the docket for this rule show that the number of competitive markets has continued to increase.

Comment: A group of commenters asserts that the FAA used outdated and irrelevant financial data and, therefore, overestimated the industry's ability to cope with the proposed rule's costs. They also assert that the analysis underestimated the degree to which individual carriers would exit airline markets, particularly given the rule's disproportionate impact on individual carriers.

Final Rule: The financial data used in the final Regulatory Impact Analysis is the most recent and credible data

available at this time. The financial data contained in the FAA's Quarterly Industry Review (December 1990) and Form 41: User's Guide—Financial and Traffic Statistics for U.S. Certificated Carriers are considered to be very creditable and relevant sources of airline financial data.

Comment: Another commenter questions the FAA's use of the DOT Competition Study (February 1990). The commenter claims that the study does not establish the degree of concentration in domestic airline markets and that the study lacks significance for public policy decision-making in competition.

Final Rule: The FAA disagrees. The draft Regulatory Impact Analysis merely referenced a conclusion of the DOT Competition Study (Pricing, Volume 1, page 2). That study concludes that the fundamentally competitive nature of the industry has not changed in recent years. The proliferation of hub-and-spoke systems and their inherent stability have reduced the intensity of price competition in many short-haul local markets, while intensifying the benefits of price competition for the vast majority of travelers.

Comment: A number of commenters assert that the proposed rule fails to consider that the national hub-and-spoke system lacks the power to discipline or control regional and local markets. This is particularly true for high frequency or shuttle-type service.

Final Rule: The FAA disagrees. The competition section contained in the analysis for the proposed rule assumed that regional and local markets would be dictated by competitive market forces, not the hub-and-spoke system. The FAA does not have, nor did it receive from the commenters, sufficient information that would lead it to think otherwise.

Comment: Several commenters state that the proposed rule would cripple their ability to expand and, in some cases, their ability to maintain low-fare air service. Other commenters state that the proposed rule is unnecessarily inflexible, and that it is contrary to the intent of Congress that compliance with the statute be achieved through a phasein of Stage 3 airplanes.

Final Rule: The FAA acknowledges that the proposed rule would restrict some air carriers' ability to expand more than others. Consequently, the FAA has incorporated more flexibility into the final rule. The final rule adds additional flexibility through the addition of carry-forward compliance credits, waivers from the interim compliance requirements, and a fleet mix percentage compliance option.

Comment: Some commenters contend that the proposed rule would cost an inordinately greater percentage of the net worth of the smaller, low-fare carriers than that of any of the larger carriers. After the FAA's calculation of present value cost is taken into consideration, three low-fare carriers have a remaining net worth of $117 million. Three larger carriers will have a remaining net worth approximating $5.4 billion. This is a 45-fold disparity.

Final Rule: The FAA recognizes that operators of Stage 2 airplanes will be affected in varying degrees by this rule. Overall, the FAA expects that actual costs will be less than those cited because the cost estimates used in the draft Regulatory Impact Analysis are conservative (high). The estimates were based on the worst-case scenario that all Stage 2 airplanes would be replaced rather than modified to meet compliance by less costly alternatives. In fact, the FAA anticipates that many air carriers, as practicable, will install noise abatement retrofit equipment.

Comment: According to a commenter that operates Boeing 737–200 airplanes, the proposed rule would have a severe effect on its ability to serve its markets. The commenter states that if the proposed rule is adopted, these markets would be the first to suffer.

Final Rule: As stated previously, the proposed rule is not expected to have a significant, if any, impact on small or nonhub markets. Those air carriers affected by the final rule and the statute are expected either to replace their Stage 2 airplanes with Stage 3 airplanes or install noise abatement retrofit equipment. Given the competitive market, if an air carrier fails to replace Stage 2 airplanes serving smaller markets, then it is reasonable to assume that such services would be provided by another air carrier. The commenters also failed to provide any evidence that would support their allegation of the severe adverse impact on its markets in question as well as those for other air carriers' markets.

Regulatory Flexibility Determination

Comment: With regard to the impact of the proposed rule on small carriers and those with few U.S. operations, some of the airlines comment that waivers from the interim compliance requirements should be considered to give small carriers some added flexibility in meeting the December 31, 1999, deadline. Such waivers, according to the comments received, would recognize the value of competition provided by small carriers and address their special financial needs.

Final Rule: The final rule contains a mechanism by which all operators may apply for waivers from interim compliance requirements. The effect of compliance on competition and an operator's financial status are among the criteria that will be used to evaluate applications for such waivers.

Comment: A small express carrier indicates that it is much more costly proportionately for a smaller air carrier to convert a fleet to Stage 3 because at any one time there may be several airplane types operated. For smaller carriers, the cost of maintaining an inventory of parts cannot be spread out over a large number of airplanes.

Final Rule: Congress required the FAA to establish a compliance framework that would eventually result in the elimination of Stage 2 airplane operations. Any dates established would require an air carrier to maintain an inventory of spare parts for more than one kind of airplane if replacement airplanes are the operator's only option. The commenter did not offer any flexible solution that could eliminate the inventory problem as described above.

Comment: Many comments were received concerning the minimum fleet size for a foreign air carrier to be subject to the interim compliance dates of the rule. Some comments suggest that the minimum fleet size be increased from two to four or five. A foreign airline suggests that the FAA exempt those carriers from the interim compliance dates whenever the carrier operates no more than one daily round trip flight to the contiguous United States.

Final Rule: In the final rule, U.S. operators and foreign air carriers are treated the same. This change from the proposed rule obviates the need for special circumstances for foreign operators of small fleets. Both U.S. operators and foreign air carriers will benefit from the rounding provision in terms of the number of airplanes that must be retired.

Comment: In terms of the rule's flexibility regarding noise abatement retrofit equipment availability, a municipality's transportation department commented that owners of DC–8 airplanes can only modify their airplanes with new engines. This commenter states that other noise abatement retrofit equipment for the DC–8 airplane is not available.

Final Rule: The FAA agrees that currently there is no certificated hushkit-type noise abatement retrofit equipment available for the DC–8 airplane. Owners of DC–8 airplanes still have the option of replacing engines, retiring airplanes, or adding to their Stage 3 fleets in order

to comply with the final rule. Operators may also apply for a waiver from an interim compliance requirement and present their circumstance of lack of available technology causing greater costs of compliance.

Federalism and International Trade Impacts

With regard to the proposed sections on Federalism and the International Trade Impact Analysis, no substantive comments were received.

Section-by-Section Discussion of the Final Rule

Section 91.801 Applicability: Relation to Part 36

In the NPRM, the FAA proposed to revise §§ 91.801 through 91.811 to accommodate the regulations implementing sections 9308 and 9309 of the statute. After further consideration, the FAA has decided that to maintain continuity in subpart I of part 91, the new regulations implementing the statute will be added beginning with § 91.851. This designation will allow faster reference to the set of regulations that apply to large airplanes operating in the contiguous United States, and leaves intact the operating noise limits governing areas of the United States not covered by the statute and the regulations regarding Stage 1 and supersonic airplanes.

The only exception to this designation is the addition of paragraph (c) to § 91.801 that describes the applicability of the subject regulations and refers the reader to the proper sections of subpart I.

In the NPRM, the FAA indicated that it proposed to limit the application of the phaseout requirements to airplanes with standard airworthiness certificates. This limitation would have effectively excluded a small number of airplanes with experimental and restricted category airworthiness certificates from the phaseout. Such airplanes are generally used for research and development, firefighting, and other specialized purposes and cannot, by definition, be used in revenue service.

After further review, the FAA concluded that such an interpretation of the statute may not fairly be made. Section 9308 of the statute is unambiguous in its coverage of "any subsonic turbojet aircraft" without limitation as to its airworthiness certification. Accordingly, these regulations must be read as applicable to all civil subsonic turbojet airplanes with a maximum certificated weight of more than 75,000 pounds, regardless of the type of airworthiness certificates they possess. The language of § 91.801(c) has been revised accordingly.

Section 91.851 Definitions

A definitions section, § 91.851, has been added. The definitions apply only to §§ 91.853 through 91.875. These terms and their specialized meaning for the regulations have been gathered in one place to facilitate reference to terms used repeatedly.

All of the terms appearing in this section have the same meaning as proposed in the NPRM. At the request of commenters, some of the terms have been clarified.

The only term that warrants further explanation is operations specifications. The term is defined in § 91.851 to mean an enumeration of an operator's airplanes by type, model, series, and serial number that were operated by an operator on a given day (most likely the date chosen for establishing its base level or for reporting its status).

The FAA is aware that some operators are not required to maintain operations specifications as they are formally known, and that the operations specifications of some operators do not actually contain a list of airplanes being operated.

However, all operators have or can create a list of airplanes that they are operating on any given day. The FAA uses the term operations specifications in §§ 91.851 through 91.875 as a shorthand reference to such a list, without regard to whether such list is formally maintained or created for the purpose of reporting to comply with §§ 91.853 through 91.875. For operators that maintain such lists to comply with other regulations, the FAA anticipates that such lists will be submitted as they are maintained.

The definition and the use of this term in these regulations does not change the status, designation, content, retention or any other requirement for operations specifications required elsewhere in the Federal Aviation Regulations.

Section 91.853 Final Compliance: Subsonic Airplanes

Section 91.853 implements the final compliance date for Stage 3 operations set by the statute, which states:

> After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels, as determined by the Secretary.

The statute also provides that this prohibition:

> * * * shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States.

Accordingly, § 91.853 limits the compliance and nonaddition provisions to Stage 2 airplanes that are operated to or from any airport in the contiguous United States.

Section 91.855 Entry and Nonaddition Rule

The statutory nonaddition rule, section 9309, prohibits the operation in the contiguous United States of any Stage 2 airplane imported after November 5, 1990. Specifically, the statute states:

> [N]o person may operate a civil subsonic turbojet aircraft with a maximum certificated weight of more than 75,000 pounds which is imported into the United States on or after [November 5, 1990] unless—
>
> (1) it complies with Stage 3 noise levels, or
>
> (2) it was purchased by a person who imports the aircraft into the United States under a written contract executed before [November 5, 1990].

The definition of import proposed in the NPRM and adopted here concerns the transfer of an ownership interest from a non-U.S. person to a U.S. person when the airplane is to be operated in the United States. The nonaddition rule protects U.S. ownership interests in Stage 2 airplanes when that interest existed on November 5, 1990, regardless of the airplane's location on that date. Such airplanes are allowed to return to and operate in the contiguous United States. Thus, the test of the nonaddition rule becomes one of the legal ownership of the airplane on November 5, 1990.

The nonaddition rule is written into the operating rules of part 91 in the form of a regulation describing categories of airplanes that will be allowed to operate in the contiguous United States as of September 25, 1991.

These descriptions were proposed in the NPRM as § 91.805, but because of the designation considerations described earlier, is adopted in the final rule as § 91.855. In addition, this section has been revised to facilitate reference and to clarify applicability.

Section 91.855(a) allows for the operation of any Stage 3 airplane in the contiguous United States without further restriction by this subpart. This was proposed as § 91.805(a)(1), and is adopted without change as § 91.855(a).

Section 91.855(b) allows for the operation of any Stage 2 airplane that was owned by a U.S. person on November 5, 1990, and has remained U.S.-owned since that time. The reference to airplanes in an operator's base level that was proposed in the

NPRM was found to be a source of confusion. The airplanes intended to be covered by the proposed section are all included within the provisions of § 91.855.

As noted in the disposition of comments, this revision clarifies that this provision was not meant to be used to operate a foreign-owned leased airplane once it leaves the fleet of a U.S. operator at the termination of a lease. Leasing of foreign-owned airplanes is to be considered under new § 91.855(c).

As noted in the disposition of comments, the term "U.S. operator" was seen as too restrictive a source of airplanes. Section 91.855(b) refers to a Stage 2 airplane owned by a U.S. person, without further reference to the status of the owner.

Section 91.855(c) allows the operation of foreign-owned Stage 2 airplanes leased to U.S. operators before and on September 25, 1991. This provision was not explicitly stated in the NPRM. Its absence was interpreted by some to mean that foreign-owned Stage 2 airplanes leased to U.S. operators were categorically denied from operation, and by others to be presumed as allowed under the provision for airplanes in an operator's base level.

The addition of § 91.855(c) clarifies that U.S. lessees of foreign-owned Stage 2 airplanes may operate those airplanes for the term of the lease in effect before and on September 25, 1991, including any extensions thereof that were provided for by the lease agreement in effect before and on that date.

The phased compliance status of an airplane leased after the date chosen by an operator to establish its base level is dependent on that base level and subject to the regulations regarding the operator's compliance. No foreign-owned Stage 2 airplane leased after the chosen date gains any special base level treatment simply because of its leased status.

Operators should be aware that a Stage 2 airplane that is not actually "purchased" under a lease/purchase agreement until after November 5, 1990, must have a determination made as to its status with regard to the nonaddition rule. Persons interested in such findings of purchase and ownership are advised to read the FAA Notice of Legal Opinion published at 55 FR 40502 (October 3, 1990). This is the same opinion referenced in the NPRM and concerns determinations of ownership. As indicated in the definition of owner in § 91.851, these determinations will be made under the same considerations as those for part 47 of the FAR.

Section 91.855(d) allows for operation of Stage 2 airplanes by a foreign air carrier. This was proposed as § 91.805(a)(3). The reference to the proposed phaseout section has been removed because that provision has been moved to § 91.855(h) to clarify its applicability to all Stage 2 airplanes described in § 91.855.

Section 91.855(e) allows for the operation of Stage 2 airplanes by foreign operators when they are operated for a purpose other than foreign air commerce. This was proposed as § 91.805(a)(4), and is adopted here as § 91.855(e) without change.

Section 91.855(f), proposed as § 91.805(a)(5), tracks the language of the nonaddition rule in the statute and allows for the return and operation of Stage 2 airplanes that were U.S.-owned on November 5, 1990, leased to a foreign airline, and returned within 6 months of the expiration of the lease.

Two changes have been made to this section. The first concerns the interpretation of the language of the statute made by the FAA in the preamble to the NPRM. As indicated in the disposition of comments, the explanation overstated the meaning of the statutory language. It is clear that U.S.-owned Stage 2 airplanes did not have to be leased to a foreign airline on November 5, 1990, to qualify for return; U.S.-owned Stage 2 airplanes may be leased at any time. The operational status of the airplane after a return will be determined according to the regulations. In brief, while a Stage 2 airplane that was operated as part of an operator's fleet on November 5, 1990, may subsequently be leased outside the United States, its later return to the contiguous United States will not count as an addition to a U.S. operator's base level. This concept is incorporated into § 91.861(a)(1) and prevents multiple additions to an operator's base level that would be double counted as an airplane phased out by the removal for leasing.

The second change to this section concerns the term "foreign air carrier" used in the statute. That term now appears as "foreign airline" in the regulation. As stated in the disposition of comments, there is no indication that Congress meant to limit the use of this provision. The adoption of the term foreign air carrier as used in the FAAct could have a discriminatory effect on U.S. owners of Stage 2 airplanes that were leased to a foreign operator that did not have foreign air carrier status. Since the intent of the nonaddition rule includes the protection of preexisting U.S. ownership interests, the language of the regulation has been broadened as requested.

Accordingly, § 91.855(f) is adopted with the changes noted.

Section 91.855(g), proposed in the NPRM as § 91.805(a)(6), tracks the language of the statute regarding the status of airplanes purchased by a U.S. person from a foreign owner (i.e., imported) under a written contract executed before November 5, 1990.

As indicated in the preamble to the NPRM, the FAA does not intend to extend the meaning of the term "executed contract" beyond its generally accepted legal interpretation. In general, the FAA interprets the language of the statute to attempt to account for airplanes that had legally changed ownership but were not yet physically present in the United States and were not leased on November 5, 1990. As described in the comment disposition, executory contracts are those that are considered incomplete. Any determinations of whether contracts are executed or executory beyond these simple circumstances must be made on a case-by-case basis.

Accordingly, § 91.855(g) is adopted without change except as to its designation.

Section 91.855(h) makes every otherwise operable Stage 2 airplane described in the preceding paragraphs subject to the compliance provisions of § 91.865 or § 91.867 that are applicable to the airplane's operator. Nothing in § 91.855 regarding Stage 2 airplanes may be read to negate any provision of the compliance requirements mandated by the statute and incorporated into the regulations at §§ 91.865 or 91.867. This provision is a new paragraph added at the end of § 91.855 to remove individual references and leave no question that all Stage 2 airplanes are covered by the compliance requirements.

Section 91.857 Airplanes Imported to Points Outside the Contiguous United States

This section addresses special rules applicable to airplanes imported (purchased by a U.S. owner from a foreign owner for U.S. operation) after November 5, 1990. When used to provide air transportation, these airplanes may only be operated outside the contiguous United States.

To distinguish these airplanes, the NPRM included proposed § 91.805(d) that required that a statement be added to the operations specifications of the operator that the airplane could not be used to conduct air transportation to or from an airport in the contiguous United States. That requirement is maintained in the final rule as § 91.857(a). Also included as § 91.857(b) is a provision

that allows Stage 2 airplanes imported into noncontiguous States on or after November 5, 1990, to operate in the contiguous United States for the purpose of maintenance. As discussed in the disposition of comments, the statute limits only the operation of such imported airplanes for the purpose of air transportation.

Accordingly, where operated under a special flight authorization that limits the operation to a non-revenue or "ferry" flight, the airplane is not providing air transportation and can be operated into the contiguous United States for the purpose of maintenance. A special flight authorization issued for this purpose must include the fact that it was issued pursuant to this regulation.

Section 91.859 Modification To Meet Stage 3 Noise Levels

The statute provides an exemption in the nonaddition rule for imported Stage 2 airplanes to be operated in the contiguous United States to obtain modifications in order to comply with Stage 3 noise levels.

The FAA will be issuing a Special Federal Aviation Regulation (SFAR) detailing the procedures for obtaining a special flight authorization under this section. In general, the FAA anticipates requiring that an applicant show that it has a valid contract for a certificated modification to secure the special flight authorization. This is the same standard that the FAA has applied consistently to requests to operate Stage 1 airplanes to obtain modifications to comply with Stage 2 noise levels.

Until the SFAR is adopted, persons wishing to take advantage of this provision for airplanes imported after November 5, 1990, may apply under 14 CFR 11.25 for an exemption from § 91.855.

Accordingly, this provision, proposed as § 91.805(c) is adopted as § 91.859, with the changes appropriate to its redesignation.

Section 91.861 Base Level

Under the provisions of this section, each U.S. operator must determine its "base level" of Stage 2 airplanes according to a specified formula. Included are those airplanes on operations specifications on any one day selected by the operator during the period from January 1, 1990, through July 1, 1991; those airplanes added pursuant to the statutory provisions for the return or purchase of Stage 2 airplanes in § 91.855 (g) and (h); and those airplanes acquired with a corresponding amount of base level under § 91.865. Returns, purchases, and transfers of airplanes with base level are discussed further under the analyses of §§ 91.855 and 91.865.

Each foreign air carrier must determine its base level by including those Stage 2 airplanes on its U.S. operations specifications on any one day during the same 18-month period, plus foreign air carrier base level acquired from other persons. Any such acquisition must be made only with a corresponding number of Stage 2 airplanes.

The rule provides the flexibility necessary to transfer a single airplane with base level or an entire fleet. Elimination of any number of Stage 2 airplanes does not alone change the base level number.

Since, by definition, new entrants did not operate Stage 2 airplanes subject to these regulations during the base level determination period, they will not have a base level. Section 91.867 provides a fleet mix compliance percentage for new entrants depending on the time of market entry.

The definition of new entrant here is different from the definition used in new part 161. In part 161, a new entrant is any aircraft operator that did not operate to or from a particular airport at the time a local noise or access restriction was adopted. In the instant rule, a new entrant is an operator that did not operate Stage 2 or Stage 3 airplanes in the contiguous United States before July 1, 1991.

Section 91.863 Transfers of Stage 2 Airplanes With Base Level

Section 91.863 contains the regulations regarding the transfer of Stage 2 airplanes. Section 91.863(a) indicates that Stage 2 airplanes may be transferred with or without the corresponding amount of base level, but that base level cannot be transferred without the corresponding amount of Stage 2 airplanes.

The FAA presumes that the portion of the base level that corresponds to a leased airplane remains with the operator when the airplane is returned to the owner, unless the lessee and lessor agree otherwise. One consideration in such an agreement would be that the transfer of base level would reduce the operator's base level and affect the number of Stage 2 airplanes it would be allowed to operate after the next compliance date.

Section 91.863(b) indicates that while Stage 2 airplanes and the corresponding base level may be transferred between U.S. and foreign persons, foreign air carriers cannot use base level from U.S. operators, and U.S. operators cannot use base level from foreign air carriers to operate Stage 2 airplanes.

Section 91.863(c) requires that whenever a transfer of airplanes with base level occurs, the transferring and acquiring parties must submit a report of the transaction to the FAA. That report must include the type of base level transferred, that is, whether it is U.S. operator base level or foreign air carrier base level.

Section 91.863(d) states that any transaction or series of transactions in which base level is transferred will be scrutinized by the FAA. Transactions that ultimately result in no increase or decrease in the number of Stage 2 airplanes of either the acquiring or transferring operator will not be valid to establish compliance with the requirements of § 91.865.

This provision is intended to prevent sham transactions involving base level transfers. This provision is necessary to prevent an unrestricted transfer of base level that would function solely as a means to escape compliance by a reduction of Stage 2 airplanes or a change in fleet mix.

As an example, Operator A with a base level of 100 sells 100 Stage 2 airplanes and the corresponding base level to Operator B before the first compliance date. Operator B already had 100 Stage 2 airplanes and a base level of 100. Operator A then buys back the airplanes without the base level, and chooses to report compliance with the fleet mix option of § 91.865(d) because it has enough Stage 3 airplanes to do so. Since the fleet mix option does not require a calculation of base level, Operator A is unaffected by the reduction to its base level.

However, Operator B now has a base level of 200 but only has 100 Stage 2 airplanes. Operator B would be in compliance with the provisions of § 91.865(b) for the 1994 compliance date since it holds twice as much base level as the number of Stage 2 airplanes it operates. In fact, Operator B could add 50 more Stage 2 airplanes to its fleet and still meet the first compliance date. Or, Operator B could do nothing, and it would meet both the first and second compliance requirements of § 91.865(b). Both operators would be in compliance with their chosen options under § 91.865, yet no airplanes would have been eliminated.

Section 91.863(d) indicates that the base level transaction in this example would not be considered valid for Operator B to establish compliance under the phaseout option of § 91.865(b). The net effect of the transactions between Operators A and B is no change in the number of Stage 2 airplanes for either operator. The

regulations do not allow the transfer of base level without a corresponding number of airplanes, which is the eventual result of these transactions. It is clear that neither operator could show a legitimate business purpose for this series of transactions—they constitute no more than an effort to transfer base level. Section 91.863(d) disallows the result of this transaction from being used to establish compliance.

In another example, Operator A finds that it cannot meet the fleet mix requirement of § 91.865(d) for a given compliance date. Before that date, Operator A transfers enough Stage 2 airplanes to Operator B, which can absorb them and still meet its compliance requirement.

If, after the compliance date passes, Operator A takes back its Stage 2 airplanes, it would be in violation of the requirement that it maintain the Stage 2 number or percentage it had on the compliance date just passed.

Alternatively, if Operator A eliminated some other Stage 2 airplanes after the compliance date in order to get back the ones it transferred to Operator B, the transactions would be suspect under § 91.863(d) since it would have been entered into only for Operator A to show compliance on the date required while in reality it was still adjusting the size of its fleet.

Similarly, transactions involving the subleasing or transferring of Stage 3 airplanes to bolster an operator's fleet past a compliance date would also fail the compliance test.

Operators that find themselves unable to comply for reasons of capacity should apply for a waiver from the interim compliance date.

Section 91.865 Phased Compliance for Operators With Base Level

To incorporate the many requests for flexibility in the elimination of Stage 2 airplanes, § 91.865 sets out two compliance options for operators of Stage 2 airplanes that have established base levels.

Section 91.865(a) indicates that the rule for reduction of Stage 2 airplanes does not apply to new entrants, since they are accounted for separately in § 91.867, nor does it apply to foreign operators not engaged in foreign air commerce.

Each operator that operated airplanes before July 1, 1991, and has an established base level, has a choice of how it wishes to comply at any interim compliance date. An operator may choose to comply with paragraph (b) and phase out its Stage 2 airplanes, or it may choose to comply with paragraph (d) and achieve a certain percentage of Stage 3 airplanes in its fleet. Both options function as a phased transition to the statute's final compliance date of December 31, 1999.

An operator can mix its compliance by choosing to comply with paragraph (b) on one compliance date and paragraph (d) on another. Between compliance dates an operator must maintain the level of compliance it demonstrated on the previous compliance date. This is discussed in more detail below.

Section 91.865(b) sets out the amount of reduction of Stage 2 airplanes from its base level required by an operator on the date of compliance. For example, an operator with a base level of 100 on December 31, 1994, may operate no more than 75 Stage 2 airplanes at any time after that date. After December 31, 1996, that operator may operate no more than 50 Stage 2 airplanes, and after December 31, 1998, no more than 25 Stage 2 airplanes.

Section 91.865(c) indicates that the calculation of how many airplanes may be operated is to be made pursuant to the operator's base level, including any adjustments that were made prior to the compliance date in question.

Section 91.865(d) sets out the alternative method of compliance that an operator may choose. Compliance with this paragraph is achieved by operating a fleet that consists of not less than 55 percent Stage 3 airplanes after December 31, 1994, not less than 65 percent Stage 3 airplanes after December 31, 1996, or not less than 75 percent Stage 3 airplanes after December 31, 1998.

An operator that switches from one method of compliance to the other at different compliance dates may not exceed the number of Stage 2 airplanes it was allowed to operate on the previous compliance date. For example, Operator A has a base level of 100 on December 31, 1994, reports compliance under § 91.865(b) and afterward operates only 75 Stage 2 airplanes. It also operates 100 Stage 3 airplanes, such that its fleet mix is 57.1 percent Stage 3 airplanes. Operator A cannot then acquire 7 additional Stage 2 airplanes to bring its total Stage 2 airplanes to 82 and its fleet mix to 55 percent Stage 3. Operator A must stay at or below the number of Stage 2 airplanes it was allowed to operate after the previous compliance date. In order to increase the number of Stage 2 airplanes it operates before the next compliance date, Operator A would have to acquire sufficient base level to do so. Each operator must maintain the compliance it reported at the previous compliance date.

An operator that reported compliance pursuant to § 91.865(d) at one compliance date may increase the number of Stage 2 airplanes it operates before the next compliance date only if it also adds enough Stage 3 airplanes to maintain the percentage required.

Section 91.865(e) indicates that compliance calculations that result in a fraction may be rounded to allow the operation of the next whole number of Stage 2 airplanes. For example, under paragraph (b), an operator with a base level of 123 would have a calculation that resulted in 92.25 airplanes after the first compliance date. That operator may operate 93 Stage 2 airplanes after that date. Under paragraph (d), an operator that found itself, for example, with a fleet that consisted of 54.22 percent Stage 3 airplanes at the first compliance date could round this number up to 55 percent without eliminating any more Stage 2 airplanes.

Section 91.867 Phased Compliance for New Entrants

Paragraphs (a)(1), (2), (3), and (4) of § 91.867 provide a Stage 2 airplane fleet allocation for U.S. new entrants that hold an operating certificate under part 121, 125, or 135 of the FAR. The rule specifies the minimum percentage of a new entrant's airplanes that must meet Stage 3 noise levels, with the specific percentage tied to the date that the new entrant begins operations. The definition of Stage 3 airplane in § 91.851 prohibits airplanes with a maximum certificated weight of 75,000 pounds or less from being counted to meet compliance schedule percentages for new entrants.

Paragraphs (b)(1), (2), (3), and (4) provide the Stage 2 airplane fleet allocation for foreign air carrier new entrants that hold an operating certificate under part 129 of the FAR.

Section 91.867(c) indicates that calculations of the number of airplanes operated by a new entrant that result in a fraction may be rounded to allow the operation of the next whole number of Stage 2 airplanes.

Section 91.869 Carry-forward Compliance

Section 91.869 indicates that an operator that exceeds a compliance requirement of § 91.865(b) may accrue compliance credit for the number of airplanes by which it exceeds the number required for compliance. Such carry-forward compliance credit may accrue at the December 31, 1994, or December 31, 1996, compliance date. It may be used at the December 31, 1996, or December 31, 1998, compliance date.

Section 91.869(b) indicates that operators that choose to comply with the phaseout option can use the excess number of Stage 2 airplanes phased out as a credit against later compliance with § 91.865(b) or (d).

For example, under § 91.865(b) an operator with a base level of 100 may operate no more than 75 Stage 2 airplanes after December 31, 1994. If at that time the operator reports only 70 Stage 2 airplanes, it may later claim a carry-forward compliance credit of five. Accordingly, on December 31, 1996, instead of reducing its Stage 2 airplanes to 50, it would only have to reduce that number to 55 and report that it is using its accrued carry-forward compliance credit.

If an operator that holds five carry-forward compliance credits after December 31, 1994, decides to comply with the fleet mix provision of § 91.865(d) on December 3, 1998, it may still use those credits to achieve compliance. If the operator had 69 Stage 3 airplanes and 25 Stage 2 airplanes, its fleet mix would be 73.4 percent Stage 3, or 74 percent after rounding. The operator could use its credit to calculate its fleet as containing 74 Stage 3 airplanes, and its fleet mix would then be 74.7 percent Stage 3, or 75 percent after rounding.

Carry-forward compliance credit may not be transferred to another operator. It does not expire, but it cannot be used to achieve compliance with the 85 percent fleet mix required to apply for a waiver from the final compliance date. That requirement is statutory and cannot be affected by this regulation.

Section 91.871 Waivers From Interim Compliance Requirements

The NPRM did not include a separate provision for waivers from the interim compliance requirements. As noted in the disposition of comments, many commenters requested that such waivers be provided for in the final rule to offer flexibility from the interim compliance requirements.

Accordingly, § 91.871 contains the procedures and information required to be submitted by U.S. and foreign operators when requesting such a waiver.

In general, an applicant may request a waiver when it would be financially onerous, physically impossible, or technologically infeasible to comply with the interim requirement, or when meeting the requirement would have an adverse effect on competition or service to small communities. As indicated in the disposition of comments, the FAA anticipates that the existence and availability of noise abatement retrofit equipment will be an important factor in the consideration of applications for interim waivers.

An applicant must show why granting a waiver would be in the public interest, and must submit evidence of its good faith efforts to achieve compliance. Additional information relevant to the circumstances of the application must also be submitted, as detailed in the rule language.

Applications must be submitted at least 120 days prior to the compliance date from which a waiver is sought. No individual waiver will be granted that extends beyond the next interim compliance date. If a waiver is sought for the next compliance date, an applicant must reapply based on the circumstances that exist at that time.

A summary of all applications will be published in the **Federal Register** with time allowed for public comment.

Section 91.873 Waivers From Final Compliance

The statute provides that:

> If, by July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the Stage 3 noise levels, such carrier may apply for a waiver of the prohibition set forth in subsection (a) for the remaining 15 or less percent of the aircraft used by the carrier to provide air transportation. Such application must be filed with the Secretary no later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the air carrier to provide air transportation to comply with such noise levels not later than December 31, 2003.

Section 91.873 codifies the requirement for a waiver from the final compliance requirement as set out in the statute. The terms of the statute limit the grant of a final compliance waiver to U.S. air carriers. To be eligible, a carrier's fleet must be 85 percent Stage 3 airplanes by July 1, 1999.

The rule lays out the application procedure and filing date, and specifies that to grant such a waiver, the Secretary must find that it would be in the public interest. In addition, criteria similar to the ones enumerated in the provision for waivers from interim compliance requirements will be used, including the effect of granting such a waiver on competition and small community air service.

Section 91.873(e) also states that the term of any final compliance waiver will be determined by the circumstances presented in the application. By statute, no waiver can be granted that would permit the operation of any Stage 2 airplane beyond December 31, 2003.

A summary of all applications will be published in the **Federal Register** with time allowed for public comment.

Section 91.875 Annual Progress Reports

Section 91.875(a) requires each operator covered by § 91.865 or § 91.867 to report annually to the FAA, Office of Environment and Energy, its progress on complying with the appropriate section. Progress reports are for calendar years.

Sections 91.875(a) (1) through (3) list the information that must be provided in every report, including identification of the operator, any base level transactions, and the individual airplanes removed from service or modified to meet Stage 3 noise levels. Specific identifying information will be required for each Stage 3 airplane. This information is necessary to permit the FAA to ensure that airplanes reported are in fact operated in the reporting operator's fleet, as required by § 91.865. Only those airplanes actually operated by the reporting operator will count toward determining compliance with that section. When an airplane is reported in the fleet of more than one operator, because of a lease or other arrangement, the FAA may investigate, if necessary, to determine whether the requirements of § 91.865 have been met.

Section 91.875(b) lists the information that must be included in the initial report of each operator that covers the period January 1, 1990, through December 31, 1991. The information required for this report is detailed in § 91.875(b)(1). In addition, each U.S. operator must submit its plan for meeting the requirements of the regulations and the statutory final compliance date. U.S. operators must also identify any Stage 2 airplanes that were returned or purchased pursuant to the nonaddition rule, § 91.855.

Section 91.875(c) indicates that subsequent annual reports must include any changes in the information required pursuant to paragraphs (a) and (b) of § 91.875, including the use of any carry-forward credits.

Section 91.875(d) indicates that information submitted that an operator considers proprietary should be identified and a request made to keep the material confidential.

Section 91.875(e) indicates that if actions taken by an operator during a reporting period cause it to be in compliance with § 91.853, that status must be reported. Future reports are not required unless the required information changes.

Section 91.875(f) indicates that certain annual progress reports must contain

information describing how the operator achieved compliance with the interim compliance requirements.

Economic Summary

This section summarizes the Regulatory Impact Analysis prepared by the FAA on the amendments to 14 CFR part 91, Subpart I—Operating Noise Limits. This summary and the full regulatory impact analysis quantify, to the extent practicable, estimated costs to the private sector, consumers, and Federal, State, and local governments, as well as anticipated benefits.

Executive Order 12291, February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This determination is normally made on the basis of a regulatory evaluation or regulatory impact analysis. However, by enacting the Airport Noise and Capacity Act of 1990, Congress has in effect already determined that the phased transition to an all Stage 3 fleet by the end of 1999 is in the public interest; that is, the collective public benefits of the phased transition outweigh its costs to the public. The FAA has prepared a regulatory impact analysis of the final rule. The purpose of the analysis is to estimate potential costs and benefits (either qualitatively or quantitatively) and to promote a better understanding of the impact of the rule.

Executive Order 12291 requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that: has an annual effect on the economy of $1 million or more; creates a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or has a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. The Executive Order requires that alternative actions be considered and evaluated for major rules.

In addition to a summary of the regulatory impact analysis, this section also contains a summary of public comments, various alternatives for accomplishing the phased transition to Stage 3 airplanes, a regulatory flexibility determination as required by the 1980 Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and an international trade impact assessment. Detailed economic information supporting this final rule is contained in the final Regulatory Impact Analysis, which has been placed in the docket.

Summary of Public Comments

The public comments that the FAA received on the regulatory impact analysis, regulatory flexibility determination, and international trade impact assessment are discussed above. Some of the issues that the commenters address are the methods the FAA used to calculate the cost of compliance, whether the health benefits from noise reduction can be quantified, and the stringency of the compliance schedule. As stated above, a more detailed discussion of the comments on these topics and others can be found in the detailed Regulatory Impact Analysis of the final rule, which has been placed in the docket.

Summary of the Description of Alternative Actions

For this final rule, the FAA compared several additional alternatives. These alternatives fall under the broad categories of:

- Stage 2 phaseout schedule;
- Fleet mix schedule;
- Interim compliance waivers;
- Carry-forward compliance credits;
- Transferable rights.

Stage 2 Phaseout Schedule

A phaseout of Stage 2 airplanes was originally proposed in the NPRM. This phaseout approach would ensure that an absolute number of Stage 2 airplanes would be retired or modified by each compliance date, with the corresponding quantifiable noise benefits. It would also require every operator to share the cost burden at each compliance date. The issues associated with phaseout schedules are whether to: (1) Maintain the NPRM phaseout schedule; (2) exclude the 1998 compliance requirement of a 75 percent reduction from the base level; or (3) exclude the 1994 compliance requirement of a 25 percent reduction from the base level. A phaseout schedule that does not require significant progress toward a quieter fleet by the end of 1994 could result in a proliferation of locally proposed airport restrictions on Stage 2 operations. While, as noted in the part 161 rulemaking, the FAA would generally oppose such restrictions, considerable uncertainty and expensive deliberation would result. Eliminating the 1998 compliance date could reduce costs substantially while reducing the benefits proportionately, but would entail the risk of numerous local restrictions.

Stage 3 Phasein Schedule

As an alternative to phasing out Stage 2 airplanes, a large number of commenters supported an option to phase in Stage 3 airplanes. This alternative would allow operators to reduce the percentage of their fleets that are composed of Stage 2 airplanes by adding Stage 3 airplanes or converting Stage 2 airplanes to Stage 3. This is designated as compliance Scenario 4 in the Regulatory Impact Analysis. The FAA considered two such fleet mix schedules. The interim dates for each schedule are the same—1994, 1996, 1998—but the compliance percentages are different. Fleet mix scenario 4A would require operators to have 65, 75, and 85 percent Stage 3 fleets at each interim date, respectively. Fleet mix Scenario 4B, the option chosen for this final rule, would require 55, 65, and 75 percent, respectively.

The fleet mix option favors those operators starting the phased transition with larger percentages of their fleets consisting of Stage 3 airplanes. However, the fleet mix option could ease the compliance burden on some air carriers with a high percentage of Stage 2 airplanes. It will also provide noise relief benefits to a significant number of people, although at a slightly lesser rate than the proposed Stage 2 phaseout alone would. The major noise benefits accruing at the end of 1999 would be the same with either approach.

Interim Compliance Waivers

An issue not considered in the NPRM is whether to include waivers from interim compliance requirements. These waivers have been included in the final rule and will require the affected parties to demonstrate that they meet certain criteria before the waiver is granted.

Carry-forward Compliance Credits

Carry-forward compliance is a concept similar to transferable rights. Carry-forward compliance credits earned by phasing out additional Stage 2 airplanes can only be used by the operator generating them. The FAA concludes that carry-forward compliance credits will add flexibility and reduce compliance costs while maintaining the same level of benefits.

Transferable Rights

After careful consideration of the public comments, the FAA has determined from a qualitative viewpoint that the final rule will not include transferable rights. In making this determination the FAA reviewed several options including those proposed in the joint submission.

A complete explanation of transferable rights is presented in the preceding comment disposition section of this document.

Scenarios for the Final Rule

For the final rule, the FAA developed five compliance scenarios based on the schedules presented in the NPRM and public comments. All of the assumptions made in the NPRM for the Stage 2 phaseout will be used in the final rule. These assumptions include: airplane life (25 years), interest rate (10 percent), salvage value of Stage 2 airplanes ($1–2 million), alternative uses for the airplanes, availability of noise abatement retrofit equipment, types of replacement airplanes along with the price of fuel ($0.65 per gallon), and the cost of a new Stage 3 airplane ($186,229 to $198,237 per seat).

The FAA considered the following five scenarios:

Scenario 1—NPRM Schedule 5, a Stage 2 phaseout approach with three interim compliance dates: December 31, 1994; December 31, 1996; December 31, 1998.

Scenario 2—NPRM Schedule 5 without the December 31, 1998, compliance date.

Scenario 3—Scenario 1 plus an evaluation of any cost savings resulting from waivers granted from the interim compliance requirements and the use of carry-forward compliance credits.

Scenario 4—Adds a fleet mix compliance option to Scenario 3. There are two variations of this scenario, 4A and 4B which are explained below.

Scenario 5—Scenario 1 with the addition of a transferable rights approach.

Costs

The final rule implements a phased transition to Stage 3 airplanes as required by the statute. The costs attributed to removing all Stage 2 airplanes by December 31, 1999, for the carriers studied in this analysis for which reliable data are available is $4.2 billion. Assuming compliance by installing the least expensive noise abatement retrofit equipment on these affected airplanes,[1] the cost will be $830 million. The final rule allows operators to phase out Stage 2 airplanes under Scenario 3 or choose a fleet mix approach under Scenario 4B. Allowing air carriers to select a compromise approach maximizes benefits and minimizes costs. The costs of these scenarios are presented below.

[1] The airplanes that will be affected by the statutory ban and the final rule are those that will be 25 years old after 1994.

Five compliance scenarios were evaluated for the final rule and will be described in a later section entitled Cost of Compliance. These statutory costs are underestimated because the FAA is assuming that Stage 2 airplanes are instantaneously replaced with Stage 3 airplanes at midnight, December 31, 1999. In reality, operators will remove Stage 2 airplanes over a period of time. Conversely, the costs associated with the five compliance scenarios are overestimated.

These compliance scenarios can be met by the operators by either replacing airplanes or installing noise abatement retrofit equipment. Scenario 3, for instance, allows compliance to be achieved only by eliminating Stage 2 airplanes while Scenario 4 allows compliance to be achieved by either eliminating Stage 2 airplanes, adding Stage 3 airplanes, or both. In most cases, replacing Stage 2 airplanes with new Stage 3 airplanes will cost more than installing noise abatement retrofit equipment. Because the industry can comply with the statute through retrofitting with noise abatement equipment, rather than by upgrading to new airplanes, the FAA considers the retrofit cost as the more likely cost of the rule.

In addition to the cost of the final rule's phased compliance schedule, there will be administrative costs for the FAA and the industry. As required by the statute, § 91.875 requires U.S. operators to submit annual progress reports to the FAA showing compliance with the requirements of this subpart. The FAA estimates that the net present value of air carrier costs to produce annual progress reports will be $20,000. The net present value of costs to the FAA to review these annual progress reports and monitor the program will be $414,000. These compliance costs are not expected to change under any of the scenarios considered.

The following is a discussion of the major alternative scenarios considered in determining the final rule. The method of computing the costs is included.

Cost of Compliance Methodology

The true economic measure of cost resulting from the phased compliance is not the gross purchase price of a replacement Stage 3 airplane. Rather, it is the opportunity cost of capital tied up in the purchase of a new asset, plus or minus the discounted value of changes in operating and maintenance costs that may accrue by replacing older airplanes with new ones.

The opportunity cost of capital, in the case of this final rule, is the premature interest cost associated with the early unanticipated purchase of Stage 3 airplanes or noise abatement retrofit equipment. Additional costs associated with the purchase of a new airplane should be added to obtain the true purchase cost. Additional costs include employee training, tooling, spare parts, supplemental equipment, etc. To account for these additional costs, the analysis adds $1 million to published Stage 3 airplane purchase prices.

Cost of Compliance

The two cost models used in this analysis were the fleet model and the air carrier model. The fleet model was used to calculate the cost impact for all affected airplanes and assumed that the oldest Stage 2 airplane, regardless of carrier, is phased out first. The air carrier model was used to examine the cost impact on 17 major and national air carriers. It is assumed in the cost model that the oldest Stage 2 airplane by carrier is phased out first. Consequently, in the air carrier model, some newer Stage 2 airplanes owned by one carrier would be phased out before some older Stage 2 airplanes owned by another air carrier. The air carrier model was used to evaluate the costs and benefits for most of the scenarios.

Costs were estimated for the statutory ban of Stage 2 airplane and for the six alternative scenarios considered. The estimated present value of the cost of the statute, calculated by summing the present value of the costs of the individual carriers, is $4.2 billion for replacement of Stage 2 airplanes by Stage 3 airplanes and $827 million for converting Stage 2 airplanes to Stage 3 airplanes by using the least expensive noise abatement retrofit equipment. The FAA believes $827 million is the most likely cost since noise abatement retrofit equipment will likely be available for most Stage 2 airplanes early in the transition period. It is important to remember that the statutory ban costs will always be incurred without regard to the scenarios adopted in the final rule.

Four of the scenarios (1, 2, 3, and 5) that were considered in the final rule would phase out Stage 2 airplanes as was done in Schedule 5 in the NPRM; the two other scenarios (identified as Scenarios 4A and 4B) would phase in Stage 3 airplanes. Scenario 1 is the same as Schedule 5 in the NPRM, with a Stage 2 phaseout schedule as follows: 25 percent by December 31, 1994, 50 percent by December 31, 1996, 75 percent by December 31, 1998 and 100 percent by December 31, 1999. The present value of the cost for scenario 1

was estimated to be $1.5 billion for replacing Stage 2 airplane with Stage 3 airplanes and $300 million for converting Stage 2 airplanes to Stage 3 airplanes. The latter is considered by the FAA to be the more likely cost since noise abatement retrofit equipment is expected to be available for most Stage 2 airplanes.

Scenario 2 is similar to scenario 1, except that the 1998 compliance deadline is eliminated. This option would help reduce compliance costs for all air carriers, but operators with young Stage 2 airplanes would be aided the most. However, scenario 2 would likely encourage local airport proprietors to impose their own local airport noise and access restrictions against Stage 2 airplane operations, increasing the costs imposed on all air carriers. Scenario 2 was rejected early from consideration and no cost estimates were done for the 17 air carriers.

Scenario 3 is another phaseout alternative similar to scenario 1, but includes interim compliance waivers and carry-forward compliance credits. The waivers for interim compliance dates will provide flexibility to those air carriers that cannot otherwise comply with the compliance schedule. Carry-forward compliance credits will provide operators an opportunity to initially phase out more airplanes than required so as to reduce their requirements at the later interim compliance dates. The FAA assumed in its evaluation of scenario 3 that waivers will be granted to no more than 15 percent of the airplanes that are to be phased out on each compliance date. If an interim waiver is granted to each carrier, the estimated present value of the costs of scenario 3 is $1.2 billion for replacement and $260 million (the more likely cost) for conversion. Some air carrier might choose to use the carry-forward compliance credit option in scenario 3. If air carriers chose to use carry-forward compliance credits, the FAA estimated, for costing purposes, that they would accelerate their phaseout to 30 percent in 1994 and consequently decelerate their phaseout to 20 percent in 1998. This was not considered likely and only fleetwide estimates were done. The present value of the estimated costs were $550 million for replacement and $120 million for conversion; these cost estimates would be higher if the carrier cost model was used.

Scenarios 4A and 4B allow the phasein of Stage 3 airplanes. Under these scenarios, operators could potentially meet interim compliance dates by adding Stage 3 airplanes to their fleets, thereby reducing the fleet percentage of Stage 2 airplanes. Scenarios 4A and 4B better accommodate those air carriers whose fleets currently have a high starting percentage of Stage 3 airplanes. Scenario 4A requires 65 percent Stage 3 airplanes by the end of 1994, 75 percent Stage 3 airplanes by the end of 1996, and 85 percent Stage 3 airplanes by the end of 1998. Scenario 4B requires 55, 65, and 75 percent Stage 3 airplanes at these same dates. The estimated present value of the costs for Scenarios 4A and 4B are $1.1 billion and $273 million, respectively, to replace Stage 2 airplanes with Stage 3 airplanes and $218 million and $55 million, respectively, to convert Stage 2 airplanes to Stage 3 airplanes.

Scenario 5 would phase out Stage 2 airplanes as in scenario 1, but scenario 5 allows transferable rights. A base level would be established for each operator and would be based on the maximum number of owned or leased Stage 2 airplanes that were listed on each operator's operations specifications on any one day during the period January 1, 1990 through July 1, 1991. Under this scenario, part or all of the base level could be transferred from one domestic operator to another domestic operator, so that each operator's base level could increase or decrease accordingly. This analysis assumes that the most efficient allocation of operating rights would be based upon a first-in first-out retirement schedule. That is, the oldest airplanes would be retired first. It also assumes that if an airplane is retired earlier than its normal (25 year) useful life, an operating right would be generated that could be traded.

Under this scenario, in an efficient transferable operating rights system, the fleet would be acting as one to meet the requirements of the compliance schedule. This scenario does not require any one operator to meet its schedule. If an individual operator is unable to meet its schedule, then that operator would purchase enough operating rights to meet the compliance schedule.

The cost for scenario 5 falls between the cost of scenario 1 using fleet-wide model and the cost of scenario 1 using the carrier model. For replacing Stage 2 airplanes, the cost would be between $740 million and $1.5 billion. The cost would be between $150 million and $300 million if all Stage 2 airplanes are converted to Stage 3 airplanes.

The final rule implements scenario 4B. Each operator may choose whether to phase out its Stage 2 airplanes or phase in Stage 3 airplanes to achieve compliance on each interim compliance date.

The FAA expects that most air carriers will choose to phase in Stage 3 airplanes to achieve compliance and to convert Stage 2 airplanes to Stage 3 airplanes (to the extent that such conversions are economically logical) by using the least expensive noise abatement retrofit equipment.

Cost Estimate Assuming 30-Year Life

In addition to calculating the cost under the 25-year useful life assumption, the FAA calculated the cost of the statutory ban and final rule under a 30-year useful life assumption. This was done because some commenters suggested that the average retirement age of their airplanes is currently greater than 25 years. This was also accomplished to determine if the final rule might have been different if a 30-year useful life assumption were adopted.

The air carriers have incurred large losses resulting from reduced operating revenues due to the Persian Gulf war, coupled with a slowdown in the U.S. economy. However, this situation is expected to pass.

The FAA considers the 25-year useful life assumption to remain valid for forecasting in the long run. However, the FAA examined estimates of industry costs based on a useful life assumption greater than 25 years to assess the possible effect of this rule until the financial health of the industry improves.

Using the fleet model, the FAA estimates that the present value of the cost for converting Stage 2 airplanes to Stage 3 is $2.3 billion for scenario 1 (which was the proposed rule in the NPRM) and $2.1 billion for scenario 4B. These estimates are the sum of the costs of the statutory ban and cost of the final rule for converting the Stage 2 airplane fleet by installing noise abatement retrofit equipment. The estimated present value of the costs of replacing Stage 2 airplanes with Stage 3 airplanes is $11.2 billion for scenario 1 and $10.2 billion for scenario 4B. As previously stated, these estimates include both the costs of the statutory ban as well as the costs of the final rule (in this case, the regulatory costs are about one-fourth the total costs). If costs had been estimated for each of the 17 carriers, the total cost estimates would have been somewhat higher.

Cost Analysis of Sections of the Rule

Sections 91.801, 91.851, 91.853, 91.855, and 91.861

Section 91.801 prescribes the applicability of operating noise limits

and related requirements for civil subsonic turbojet airplanes in the United States. Section 91.851 presents definitions that are used in this final rule. Section 91.853 specifies compliance requirements. Section 91.855 provides the rules for entry and nonaddition of Stage 2 airplanes. Section 91.861 defines the base level of Stage 2 airplanes for U.S. operators and foreign air carriers. None of these sections results in any incremental compliance costs.

Section 91.857 Airplanes imported to points outside the contiguous United States

This section states that an operator with an airplane that does not comply with Stage 3 noise levels and was imported into the 48 contiguous United States on or after November 5, 1990, must include in its operations specifications a statement that the airplane will not be used to provide air commerce to or from any airport in the 48 contiguous United States. In addition, to operate that airplane in the 48 contiguous United States for the purpose of maintenance, the operator must obtain a special flight authorization. The net present value cost of obtaining special flight authorizations for airline operators is expected to be $2,300; cost to the FAA is expected to be $7,400.

Section 91.859 Modification to meet Stage 3 noise levels

This provision allows any operator to apply for a special flight authorization for modification of Stage 2 airplanes otherwise prohibited from operating to or from an airport in the contiguous United States. This provision will allow individuals to obtain modifications to meet Stage 3 noise levels in the contiguous United States on or before December 31, 1999. The costs involved with obtaining this special authorization are covered under § 91.857 above.

Section 91.863 Transfer of airplanes with base level

Section 91.863 allows, under certain conditions, for Stage 2 airplanes to be transferred between operators and others with or without the corresponding amount of base level. It states the parameters under which transfers may occur. Because the transfer of airplanes between parties is considered a normal business decision, the FAA concludes that there will be no incremental compliance costs.

Section 91.863(c) requires that when a transfer of Stage 2 airplanes with base level occurs, the transferring and acquiring parties shall, within 10 days, jointly submit written notification of the transfer to the FAA. The FAA estimates that 10 transfers will occur per year through 1999. The discounted total cost estimates of this provision to the industry will be $710 and to the FAA will be $660.

Section 91.867 Phased compliance for new entrants

Section 91.867 states the minimum Stage 3 percentage requirement for a new entrant's fleet. Due to the entry and nonaddition provisions of the statute and § 91.855, the number of Stage 2 airplanes operated in the United States is limited. Therefore, any costs associated with eliminating Stage 2 airplanes for new entrants have already been calculated in § 91.865. The costs attributable to new entrant foreign carriers are not included as a cost under this Regulatory Impact Analysis.

Section 91.869 Carry-forward compliance

Section 91.869 allows for any operator that exceeds the compliance requirements of § 91.865(b) by phasing out, modifying, or replacing more airplanes than is required at any interim compliance date to apply that number of airplanes to future compliance requirements. The cost savings associated with this provision have been identified earlier in compliance Scenario 3.

Section 91.871 Waivers from interim compliance requirements

This section will allow any U.S. operator or foreign air carrier subject to the requirements of §§ 91.865 or 91.867 to apply for a waiver from any of the interim compliance requirements. Applicants must show that a grant of waiver would be in the public interest and include certain information such as the number, type and age of Stage 2 airplanes for which a waiver is requested. The applicant must also show its current fleet, its balance sheet and cash flow position, and its good faith fleet conversion plan and equipment delivery position. The cost savings resulting from this provision are identified under scenario 3.

Section 91.873 Waivers from final compliance

This section permits U.S. operators to apply for a waiver, if by July 1, 1999, at least 85 percent of their individual fleets comply with the Stage 3 noise levels in part 36. U.S. operators must apply by January 1, 1999, and must include a plan with firm orders to ensure compliance not later than December 31, 2003. The Secretary may grant such a waiver if he finds that it is in the public interest. A waiver granted under this subsection may not permit the operation of Stage 2 airplanes in the United States after December 31, 2003. This provision is a restatement of the statute. Because it is impossible to determine at this time the extent to which waivers from the final compliance requirement will be requested or granted, the FAA has not calculated estimated costs associated with processing such waivers.

Section 91.875 Annual progress reports

This section implements the statutory requirement that, beginning in calendar year 1992, each U.S. operator and foreign air carrier subject to § 91.865 or § 91.867 shall submit to the FAA, Office of Environment and Energy, an annual report on the progress that operator has made toward complying with the requirements of this regulation. These reports must be submitted no later than 45 days after the end of the calendar year. All progress reports must provide the information as it existed at the end of the calendar year. The FAA estimates the present value costs to the FAA for all reports over 10 years to be about $414,000. In addition, the FAA estimates the present value of reporting costs over 10 years, for all carriers, to be about $20,000.

Benefits

The principal benefit of this final rule is the reduction in the number of people living in the 65 decibel (dB) day-night sound level (DNL) contours around the nation's airports. In 1990, an estimated 2.7 million individuals were within the 65 DNL dB contours. By expected attrition of Stage 2 airplanes, this number would drop to 1.3 million by December 31, 1999. The eventual elimination of Stage 2 airplanes mandated by the statute is expected to reduce this number by an additional 900,000 to a total of 400,000 with an all Stage 3 airplane fleet. The noise reduction benefits attributed to this final rule are in addition to those resulting from the 1999 statutory deadline.

The final rule ensures that the expected benefits from steady attrition of Stage 2 airplanes during the 1990's are, in fact, realized. Even though the FAA projects a natural reduction to 1.3 million people affected (without the statute) by the year 2000 without the regulations, there is no guarantee that this would occur. From 1987 to 1990, the actual retirement of Stage 2 aircraft was much less than the projected attrition (Report to Congress: Status of the United States Stage 2 Commercial Aircraft Fleet, August 1989). The statute and regulation guarantee progress. The regulations should reduce the noise

impact that has caused a patchwork of restrictions on Stage 2 operations to be promulgated by local authorities at many U.S. airports. While difficult to quantify, numerous segments of the industry have alleged serious economic harm from complying with such restrictions. Further, the final rule costs must be considered in relation to the potentially sharply higher costs of probable local phaseout rules. For comparison, the FAA estimates that if the local restrictions proposed for Los Angeles International and nearby airports were applied on a national basis, the cost to the industry would be approximately $500 million.

With the exception of the potential of noise-induced hearing loss at severe levels of noise exposure, there currently is no sound scientific basis for making adequate risk assessments of the non-auditory health effects of airplane noise in airport environs. Potential non-auditory health consequences of airplane noise exposure that have been alleged include birth defects, low birth weight, psychological problems, cancer, stroke, hypertension, and cardiac problems such as myocardial infarction and cardiac arrhythmias. The current state of technical knowledge does not support the inference of a direct relationship between airplane noise exposure and health consequences. At best, current findings, taken in sum, indicate only that further rigorous studies are needed to establish a linkage. Therefore, the benefits analysis does not assess the effects of noise reduction on health.

As a general hypothesis, noise levels are inversely correlated with residential property values. That is, as airplane noise levels decrease, it is surmised that property values around airports increase. To quantify the economic impact associated with the decrease in residential property values, the FAA has used a case study approach to provide a benchmark comparison of the expected benefits of rulemaking actions over an extended period of time. Based on a review of several statistical studies on the change in property values as they relate to airplane noise, it is not unreasonable to assume for evaluation purposes that property values increase one-half of one percent for every decibel decrease in DNL. Using this assumption, the FAA estimates that the net present value of the quantitative benefits associated with the statute of reducing the population exposed to a DNL of 65 dB or higher would be $508 million. A statistical methodology was used to arrive at this number. Current data on an airport-by-airport basis are not available to reflect adequately the actual effect that a reduction in noise may have.

For the different compliance scenarios, the FAA evaluated the incremental noise-reduction benefits to be $42.4 million under scenario 1 and $13.6 million under scenario 2. The incremental benefits were also calculated to be $38.9 million under scenario 3, assuming interim compliance waivers, and $41.2 million assuming carry-forward compliance credits. Finally, the benefits were calculated to be between $16.1 and $28.5 million for compliance scenario 4, depending upon the percentage of Stage 3 airplanes required at each compliance date. The benefits for scenario 5 were not calculated because estimates of the volume of transferable rights that would be transferred is highly speculative. The benefits under compliance scenario 5 would be no greater than the calculated benefits under scenario 1 assuming no credits are transferred. To the extent that credits would be transferred, the benefits would be lower.

Competitive Impact Analysis of the Phasein/Phaseout Option

This section analyzes the impact of scenarios 3 and 4 on competition in the airline industry. The components that will be discussed are: (1) The financial health of the U.S. airline industry, (2) an overview of competitive impact on the industry, (3) the ability of air carriers to achieve growth, (4) the impact on competition within the airline and cargo industries, (5) the impact on service to nonhubs and small communities, and (6) the impact on new entry into the airline industry.

1. The Financial Health of the U.S. Airline Industry

The financial condition of the U.S. airlines industry has deteriorated seriously in recent months. During the first quarter of calendar year (CY) 1991, commercial air carrier operating losses totaled over $3.8 billion. Of the 12 major airlines, only Federal Express was profitable. (Major airlines are defined as those with revenues over $1 billion.) Eight of these 12 major carriers, which include American and United, had operating losses ranging from slightly more than $300 million to over $550 million. These losses resulted primarily from reduced operating revenues due to the recent war in the Persian Gulf, coupled with a slowdown in the U.S. economy. Concerns about terrorism created a reluctance on the part of a number of potential passengers to travel by air. The downturn in the demand for air travel created fierce competition among a number of major carriers that further suppressed revenues. The Persian Gulf crisis caused immediate and substantial increases in oil prices, which increased operating costs substantially. Of the 11 national airlines, only five were profitable during the first quarter. (National airlines are defined as those with annual revenues between $100 million and $1 billion.) Those five carriers posted profits ranging from $100,000 to almost $7.5 million. The six remaining carriers posted operating losses ranging from $200,000 to $51.5 million. Recent experience was similar to the last quarter of FY 1990, when 29 carriers posted operating losses totaling $2 billion. Most of this financial assessment is based on information contained in the FAA report entitled, Quarterly Industry Overview: 1st Half FY 1991, July 1991, Office of Aviation Policy and Plans.

Shortly before the NPRM was issued, two major carriers filed for protection under Chapter 11 of the bankruptcy laws (Continental on December 3, 1990, and Pan American on January 8, 1991), and another major carrier filed for bankruptcy under Chapter 7 (Eastern ceased operations on January 19, 1991). After the release of the NPRM, two additional large airlines filed for Chapter 11 bankruptcy protection (Midway on March 25, 1991, and America West on June 27, 1991). On July 30, 1991, TWA announced plans for debt restructuring which included filing under Chapter 11 in early 1992.

While these results cause concern about its near-term financial condition, the industry is expected to recover to pre-Gulf war levels of activity and profitability. Since the operating loss experienced by the airline industry is attributable to factors that either no longer exist or are abating (the Persian Gulf was and the slowdown in the economy), a return to profitability is predicted, but not necessarily at the recovery pace of other sectors of the economy.

The recent losses represent a dramatic change for the U.S. airline industry, which operated at a profit each year from 1984 through 1989. The single exception was 1986 when industry data were distorted by large losses sustained by Pan American, Eastern, and People Express.

A majority of large carriers that operate today consistently earned

profits after the initial shakeout resulting from deregulation in the early 1980's. However, none were immune to the recent flux in market conditions. The FAA projects that the air carrier industry will become profitable again as the nation's economy recovers. It is reasonable to assume that the airline industry may not recover as rapidly as the general economy since much air travel is elective. The weakened financial condition of airlines will likely reduce the ability of some carriers to modernize their fleets and compete as effectively as others. Based on this analysis, a number of provisions were included to ensure the final rule does not further exacerbate the precarious financial position of several carriers and to provide a sufficiently flexible environment to comply with this rule as the industry as a whole recovers.

These flexibility elements include: (1) The option to comply by achieving a specified total fleet mix of Stage 2 and Stage 3 airplanes, or by eliminating Stage 2 airplanes on each compliance date, (2) interim compliance waivers, and (3) credit for extra compliance achieved carried forward to a later interim compliance date. The fleet mix option provides a standard for each operator to achieve final compliance through a transition to Stage 3 airplanes by ensuring that an increasing percentage of its fleet is composed of Stage 3 airplanes. Ultimately, all Stage 2 airplanes must be retired or modified to Stage 3 to achieve final compliance. The interim waiver provision provides flexibility for an operator to receive relief from interim compliance requirements in the event that noise abatement retrofit equipment is not available or the financial condition of an operator precludes compliance. The carry forward provision provides flexibility for operators that achieve extra compliance on the first or second interim compliance dates to carry forward that extra compliance to a later interim compliance date. Thus, operators have the flexibility to do more than required for an early compliance date for credit on a later compliance date. The result of these flexibility provisions in the final rule is a reduced cost of compliance as compared to the NPRM (scenario 1).

The estimated compliance costs comparisons for the three scenarios considered for the final rule are shown in the table below. For purposes of comparison, the table also presents the cost of the NPRM (scenario 1).

SUMMARY OF ESTIMATED FINAL RULE COMPLIANCE COSTS

[1994–2000, 1990 Dollars]

Scenario	Hushkit costs	Replacement costs
1	$307 million	$1,506 million.
3	258 million	1,253 million.
4A	218 million	1,091 million.
4B	55 million	273 million.

Based on this analysis, the final rule is expected to have a significantly lower cost impact on operators of Stage 2 airplanes, as compared to requirements contained in the NPRM.

Despite the rule's significantly reduced costs compared to the NPRM, some airlines, including some financially stronger ones, still may have to divert funds from capacity expansion to compliance with the final rule. Given the weakened financial condition of the industry in general, and individual carriers in particular, as discussed above, it now seems likely that some air carriers will operate Stage 2 airplanes longer than 25 years, at least for the immediate future. Any assumption of average useful life of Stage 2 airplanes greater than 25 years drives the compliance cost estimates up dramatically. In view of this, and the current economic environment, the FAA concludes that for many carriers, the NPRM interim compliance schedule costs would have been prohibitive, with the likelihood that many air carriers would have been unable to comply, or that compliance would have significantly diminished their ability to effectively compete.

2. Overview of Competitive Impact

In the NPRM, the FAA stated that while the expected compliance cost of the proposed rule may contribute to forcing some carriers out of business, a reduction in the number of airlines offering scheduled passenger service might not significantly reduce either price or service competition within the industry. In February 1990, at the direction of the Secretary, a Department of Transportation task force released a comprehensive assessment of the state of airline competition. This assessment, entitled Secretary's Task Force on Competition in the U.S. Domestic Airline Industry (U.S. Department of Transportation, Office of the Secretary of Transportation, Volumes I–XI, February 1990), concluded that the domestic airline industry is competitive except in short haul markets involving higher density traffic hub airports. However, these short-haul markets represent less than 5 percent of system traffic. The study also showed that the increase in national concentration has not resulted in a reduction in competitive pressures in city-pair markets, but rather has resulted in more competition as individual carriers expanded their systems from a regional to a national basis.

Moreover, the hub-and-spoke systems of service have led to the geographical expansion of most carriers and a resulting increase in city-pair competition. In other words, connecting services created by airport hubs allow more competitors in city-pair markets than would be possible with linear-type systems of service. This is particularly true for small traffic-generating points, and explains why they have been the prime beneficiaries of deregulation.

A basic issue raised by a forced conversion of Stage 2 airplanes to Stage 3 airplanes or early retirement of Stage 2 airplanes is whether this action would cause a reduction in competition. The answer depends on the number of carriers affected and the extent to which they are affected. The Department's competition study shows, however, that the national hub-and-spoke systems have enabled a relatively small number of carriers to provide more intense competitive service in most city-pair markets. On a city-pair basis, it does not take a large number of carriers to provide highly competitive service. This suggests that some loss of capacity by financially weaker carriers or the elimination of a financially weaker carrier may not have any significant lasting impact on competition at the city-pair level.

Recent information showed that the financial problems of the U.S. airline industry are far more serious than was apparent when the NPRM was drafted. Virtually all of the major carriers have sustained financial losses during CY 1990 and the three-month period ending March 31, 1991. Given this circumstance, the proposed interim compliance schedule would have significantly affected the ability of carriers to provide an acceptable level of service and would have increased the likelihood of more carriers filing for bankruptcy. Such events tend to erode competition in the industry. Based on this analysis, the final rule has been revised to be more flexible and less onerous financially than the NPRM and to ensure that competition in the U.S airlines industry remains viable.

3. The Ability of Air Carriers To Achieve Capacity Growth Consistent With the Projected Rates of Growth for the Airline Industry

Had the requirements of the NPRM been implemented, fleet expansion may have been constrained. The NPRM focused only on the elimination of Stage 2 airplanes from the fleet with no specific credit for compliance by the addition of Stage 3 airplanes. Some air carriers were not planning to replace or convert their Stage 2 airplanes as early as is required by the statute. Also, in view of the recent operating losses incurred by most air carriers, many are not financially able to increase their fleets during the transition by replacing their entire Stage 2 airplane fleets prior to their planned retirement. In view of the current financial conditions of many air carriers, implementation of the NPRM requirements could have led to a seriously reduced growth rate for the U.S. airline industry.

The final rule incorporates flexibility to accommodate industry growth when the economy rebounds. The primary provision added to accommodate growth is the provision for compliance with the interim requirements by phasing in Stage 3 airplanes. This provision encourages air carriers to achieve growth along with compliance by adding Stage 3 airplanes to their fleets.

The lower costs of the final rule (compared to the NPRM) may also increase the industry's growth potential during the transition to Stage 3 airplanes. The interim waiver and carry-forward compliance provisions add the flexibility carriers need to grow during the transition period. The more flexibility added to the compliance rules, the less cost they impose on carriers, thereby increasing the availability of capital for growth.

4. The Impact of Competition Within the Air Passenger and Air Cargo Industries

At present, Stage 2 airplanes account for a significant percentage of most air carriers' fleets as is shown in Table 4–2. The range is from 34 percent to 100 percent, with over half of the carriers falling between 50 percent and 70 percent. Because of the disproportionate fleet mix of various carriers, the NPRM, which focused on compliance solely by the phaseout of Stage 2 airplanes, would have placed disparate burdens on certain air carriers. The differences among air carriers in the average age of their Stage 2 fleets may also result in varying degrees of impact caused by aircraft retirement or replacement. Hence, a final rule which focuses solely on the elimination of Stage 2 airplanes would not be equitable in the relative burden imposed on carriers. The result would be a reduction in the ability of these carriers to compete.

In the air passenger industry, the percentage of Stage 2 airplanes in the fleets of the very large air carriers (American, United, and Delta) ranges from 34 percent to 54 percent. The average age of their Stage 2 airplanes ranges from 13 to 18 years. The smaller passenger carriers' fleets (Southwest, Midway, Alaska, etc.) range from 48 to 100 percent Stage 2, and the average age of these airplanes ranges from 10 to more than 22 years. Because of the recent bankruptcies in the air passenger industry and the estimated costs of implementing the NPRM requirements, the FAA has revised the final rule to reduce the potential cost burden on air carriers. Under the final rule, only five carriers will incur any regulatory costs. (By contrast, scenario 1 would impose costs on 15 air passenger carriers.) The four affected carriers are Delta, Eastern (no longer operating), Alaska, and Southwest; however, the cost burden to these carriers is significantly lower than what would have been incurred under scenario 1.

TABLE 4–1.—AIR CARRIERS WITH STAGE 2 AIRPLANES BY AGE

Air carriers	No. of stage 2 air-planes in fleet	Total no. of air-planes in fleet	Percent of stage 2 air-planes in fleet	Avg. age (yrs.)
Majors				
American	175	516	34	18
Continental	164	325	50	25
Delta	224	416	54	13
Eastern	119	169	70	17
Northwest	210	323	65	18
Pan Am	99	166	60	17
TWA	117	214	55	17
United	211	435	49	16
USAir	248	448	55	12
Nationals				
Alaska	36	58	62	12
America West	34	81	42	14
Hawaiian	17	24	71	18
Midway	56	66	85	22
Southwest	47	97	48	10

Source: U.S. Dept. of Transportation, Federal Aviation Administration, Office of Environment and Energy, April 1990.

TABLE 4–2.—AIR CARGO CARRIERS WITH STAGE 2 AIRCRAFT BY AGE

Air cargo carrier	No. of stage 2 air-planes in fleet	Total no. of air-planes in fleet	Percent of stage 2 air-planes in fleet	Avg. age (yrs.)
Airborne	37	41	90	21
Arrow Air	6	6	100	22
Burlington Air Express	15	15	100	23
DHL Worldwide	10	10	100	23
Emery Worldwide	52	59	88	23
Evergreen International	23	32	72	23
Federal Express	130	182	71	20
Southern Air Transport	4	4	100	21
UPS	42	104	40	21

Source: U.S. Dept. of Transportation, Federal Aviation Administration, Office of Environment and Energy, April 1990.

Competition in the air cargo industry would likely have been adversely affected by the implementation of the NPRM requirements. Among the large cargo carriers, Federal Express and UPS have 71 percent and 40 percent of their fleets, respectively, composed of Stage 2 airplanes that are subject to these regulations (as shown in Table 4–2). Some of the smaller air cargo carriers such as Burlington Air Express, DHL Worldwide, and Arrow Air have fleets that consist mostly of Stage 2 airplanes (also shown in Table 4–2). The relative cost of compliance with the NPRM requirements would have been higher for these smaller air cargo carriers (as a percent of net worth) than for Federal Express or UPS since the smaller air cargo carriers would have had to replace or install noise abatement retrofit equipment sooner on a greater percentage of their fleets. Under scenario 1, some of these smaller carriers, lacking sufficient capital for conversion to Stage 3, may have had to reduce the size of their fleets or even leave the industry, possibly resulting in the two large air cargo carriers increasing their market share.

The FAA concluded that implementing the proposed phaseout compliance schedule would have had a disproportionate impact on the air cargo industry, possibly reducing competition

to an unacceptable level. The final rule was revised to provide flexibility to cargo carriers to comply without threatening the current level of competition.

5. The Impact on Nonhub and Small Community Air Service

The hub-and-spoke system of service enables carriers to compete for very small volumes of traffic. This is the principal reason that smaller communities have been the prime beneficiaries of deregulation. These communities will continue to receive competitive service even if additional concentration occurs at the national level.

The final rule is expected to have little or no effect on nonhub and small communities through the provisions that reduce the financial impact of the rule on domestic air carriers, as compared to the NPRM. The rule adds flexibility in achieving compliance. Noise abatement retrofit equipment will soon be available for virtually all of the Stage 2 airplanes now in use. Thus, operators will not be forced to replace the Stage 2 airplanes in their fleets with Stage 3 airplanes to achieve compliance. They may instead choose the less costly option of modifying their Stage 2 airplanes to comply with Stage 3 noise levels.

The final rule will have little impact on nonhub and small communities even if noise abatement retrofit equipment does not become available as expected. A large proportion of the service provided to such communities is provided with commuter airplanes, most of which are not subject to the final rule, since their maximum certificated weight is less than 75,000 pounds. Of the 374 nonhub communities, only 64 are now served with as many as 2 round trips a day, 6 days per week, by Stage 2 airplanes that are subject to the final rule. (The original nonhub estimate of 66 in the NPRM has been corrected to 64 because 2 communities were double counted.) During 1989, these 64 communities had approximately 600,000 departures, with only 1 out of every 5 departures provided by a Stage 2 airplane subject to the final rule.

Many of these communities also receive service to several alternative hubs by different carriers. Because most traffic from small communities moves beyond the various connecting hubs, a decrease in service at any given hub will generally not affect many local passengers traveling to cities served by that hub. For example, most city-pair markets involving Akron, Ohio, have very small traffic volumes. Nevertheless, Akron, which is a nonhub, receives service to 7 different connecting airport hubs by 6 different U.S. carriers. If a carrier discontinued service to Akron, the remaining carriers would likely continue to compete for most connecting passengers. Moreover, should an air carrier choose to stop providing service to a nonhub city like Akron, another air carrier is likely to reinstate service with complying airplanes.

6. The Impact on New Entry Into the Airline Industry

Many factors affect new entry into the airline industry. These factors include the ability to raise the necessary capital, the cost of airplanes, passenger gates, gaining priority listing on reservation systems, and operating and maintenance costs (e.g., labor and fuel). Comparatively, the added costs of the final rule are a small percentage of the total cost of entry. Thus, the cost of compliance of the final rule is not expected to discourage new entrants into the industry.

The final rule provides new entrants with somewhat more flexibility than established air carriers. The percentage of Stage 3 airplanes required for compliance is lower for new entrants than the percentage required for established air carriers for the 1994 and 1996 compliance dates (25 percent of a new entrant's airplanes have to be Stage 3 by 1994 and 50 percent by 1996). A new entrant may initiate service with any number of Stage 2 airplanes and build its fleet by acquiring used airplanes and installing noise abatement retrofit equipment, as necessary to achieve compliance on each interim date. At the time of this analysis, there were about 170 Stage 3 and 600 Stage 2 airplanes available for sale or lease. The market price ranges from $3 million to $9 million for used narrow-body Stage 2 airplanes and from $14 million to $69 million for wide-body Stage 2 airplanes. Market prices for Stage 3 airplanes range from $12 million to $47 million for narrow-body airplanes and from $50 to $130 million for wide-body airplanes. Once established and operating, a new entrant may apply for interim waivers, subject to the same criteria applicable to established operators.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA; 5 U.S.C. 601 *et seq.*) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." Small entities are independently owned and operated small businesses and small not-for-profit organizations. According to the FAA's Order on Regulatory Flexibility Criteria and Guidance, a small operator of airplanes for hire is one that owns, but does not necessarily operate, nine or fewer airplanes. The Order also defines a substantial number of small entities as a number that is not less than 11 and that is more than one-third of the small entities subject to the rule. The small entities that will be affected by this rule are the operators of Stage 2 civil subsonic airplanes with maximum weights of more than 75,000 pounds that operate in the contiguous United States.

The FAA has considered the impact on small entities and has written several provisions that address their concerns. Sections 91.865 and 91.867 allow for rounding of calculations resulting in fractions to permit the continued operation of the next whole number of Stage 2 airplanes. Therefore, a small operator with only one Stage 2 airplane may operate that airplane through 1999.

Also, §§ 91.871 and 91.873, waivers from interim compliance requirements and final compliance, afford more flexibility to small operators than to large operators. A small operator with few airplanes may not be financially able to convert its fleet within the prescribed time frame and remain economically viable. These provisions allow the FAA to consider the disproportionate financial impact that phased compliance could have on small entities so that they may remain economically viable.

There are about 115 U.S. airlines and private operators that operate more than 4,000 jet airplanes over 75,000 pounds. Fleet sizes range from one to several hundred. Many of the fleets and many of the airplanes in these fleets were either manufactured as Stage 3 or converted to Stage 3. About 2,300 Stage 2 airplanes are affected by the statute and final rule. Many affected airplanes are not owned by the carriers under whose names they operate. These leased airplanes are owned by other air carriers, banks, insurance companies, and leasing companies. Operators of only one Stage 2 airplane are exempt from compliance with the phased elimination because of the rounding provision.

The FAA has identified 12 air carriers (five nationals and seven regionals) that own fewer than nine Stage 2 airplanes. These carriers own a total of 37 Stage 2 airplanes. Four of these carriers own one Stage 2 airplane each. Through rounding of calculations, they are allowed to operate those airplanes through December 31, 1999. The eight other air carriers with fewer than nine Stage 2 airplanes are subject to the proposed transition regulations.

Most affected private operators own only one airplane. They are unaffected by the phased compliance schedule because of the rounding rule. Of the six operators that own more than one airplane, one owns two DC–8's that have been modified to comply with Stage 2 noise standards. The other five are very large companies.

For the reasons stated above, the FAA concludes that the final rule does not affect a substantial number of small air carrier entities as defined in the FAA's Regulatory Flexibility Criteria and Guidance.

International Trade Impact

The final rule is expected to have little or no impact on trade opportunities of U.S. firms conducting business overseas or for foreign firms conducting business in the United States. The rule will impose the same requirements on both domestic air carriers operating under part 121, 125, or 135 of the FAR and foreign air carriers subject to part 129 of the FAR. The cost of compliance to foreign air carriers flying into the United States under part 129 will probably be similar to the cost incurred by domestic operators. In addition, other countries are also eliminating Stage 2 airplanes. Therefore, the regulations will not cause a competitive fare disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the United States.

Environmental Analysis

This rule implements section 9308 of the Airport Noise and Capacity Act of 1990, which directs the Secretary of Transportation to promulgate final rules for the phaseout of Stage 2 airplane operations. The National Environmental Policy Act (NEPA, 42 U.S.C. 4321), requires all federal agencies "to the fullest extent possible" to include in "major Federal actions significantly affecting the quality of the human environment" an environmental impact statement analyzing the consequences of, and alternatives to, the proposed action. Under applicable guidelines of the President's Council on Environmental Quality and agency procedures implementing NEPA, absent extraordinary circumstances, the FAA normally prepares an environmental assessment to determine the potential impacts of a proposed regulation that may affect the human environment (40 CFR 1501.3, FAA Order 1050.1D, Appendix 7, Par. 3(a)). Since this regulation is a federal action subject to NEPA, the FAA has determined its potential impacts by preparing an environmental assessment (EA).

The 1990 statute only affords the Secretary discretion to set the interim dates for the transition to an all Stage 3 fleet; the fleet composition to require on these dates; and the method of implementation. Other provisions of this statute were not included in the EA since the Secretary has no discretionary authority to take any alternative action.

This rule is intended to establish a national standard ensuring a steady decline in aviation noise over the next decade, while providing sufficient flexibility for continued growth of the national aviation system. The regulation will provide substantial noise relief to persons throughout the United States living near airports or under flight paths. Negligible increases in fuel consumption and air and water pollution from airplane emissions may result from compliance with the rule. Beneficial impacts would occur to those communities near airports or under flight paths. As a result of the review of studies in the regulatory evaluation, the impact of aircraft noise intrusion on the human and natural environment would be reduced.

After examination of the EA, the FAA has determined that no thresholds indicating the potential for significant impact were exceeded and an environmental impact statement is not required.

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared and placed in the public docket. This final rule has no significant impact when compared to the impacts on environmental quality that result from a transition to Stage 3 airplanes on the basis of normal attrition of Stage 2 airplanes.

Paperwork Reduction Act

Reporting requirements proposed in the NPRM and incorporated in § 91.875 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*). Additional part 91 reporting requirements and modifications to the approved requirements have been submitted to OMB for review and will become effective when approved by OMB.

Federalism Implications

The regulations 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 proposal do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The transition to an all Stage 3 fleet is an integral part of the national aviation noise policy envisioned by Congress in enacting the Airport Noise and Capacity Act of 1990. That statute required the Secretary to develop a schedule of phased-in compliance beginning November 5, 1990. In addition, there is significant public interest in this transition rule and an urgent need by Stage 2 airplane operators to begin planning their compliance. Accordingly, the FAA has determined that good cause exists for making these regulations effective in fewer than 30 days.

For the reasons discussed throughout this preamble, and based on the findings in the Regulatory Impact Analysis and the International Trade Impact Analysis, the FAA has determined that this rule is a major rule under Executive Order 12291. In addition, in consideration of the cost information discussed under the Regulatory Flexibility Determination, it is certified that this amendment to part 91 will not have a significant economic impact on a substantial number of small entities in the air carrier industry. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The final Regulatory Impact Analysis of this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the FAA's Office of Rulemaking at (202) 267–9677.

List of Subjects in 14 CFR Part 91

Aircraft, Airports, Aviation safety, Noise control, Reporting and recordkeeping requirements.

The Amendment

Accordingly, the FAA amends 14 CFR part 91 of the Federal Aviation Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; 49 U.S.C. App. 2157, 2158; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation

(61 Stat. 1130); 42 U.S.C. 4321 et. seq.: E.O. 11514; 49 U.S.C. 106(g).

2. Section 91.801 is amended by adding a new paragraph (c) to read as follows:

§ 91.801 Applicability: Relation to part 36.

* * * * *

(c) Sections 91.851 through 91.875 of this subpart prescribe operating noise limits and related requirements that apply to any civil subsonic turbojet airplane with a maximum certificated weight of more than 75,000 pounds operating to or from an airport in the 48 contiguous United States and the District of Columbia under this part, part 121, 125, 129, or 135 of this chapter on and after September 25, 1991.

3. New §§ 91.851, 91.853, 91.855, 91.857, 91.859, 91.861, 91.863, 91.865, 91.867, 91.869, 91.871, 91.873 and 91.875 are added to read as follows:

§ 91.851 Definitions.

For the purposes of § 91.851 through 91.875 of this subpart:

Contiguous United States means the area encompassed by the 48 contiguous United States and the District of Columbia.

Fleet means those civil subsonic turbojet airplanes with a maximum certificated weight of more than 75,000 pounds that are listed on an operator's operations specifications as eligible for operation in the contiguous United States.

Import means a change in ownership of an airplane from a non-U.S. person to a U.S. person when the airplane is brought into the United States for operation.

Operations specifications means an enumeration of airplanes by type, model, series, and serial number operated by the operator or foreign air carrier on a given day, regardless of how or whether such airplanes are formally listed or designated by the operator.

Owner means any person that has indicia of ownership sufficient to register the airplane in the United States pursuant to part 47 of this chapter.

New entrant means an air carrier or foreign air carrier that, on or before November 5, 1990, did not conduct operations under part 121, 125, 129, or 135 of this chapter using an airplane covered by this subpart to or from any airport in the contiguous United States, but that initiates such operation after that date.

Stage 2 noise levels mean the requirements for Stage 2 noise levels as defined in part 36 of this chapter in effect on November 5, 1990.

Stage 3 noise levels mean the requirements for Stage 3 noise levels as defined in part 36 of this chapter in effect on November 5, 1990.

Stage 2 airplane means a civil subsonic turbojet airplane with a maximum certificated weight of 75,000 pounds or more that complies with Stage 2 noise levels as defined in part 36 of this chapter.

Stage 3 airplane means a civil subsonic turbojet airplane with a maximum certificated weight of 75,000 pounds or more that complies with Stage 3 noise levels as defined in part 36 of this chapter.

§ 91.853 Final compliance: Civil subsonic airplanes.

Except as provided in § 91.873, after December 31, 1999, no person shall operate to or from any airport in the contiguous United States any airplane subject to § 91.801(c) of this subpart, unless that airplane has been shown to comply with Stage 3 noise levels.

§ 91.855 Entry and nonaddition rule.

No person may operate any airplane subject to § 91.801(c) of this subpart to or from an airport in the contiguous United States unless one or more of the following apply:

(a) The airplane complies with Stage 3 noise levels.

(b) The airplane complies with Stage 2 noise levels and was owned by a U.S. person on and since November 5, 1990. Stage 2 airplanes that meet these criteria and are leased to foreign airlines are also subject to the return provisions of paragraph (e) of this section.

(c) The airplane complies with Stage 2 noise levels, is owned by a non-U.S. person, and is the subject of a binding lease to a U.S. person effective before and on September 25, 1991. Any such airplane may be operated for the term of the lease in effect on that date, and any extensions thereof provided for in that lease.

(d) The airplane complies with Stage 2 noise levels and is operated by a foreign air carrier.

(e) The airplane complies with Stage 2 noise levels and is operated by a foreign operator other than for the purpose of foreign air commerce.

(f) The airplane complies with Stage 2 noise levels and—

(1) On November 5, 1990, was owned by:

(i) A corporation, trust, or partnership organized under the laws of the United States or any State (including individual States, territories, possessions, and the District of Columbia);

(ii) An individual who is a citizen of the United States; or

(iii) An entity owned or controlled by a corporation, trust partnership, or individual described in paragraph (g)(1)(i) or (ii) of this section; and

(2) Enters into the United States not later than 6 months after the expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (f)(1) of this section and a foreign airline.

(g) The airplane complies with Stage 2 noise levels and was purchased by the importer under a written contract executed before November 5, 1990.

(h) Any Stage 2 airplane described in this section is eligible for operation in the contiguous United States only as provided under § 91.865 or 91.867.

§ 91.857 Airplanes imported to points outside the contiguous United States.

An operator of a Stage 2 airplane that was imported into a noncontiguous State, territory, or possession of the United States on or after November 5, 1990, shall:

(a) Include in its operations specifications a statement that such airplane may not be used to provide air transportation to or from any airport in the contiguous United States.

(b) Obtain a special flight authorization to operate that airplane into the contiguous United States for the purpose of maintenance. The special flight authorization must include a statement indicating that this regulation is the basis for the authorization.

§ 91.859 Modification to meet Stage 3 noise levels.

For an airplane subject to § 91.801(c) of this subpart and otherwise prohibited from operation to or from an airport in the contiguous United States by § 91.855, any person may apply for a special flight authorization for that airplane to operate in the contiguous United States for the purpose of obtaining modifications to meet Stage 3 noise levels.

§ 91.861 Base level.

(a) U.S. Operators. The base level of a U.S. operator is equal to the number of owned or leased Stage 2 airplanes subject to § 91.801(c) of this subpart that were listed on that operator's operations specifications for operations to or from airports in the contiguous United States on any one day selected by the operator during the period January 1, 1990, through July 1, 1991, plus or minus adjustments made pursuant to paragraphs (a) (1) and (2).

(1) The base level of a U.S. operator shall be increased by a number equal to the total of the following—

(i) The number of Stage 2 airplanes returned to service in the United States pursuant to § 91.855(f);

(ii) The number of Stage 2 airplanes purchased pursuant to § 91.855(g); and

(iii) Any U.S. operator base level acquired with a Stage 2 airplane transferred from another person under § 91.863.

(2) The base level of a U.S. operator shall be decreased by the amount of U.S. operator base level transferred with the corresponding number of Stage 2 airplanes to another person under § 91.863.

(b) Foreign air carriers. The base level of a foreign air carrier is equal to the number of owned or leased Stage 2 airplanes on U.S. operations specifications on any one day during the period January 1, 1990, through July 1, 1991, plus or minus any adjustments to the base levels made pursuant to paragraphs (b) (1) and (2).

(1) The base level of a foreign air carrier shall be increased by the amount of foreign air carrier base level acquired with a Stage 2 airplane from another person under § 91.863.

(2) The base level of a foreign air carrier shall be decreased by the amount of foreign air carrier base level transferred with a Stage 2 airplane to another person under § 91.863.

(c) New entrants do not have a base level.

§ 91.863 Transfers of Stage 2 airplanes with base level.

(a) Stage 2 airplanes may be transferred with or without the corresponding amount of base level. Base level may not be transferred without the corresponding number of Stage 2 airplanes.

(b) No portion of a U.S. operator's base level established under § 91.861(a) may be used for operations by a foreign air carrier. No portion of a foreign air carrier's base level established under § 91.861(b) may be used for operations by a U.S. operator.

(c) Whenever a transfer of Stage 2 airplanes with base level occurs, the transferring and acquiring parties shall, within 10 days, jointly submit written notification of the transfer to the FAA, Office of Environment and Energy. Such notification shall state:

(1) The names of the transferring and acquiring parties;

(2) The name, address, and telephone number of the individual responsible for submitting the notification on behalf of the transferring and acquiring parties;

(3) The total number of Stage 2 airplanes transferred, listed by airplane type, model, series, and serial number;

(4) The corresponding amount of base level transferred and whether it is U.S. operator or foreign air carrier base level; and

(5) The effective date of the transaction.

(d) If, taken as a whole, a transaction or series of transactions made pursuant to this section does not produce an increase or decrease in the number of Stage 2 airplanes for either the acquiring or transferring operator, such transaction or series of transactions may not be used to establish compliance with the requirements of § 91.865.

§ 91.865 Phased compliance for operators with base level.

Except as provided in paragraph (a) of this section, each operator that operates an airplane under part 91, 121, 125, 129, or 135 of this chapter, regardless of the national registry of the airplane, shall comply with paragraph (b) or (d) of this section at each interim compliance date with regard to its subsonic airplane fleet covered by § 91.801(c) of this subpart.

(a) This section does not apply to new entrants covered by § 91.867 or to foreign operators not engaged in foreign air commerce.

(b) Each operator that chooses to comply with this paragraph pursuant to any interim compliance requirement shall reduce the number of Stage 2 airplanes it operates that are eligible for operation in the contiguous United States to a maximum of:

(1) After December 31, 1994, 75 percent of the base level held by the operator;

(2) After December 31, 1996, 50 percent of the base level held by the operator;

(3) After December 31, 1998, 25 percent of the base level held by the operator.

(c) Except as provided under § 91.871, the number of Stage 2 airplanes that must be reduced at each compliance date contained in paragraph (b) of this section shall be determined by reference to the amount of base level held by the operator on that compliance date, as calculated under § 91.861.

(d) Each operator that chooses to comply with this paragraph pursuant to any interim compliance requirement shall operate a fleet that consists of:

(1) After December 31, 1994, not less than 55 percent Stage 3 airplanes;

(2) After December 31, 1996, not less than 65 percent Stage 3 airplanes;

(3) After December 31, 1998, not less than 75 percent Stage 3 airplanes.

(e) Calculations resulting in fractions may be rounded to permit the continued operation of the next whole number of Stage 2 airplanes.

§ 91.867 Phased compliance for new entrants.

(a) New entrant U.S. air carriers.

(1) A new entrant initiating operations under part 121, 125, or 135 of this chapter on or before December 31, 1994, may initiate service without regard to the percentage of its fleet composed of Stage 3 airplanes.

(2) After December 31, 1994, at least 25 percent of the fleet of a new entrant must comply with Stage 3 noise levels.

(3) After December 31, 1996, at least 50 percent of the fleet of a new entrant must comply with Stage 3 noise levels.

(4) After December 31, 1998, at least 75 percent of the fleet of a new entrant must comply with Stage 3 noise levels.

(b) New entrant foreign air carriers.

(1) A new entrant foreign air carrier initiating part 129 operations on or before December 31, 1994, may initiate service without regard to the percentage of its fleet composed of Stage 3 airplanes.

(2) After December 31, 1994, at least 25 percent of the fleet on U.S. operations specifications of a new entrant foreign air carrier must comply with Stage 3 noise levels.

(3) After December 31, 1996, at least 50 percent of the fleet on U.S. operations specifications of a new entrant foreign air carrier must comply with Stage 3 noise levels.

(4) After December 31, 1998, at least 75 percent of the fleet on U.S. operations specifications of a new entrant foreign air carrier must comply with Stage 3 noise levels.

(c) Calculations resulting in fractions may be rounded to permit the continued operation of the next whole number of Stage 2 airplanes.

§ 91.869 Carry-forward compliance.

(a) Any operator that exceeds the requirements of paragraph (b) of § 91.865 of this part on or before December 31, 1994, or on or before December 3, 1996, may claim a credit that may be applied at a subsequent interim compliance date.

(b) Any operator that eliminates or modifies more Stage 2 airplanes pursuant to § 91.865(b) than required as of December 31, 1994, or December 31, 1996, may count the number of additional Stage 2 airplanes reduced as a credit toward—

(1) The number of Stage 2 airplanes it would otherwise be required to reduce following a subsequent interim compliance date specified in § 91.865(b); or

(2) The number of Stage 3 airplanes it would otherwise be required to operate in its fleet following a subsequent interim compliance date to meet the percentage requirements specified in § 91.865(d).

§ 91.871 Waivers from interim compliance requirements.

(a) Any U.S. operator or foreign air carrier subject to the requirements of §§ 91.865 or 91.867 of this subpart may request a waiver from any individual compliance requirement.

(b) Applications must be filed with the Secretary of Transportation at least 120 days prior to the compliance date from which the waiver is requested.

(c) Applicants must show that a grant of waiver would be in the public interest, and must include in its application its plans and activities for modifying its fleet, including evidence of good faith efforts to comply with the requirements of § 91.865 or § 91.867. The application should contain all information the applicant considers relevant, including, as appropriate, the following:

(1) The applicant's balance sheet and cash flow positions;

(2) The composition of the applicant's current fleet; and

(3) The applicant's delivery position with respect to new airplanes or noise-abatement equipment.

(d) Waivers will be granted only upon a showing by the applicant that compliance with the requirements of §§ 91.865 or 91.867 at a particular interim compliance date is financially onerous, physically impossible, or technologically infeasible, or that it would have an adverse effect on competition or on service to small communities.

(e) The conditions of any waiver granted under this section shall be determined by the circumstances presented in the application, but in no case may the term extend beyond the next interim compliance date.

(f) A summary of any request for a waiver under this section will be published in the **Federal Register**, and public comment will be invited. Unless the Secretary finds that circumstances require otherwise, the public comment period will be at least 14 days.

§ 91.873 Waivers from final compliance.

(a) A U.S. air carrier may apply for a waiver from the prohibition contained in § 91.853 for its remaining Stage 2 airplanes, provided that, by July 1, 1999, at least 85 percent of the airplanes used by the carrier to provide service to or from an airport in the contiguous United States will comply with the Stage 3 noise levels.

(b) An application for the waiver described in paragraph (a) of this section must be filed with the Secretary of Transportation no later than January 1, 1999. Such application must include a plan with firm orders for replacing or modifying all airplanes to comply with Stage 3 noise levels at the earliest practicable time.

(c) To be eligible to apply for the waiver under this section, a new entrant U.S. air carrier must initiate service no later than January 1, 1999, and must comply fully with all provisions of that section.

(d) The Secretary may grant a waiver under this section if the Secretary finds that granting such waiver is in the public interest. In making such a finding, the Secretary shall include consideration of the effect of granting such waiver on competition in the air carrier industry and the effect on small community air service, and any other information submitted by the applicant that the Secretary considers relevant.

(e) The term of any waiver granted under this section shall be determined by the circumstances presented in the application, but in no case will the waiver permit the operation of any Stage 2 airplane covered by this subchapter in the contiguous United States after December 31, 2003.

(f) A summary of any request for a waiver under this section will be published in the **Federal Register**, and public comment will be invited. Unless the secretary finds that circumstances require otherwise, the public comment period will be at least 14 days.

§ 91.875 Annual progress reports.

(a) Each operator subject to § 91.865 or § 91.867 of this chapter shall submit an annual report to the FAA, Office of Environment and Energy, on the progress it has made toward complying with the requirements of that section. Such reports shall be submitted no later than 45 days after the end of a calendar year. All progress reports must provide the information through the end of the calendar year, be certified by the carrier as true and complete (under penalty of 18 U.S.C. 1001), and include the following information:

(1) The name and address of the operator;

(2) The name, title, and telephone number of the person designated by the operator to be responsible for ensuring the accuracy of the information in the report;

(3) The operator's progress during the reporting period toward compliance with the requirements of § 91.863, § 91.865 or § 91.867. For airplanes on U.S. operations specifications, each operator shall identify the airplanes by type, model, series, and serial number.

(i) Each Stage 2 airplane added or removed from operation or U.S. operations specifications (grouped separately by those airplanes acquired with and without base level);

(ii) Each Stage 2 airplane modified to Stage 3 noise levels (identifying the manufacturer and model of noise abatement retrofit equipment;

(iii) Each Stage 3 airplane on U.S. operations specifications as of the last day of the reporting period; and

(iv) For each Stage 2 airplane transferred or acquired, the name and address of the recipient or transferor; and, if base level was transferred, the person to or from whom base level was transferred or acquired pursuant to Section 91.863 along with the effective date of each base level transaction, and the type of base level transferred or acquired.

(b) Each operator subject to § 91.865 or § 91.867 of this chapter shall submit an initial progress report covering the period from January 1, 1990, through December 31, 1991, and provide:

(1) For each operator subject to § 91.865:

(i) The date used to establish its base level pursuant to § 91.861(a); and

(ii) a list of those Stage 2 airplanes (by type, model, series and serial number) in its base level, including adjustments made pursuant to § 91.861 after the date its base level was established.

(2) For each U.S. operator:

(i) A plan to meet the compliance schedules in § 91.865 or § 91.867 and the final compliance date of § 91.853, including the schedule for delivery of replacement Stage 3 airplanes or the installation of noise abatement retrofit equipment; and

(ii) A separate list (by type, model, series, and serial number) of those airplanes included in the operator's base level, pursuant to § 91.861(a)(1) (i) and (ii), under the categories "returned" or "purchased," along with the date each was added to its operations specifications.

(c) Each operator subject to § 91.865 or § 91.867 of this chapter shall submit subsequent annual progress reports covering the calendar year preceding the report and including any changes in the information provided in paragraphs (a) and (b) of this section; including the use of any carry-forward credits pursuant to § 91.869.

(d) An operator may request, in any report, that specific planning data be considered proprietary.

(e) If an operator's actions during any reporting period cause it to achieve compliance with § 91.853, the report should include a statement to that effect. Further progress reports are not required unless there is any change in the

information reported pursuant to paragraph (a) of this section.

(f) For each U.S. operator subject to § 91.865, progress reports submitted for calendar years 1994, 1996, and 1998, shall also state how the operator achieved compliance with the requirements of that section, i.e.—

(1) By reducing the number of Stage 2 airplanes in its fleet to no more than the maximum permitted percentage of its base level under § 91.865(b), or

(2) By operating a fleet that consists of at least the minimum required percentage of Stage 3 airplanes under § 91.865(d).

Issued in Washington, DC on September 19, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-22950 Filed 9-24-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 161

[Docket No. 26432]

RIN 2120-AD98

Notice and Approval of Airport Noise and Access Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes a program for reviewing airport noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft. This rule is in response to specific provisions in the Airport Noise and Capacity Act of 1990 and is a major element of the national aviation noise policy required by that statute.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: John M. Rodgers, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3274.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1991, the FAA issued Notice of Proposed Rulemaking (NPRM) 91-8 (56 FR 8644, February 28, 1991). Notice No. 91-8 was developed in response to Public Law 101-508, entitled Airport Noise and Capacity Act of 1990 ("the Act"), which was enacted November 5, 1990. Section 9304 of the Act directs the Secretary of Transportation to develop a national program to review proposed airport noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft.

In addition to soliciting written comments, the FAA held three public meetings pertaining to FAA rulemaking to implement provisions of the Act. The meetings were held on March 5 and 6 in Washington, DC (Alexandria, VA); March 11 and 12 in Chicago, IL; and March 14 and 15 in Seattle, WA.

Discussion of Comments

General

More than 400 individuals and organizations submitted comments on the proposal. Many organizations submitted multiple comments. Comments were submitted by airport operators, airport associations, air carriers, air carrier associations, aircraft operators, aircraft operator and pilot associations, environmental groups and community civic organizations, businesses and business organizations, and aircraft manufacturers.

Identification of commenters varies in each discussion according to the diversity of opinions within a group of commenters. That is, where groups or classes of commenters reflect very similar views, such as airport operators or noise groups, further identification other than class is not provided. However, where greater divergence of opinion occurs within a class of commenters, greater specificity in identification of commenters is given.

A discussion of the issues addressed by the commenters follows.

Major Issues

A review of comments on the proposed rule revealed seven general issues that influence the approach to the requirements for notice, analysis, and review of noise and access restrictions embodied in the rule. Because of the pervasive impact of these topics, a separate discussion of comments is provided below on each of the general issues. After these general issues are reviewed, a discussion of comments is provided by rule subpart that also references, as appropriate, issues contained in the discussion of general issues.

Total Versus Partial Approval/ Disapproval of Proposed Restrictions on Stage 3 Aircraft, and Approval/ Disapproval of Proposed Stage 3 Alternative Restrictions

Notice No. 91-8 proposed FAA approval of restrictions in whole only, but the preamble requested comments on approval of alternative proposals submitted (with order of preference indicated) with the applicant's primary proposal.

Comments: This issue generated relatively little comment, but comments generally support issuing partial approval of proposed restrictions and permitting the airport operator to submit alternative restrictions. Supporters of partial approvals include a major airport operator, the operator of a smaller commercial service airport, and a group of communities affected by noise at a large hub airport. Another airport operator specifically endorsed a final rule that would permit the airport operator to specify alternatives.

Response: After FAA consideration of these comments, the rule is revised to permit airport operator submission of an application with alternative restrictions for approval. The rule also provides for FAA approval of restrictions in whole or in part. In the case of a partial approval, as with other approvals, the airport operator would decide whether to implement the restriction as approved by the FAA. The airport operator would have the discretion to correct those aspects of its restriction that the FAA disapproved under the rule and to submit a new application. The process for partial approval and for airport operator requests for approval of alternative restrictions is discussed in connection with subpart D below.

These changes to the final rule are intended to provide additional flexibility to the airport operator and to the FAA. The FAA considers this flexibility to be consistent with the purpose of the Act—to assure that a proper balance has been struck between local needs and the needs of commerce and the national air transportation system.

Under the final rule, the Administrator will be able to approve part or most of an access restriction plan and permit some relief to airport neighbors even though other elements of the plan may be inconsistent with the Act or otherwise impermissible. Under the proposed rule, the Administrator would have been obligated to reject a proposed local restriction on Stage 3 aircraft in its entirety even if only a minor feature was unacceptable. Such a disapproval, in some cases, would have needlessly deprived airport neighbors of some of the benefits of the proposed restriction that may be obtained by partial implementation of the proposal.

The ability of the FAA to approve portions of a proposal will also relieve the airport of the need to start the 180-day review period again, with a new proposal incorporating the approvable elements of a previously disapproved proposal. Similarly, allowing submission

of alternative restriction proposals may eliminate the need to renew the proposal application process following disapproval. In this regard, airport operators are encourged to take the initiative by proposing alternative measures, including partial implementation of any proposal, with order of preference indicated for consideration in their application. An applicant proposing partial approval should also indicate any priorities as to portions of the proposal. Alternative measures and, to the extent possible, partial implementation, should be separately addressed in the notice and analysis provided under § 161.303(c). Proposed restrictions and alternatives will be considered individually, in order of preference, on their merits. The fact that an airport operator has proposed alternatives will not affect the review and evaluation of the airport operator's preferred alternative.

Local Stage 2 Restrictions: Accelerated Phaseout of Stage 2 Aircraft

Given the companion part 91 rulemaking implementing a national program to phase out the operation of Stage 2 aircraft, the NPRM preamble stated that only in exceptional circumstances would airports be expected to phase out operations by Stage 2 aircraft in advance of the national program. For those airports that proposed phaseouts, the agency required, at a minimum, a public notice and analysis that highlighted the net benefits of the phaseout. The preamble also stressed the importance for airport operators to demonstrate that the local restriction was not discriminatory and would not constitute an undue burden on interstate commerce, or an undue burden on the national aviation system.

Comments: A wide spectrum of aircraft operators (including air carriers, foreign carriers, charter operators and general aviation operators), their trade associations (National Air Carrier Association (NACA), National Business Aircraft Association (NBAA), and International Air Transportation Association (IATA)), airline pilots, and an aircraft manufacturer object to the proposed rule treatment of this issue. They urge that the rule prohibit accelerated local phaseout of Stage 2 aircraft. Among the reasons presented is the argument that the Act distinguishes between airport operator "restrictions on Stage 2 operations and a phaseout." Cargo carriers, such as Burlington Air Express and Airborne Express, state that this position is necessary for an effective national noise policy. Other cargo carriers argue that the Act preempts all local Stage 2 restrictions.

Some scheduled carriers, including America West and United, express serious concern regarding the impact of local phaseouts, although these carriers did not suggest that the rule expressly preempt accelerated phaseout. Other carriers and the Air Transport Association of America (ATA) maintain that the rule must expressly preempt restrictions that would interfere with the ntional program, and a few carriers also argue that the Act preempts all local Stage 2 restrictions.

A charter airline asserts that the small number of "national charter aircraft companies" operate mainly Stage 2 aircraft, and they will be seriously affected by accelerated local phaseouts.

In contrast, airport operators (including Raleigh-Durham, Phoenix, and Oakland), local communities (including Bedford, Concord, Lexington, and Lincoln, MA), and citizens' groups (including National Organization to Insure a Sound-controlled Environment (NOISE), Citizens for Abatement of Aircraft Noise (CAAN), and Safe Air for the Environment (SAFE)) urge that the final rule clarify that accelerated local phaseout of Stage 2 aircraft is permitted. The airport trade associations, the Suburban O'Hare Commission, and several communities in California are especially critical of language in the NPRM suggesting that the FAA would view accelerated phaseout as needed only in exceptional circumstances. Another government entity argues that a Federalism Impact Study is necessary for a determination on this issue.

Even the key Chairmen of the House-Senate Conference Committee that drafted the Act differ as to whether the Act preempts phaseouts of operations by Stage 2 aircraft different in kind from the national phaseout. Chairman Ford comments that local phaseouts are preempted, while Chairman Oberstar states that airport operators have the unrestricted ability to impose local phaseouts.

Response: This final regulation is not the appropriate vehicle to make a determination whether, or to what extent, the Act, or the Federal transition schedule itself, forecloses local adoption of accelerated phaseouts. However, strong public policy and legal concerns militate against the adoption of any local phaseouts.

First, the Act in no way grants airport operators any authority they did not have prior to the Act. Under section 9304(h), 49 U.S.C. App. 2351(h), preexisting legal limitations on airport operators' authority are not affected except as required by applying the terms of section 9304. The courts have consistently recognized FAA's legal authority to challenge airport noise and access restrictions that are discriminatory, unreasonable, or impose an undue burden on interstate commerce. This authority is expressly preserved and recognized by the Act.

Second, the FAA has serious concerns that local restrictions accelerating the phaseout of Stage 2 aircraft may impose an undue burden on commerce and on the national aviation system. The Act envisions an orderly, equitable national system for removing Stage 2 airplanes. Accelerated local phaseouts can seriously affect carriers' scheduling and increase their costs, ultimately undermining both the national program and the efficiency of the national aviation system. The FAA is concerned that the individual impacts of piecemeal local restrictions compound geometrically when local restrictions are considerad at increasing numbers of key airports in the national system, such as those in New York, Chicago, and Los Angeles. While the harmful economic effects may be less obvious in any particular area of the country, they could have a cumultive affect, increasing the carriers' system costs. The FAA concludes that restraint on the part of airport operators is essential if the national phaseout program for an entire generation of Stage 2 aircraft throughout the national airport system is to be carried out effectively.

Third, any local accelerated phaseout could stand as an obstacle to the accomplishment of the uniform, orderly transition schedule mandated by the Act. For individual carriers, a piecemeal approach in which each airport selects its own phaseout dates could be disastrous. It could render orderly fleet management virtually impossible with respect to route adjustments, equipment substitutions, hushkit acquisition, and the purchase of Stage 3 aircraft.

Fourth, actions imposing local accelerated phaseouts may induce other airports to adopt similar or even more stringent local restrictions. On a national basis, there is little that can be done in the near term to change the overall composition of the U.S. fleet by the year 1995. The backlog of orders for Stage 3 aircraft already extends at least until then. A carrier deciding today to convert to an all Stage 3 fleet would find it impossible to do so in the near term. Thus, if major airports enact regulations expanding the prohibition on operations by Stage 2 aircraft, other airports have a difficult choice. They can either accept the additional noise that the other airports may export to them or react to these increased noise pressures by

enacting their own noise restrictions which would compound the threat to the national airport system. The adverse consequences of such an escalating noise control competition upon the national aviation system, the air carrier industry, and public access to air transportation are clear and unacceptable.

Wholly apart from the question of the direct impact of the Act and the Federal phaseout schedule on local authority, the FAA would carefully scrutinize any accelerated local Stage 2 phaseout, and any other restriction that comes to its attention. Airport operators, following review of the clear national scope of the phaseout mandated by the FAA, must thoroughly consider the effect of any local Stage 2 phaseout on commerce and the national aviation system.

The FAA anticipates that the airport operator will give particular attention to the Congressional mandate for a unified and consistent national phaseout process and to the potential harm to air carriers and the national aviation system of a series of individual airport phaseout requirements. The FAA stands ready to exercise its full authority to take whatever action is necessary to alleviate any excessive burden on commerce that might result from the implementation of an accelerated local Stage 2 phaseout.

Applicability of the Rule/Definition of Noise and Access

The definitions of "noise" and "access," and the description of rule applicability, influence both the scope and coverage of the entire rule. Procedures and requirements stipulated in the rule should reflect the nature of restrictions subject to the rule.

The proposed rule defined "noise" and "access" restrictions as restrictions on noise and access that affect the operation of Stage 2 or Stage 3 aircraft. An illustrative list of restrictions based on language of the Act and statutory exceptions were contained in the proposed rule. This illustrative list of restrictions includes limits on single-event or cumulative noise, noise budgets or allocations, direct and indirect limits on operations, limits on hourly operations, airport use charges that directly or indirectly control noise, and any other limit that controls noise. However, peak-period pricing programs, when the objective was to align the number of aircraft operations with airport capacity, and noise abatement operational procedures were generally excluded from provisions of the proposed rule.

Definitions contained in the proposed rule were developed from the language and direction of the Act.

The following questions were posed in the Notice No. 91–8 and relate to applicability and the definition of restrictions:

Is the proposed definition of "noise" and "access" restrictions too broad? If so, how should it be revised? Should an access restriction that is unrelated to noise be subject to the regulation? If not, how should the FAA reasonably distinguish whether a restriction is related to noise? Is there a risk that restrictions nominally adopted for other purposes will actually be used to circumvent the requirements for noise restrictions? Should a restriction or airport use charge that has an indirect effect of controlling noise be subject to this regulation?

Comments: Many comments were received on the definition of "noise" and "access" restrictions and on questions pertaining to the definition posed in the NPRM. There was no consensus on the proposed definitions or on answers to the questions posed in Notice No. 91–8.

Responses from airport operators, environmental groups, and private citizens indicate that the proposed definitions are too broad, especially with respect to "access" restrictions. Specific suggestions were made to limit applicability. Adams County Coordinating Committee, Raleigh-Durham Airport Authority, the City of Redlands, and the City of Tempe (in a joint submission) advocated limiting the term "restriction" to one that would regulate the number of aircraft or aircraft operations and discriminate among aircraft operations based upon noise produced by the operation. Another commenter suggests that noise and access restrictions be limited to those that include a restriction on operations of Stage 2 or Stage 3 aircraft. Other commenters, including the Airport Operators Council International (AOCI) and the American Association of Airport Executives (AAAE), maintain that the intent of the Act is to limit consideration of access restrictions to those where the primary effect and purpose is to reduce noise. These commenters recommend that access restrictions be excluded if they reflect limits imposed by the physical characteristics of facilities, such as runways and terminal buildings. Many respondents, including the Citizens League for Airport Safety and Serenity (CLASS), object to the inclusion of airport use charges that have the direct or indirect effect of controlling airport noise. Comments submitted by airport operators universally agree with the proposed exclusion of noise abatement operational restrictions such as preferred runway usage.

Comments from aircraft operators, individual businesses that rely on air cargo shipments, and the Chicago Association of Commerce and Industry either affirm the proposed definitions or advocate more inclusive definitions. Several commenters advocate applicability of the rule to all access restrictions, without regard to whether they directly or indirectly relate to noise. The Air Line Pilots Association (ALPA) suggests that the rule apply to any access restriction that is unrelated to physical obstacles. Airborne Express proposes adding restrictions that have either the direct or indirect effect of controlling access to the illustrative list of restrictions presented in the proposed rule. Many commenters agree with the proposed inclusion of restrictions that have the indirect effect of controlling noise. Several commenters, such as Florida West Airlines, provide examples of restrictions contained in different types of documents such as leases, environmental assessments, and government ordinances. They argue that these situations represent either a deliberate attempt to covertly impose noise restrictions on aircraft operations or a de facto restriction. Several commenters propose inclusion of noise abatement operational procedures or to subject such operational procedures to a safety review. Aircraft operators and allied groups, such as the Regional Airline Association (RAA) and ATA, argue that the proposed rule be changed to encompass peak-period pricing plans.

Response: The definitions of "noise" and "access" restrictions and the applicability of the proposed rule were primarily based on language of the Act. Subsection 9304(a) of the Act requires the establishment of a "national program for reviewing noise and access restrictions on operations of Stage 2 and Stage 3 aircraft." Clearly, the Act requires the review of both noise and access restrictions. In paragraph (b) of section 9304, the Act addresses restrictions on Stage 3 aircraft operations subject to review. Again, the Act explicitly references both noise and access restrictions and the paragraph provides an illustrative, but not exclusive, list of types of covered restrictions. The descriptive phrases "a limit, direct or indirect, on the total number of Stage 3 aircraft operations" and "any other limit on Stage 3 aircraft" are included in the illustrative list. The Act, therefore, contemplates a broad review of restrictions including those

that have an indirect effect on airport noise. The Act is silent on the types of noise and access restrictions on Stage 2 aircraft operations that are subject to notice and analysis requirements.

The definitions included in the proposed list were developed from the language of the Act. The proposed rule includes the several spacific kinds of Stage 3 restrictions listed in the Act. The definition of "noise" and "access" restrictions in the proposed rule also extended coverage to similar types of restrictions on Stage 2 aircraft operations. Because certain types of airport use charges have the effect of limiting aircraft operations and controlling airport noise, and because the Act contemplates a broad review of such restrictions, the proposed rule makes such charges subject to the rule. The proposed rule, however, exempted both peak-period pricing plans and noise abatement operational procedures. Peak-period charges, which align the number of aircraft operations with airport capacity, generally are not expected to change the cumulative noise exposure of an area (because they do not control noise), only the timing of operations. The expected purpose of such programs is to increase the efficient use of existing airport capacity and to provide financial resources to build additional capacity. Most noise abatement operational procedures were exempted because they are not expected to limit the total number or hours of aircraft operations. Further, such procedures must comply with other parts of the Federal Aviation Regulations that regulate flight safety. Most importantly, noise abatement operational procedures, like other operational matters, remain the ultimate responsibility of the FAA.

No compelling argument or evidence was presented by commenters that the intent of the Act was to include or exclude types of "noise" or "access" restrictions other than those defined in the proposed rule. For this reason, the rule incorporates the definitions of "noise" and "access" restrictions of the proposed rule with only one revision. Upon reviewing the comments, it was apparent that the rule's definition of restrictions needed to clarify that restrictions include—but are not limited to—provisions contained in documents, such as ordinances and leases, that limit or control noise and access. Section 161.5 has been revised to include that change.

Treatment of Stage 2 Aircraft Weighing Less Than 75,000 Pounds

The proposed rule treats all Stage 2 aircraft covered under 14 CFR part 36 noise criteria in a similar fashion, making no distinction based on a 75,000 pound weight criterion. Subpart C proposed to require airport operators to provide notice and consider comments on any proposed restriction with respect to Stage 2 aircraft, regardless of weight, but would not require FAA approval of the restriction. The preamble of the NPRM cites an FAA draft report, "Study of the Application of Notice and Analysis Requirements to Operating/Noise/Access Restrictions on Subsonic Jets Under 75,000 Pounds," required by section 9305 of the Act, that supported this position. The FAA study points out that, under the Act's language, to exclude restrictions on these aircraft could have the effect of earmarking them for restrictions, and that nothing in the study's analysis suggests that it would be appropriate to give these aircraft less protection than heavier aircraft against local restrictions. The proposed rule solicited public comments on the question: Should Stage 2 aircraft weighing less than 75,000 pounds be treated differently from Stage 2 aircraft weighing more than 75,000 pounds?

Comments: The NBAA proposed that restrictions on Stage 2 aircraft weighing less than 75,000 pounds be subject to FAA approval using the same criteria as for proposed restrictions on Stage 3 aircraft. Comments from aircraft manufacturers and operators tend to support the NBAA arguments. The Gulfstream Aerospace Corporation supports the basic NBAA position, noting that the combination of high thrust-to-weight ratio, coupled with low wing loading and simplified high-lift systems, permit these aircraft to implement aggressive noise abatement procedures in complete safety. These comments include a graphic noise comparison of three Stage 2 business jets with four Stage 3 air carrier aircraft. The NBAA also proposes that FAA consider, as a minimum, providing in subpart C that no restriction on operations of Stage 2 aircraft weighing less than 75,000 pounds may be imposed without a separate analysis of costs, benefits, and alternatives for such aircraft.

The Midway Airport Tenants Association ask that Stage 2 aircraft under 75,000 pounds meeting the Stage 3 criteria of part 36, appendix 3C, for aircraft over 75,000 pounds remain exempt from the imposition of any new policy. Premier Jets opposes any further limitations constraining operation of its Lear Model 24 or 25 jets that are under 75,000 pounds maximum takeoff weight. Premier Jets comments that these aircraft are used for many emergency situations where people or equipment must be transported on very short notice, such as transporting organs for transplant patients and medical evacuation flights.

Responses from airport operators, environmental groups, and private citizens generally support the treatment of light Stage 2 aircraft as proposed. The AOCI and the AAAE note that at some airports these will be the noisiest aircraft that operate, and that at many other airports these aircraft may also significantly contribute to the noise problem. These two groups also claim it is important that airports be permitted to restrict for noise reasons the operations of the full range of aircraft, including those that carry few passengers, to increase efficiency of the national and local air transportation systems, as well as for provision of significant noise relief.

The Massachusetts towns of Bedford, Concord, Lexington, and Lincoln, in a joint response, comment that it is essential that the FAA retain this provision in the final regulation, and quote an FAA statement, "Aircraft noise heard on the ground is the result of complex factors in the design and operation of * * * aircraft, and weight alone cannot be used to determine noise produced."

The City of Grapevine, Texas, comments that a National Noise Policy should include all aircraft, regardless of weight. An exclusion of aircraft weighing less than 75,000 pounds would be without logic, the commenter argues, because all aircraft produce noise. They further suggest that exclusion of some aircraft based on weight would probably be insupportable by any scientific data.

The Massachusetts Port Authority comments that appendix C of 14 CFR part 36 establishes different noise limits for the different stage designations for aircraft both at weights above 75,000 pounds and for weights below 75,000 pounds precisely because of differences in the noise levels produced by such aircraft relative to other aircraft.

Palm Beach County, Florida, comments that, despite smaller jet aircraft's ability to use noise abatement procedures unavailable to heavier aircraft, its experience indicates that these aircraft operators are often less diligent about using noise abatement procedures. They also note that citizens often complain about specific noise events caused by general aviation jets.

Response: The FAA has considered several options for resolving this issue. The first option would be to retain the rule as presented in the proposed rule. This position is widely supported among

commenters. The option takes into consideration that, at some airports with low levels of ambient noise and few or no airline flights, small Stage 2 aircraft may be the dominant source of noise. Compared to other options, this option would result in an intermediate number of local access restrictions for aircraft under 75,000 pounds. All new light turbine powered aircraft being produced today are Stage 3 aircraft, and retirement/attrition is reducing the number of older Stage 2 light aircraft that are in service. This option, however, would inhibit business and commercial flights at general aviation facilities that predominately serve aircraft in this category.

The FAA predicts that this option, if adopted, could encourage local restrictions. Such restrictions could necessitate the retrofitting or hush-kitting of up to 960 aircraft at a cost of up to $2 million per aircraft. This represents a quarter of the total fleet of turbojet aircraft weighing less than 75,000 pounds in the United States.

The second option would include Stage 2 aircraft under 75,000 pounds in the regulatory provisions applicable to Stage 3 aircraft (subpart D of the rule) for processing proposed restrictions, and thereby requiring FAA approval. This is supported by NBAA and the Midway Airport Tenants Association. It also reflects the fact that many small Stage 2 aircraft make less noise than some larger Stage 2 air carrier aircraft. This option would require FAA approval of local restrictions on small jets used primarily by the business community. It would be consistent with treatment of Stage 2 aircraft in part 91. Conversely, this option would impose a heavy regulatory burden on those small local airports where business jets are the primary source of noise. It also would create a precedent of not treating all Stage 2 aircraft the same.

The third option would be to find the Act inapplicable to Stage 2 aircraft weighing less than 75,000 pounds, thus allowing imposition of local restrictions on these aircraft without the regulatory requirements or safeguards created by the Act. This would be consistent with the discretion provided the Secretary in section 9305 of the Act, and it is addressed in the NPRM and the FAA preliminary study. This option would reduce the burden of part 161 on airports desiring to restrict operations of small Stage 2 aircraft, permitting rapid response to local conditions. Conversely, it could generate the highest number of local airport access limitations and the greatest inconvenience for smaller jet aircraft.

The fourth option would be to treat Stage 2 aircraft as Stage 3 aircraft only at large airports (as defined by number of annual operations). This option recognizes that perceptions of aircraft noise levels are dependent upon ambient background noise: operation of Stage 2 aircraft at larger airports might be less objectionable. Defining large airports for this purpose would be difficult, and use of some distinction based on airport size could result in allegations of discrimination and preferential treatment by both air carriers and airport neighbors. It also could result in sending more non-air carrier aircraft to large airports.

The fifth option would allow determinations regarding treatment of light Stage 2 aircraft on a case-by-case basis. This option is similar to the Stage 3 restriction-approval process, except some airport operators may be exempted from the approval process entirely. This has the further disadvantage of requiring the FAA to develop criteria to determine which airports would be required to use the Stage 3 approval process for small Stage 2 aircraft.

The sixth option would be revision of the required analyses in subpart C, § 161.205, to require airport operators to include in the required analysis separate detail on costs and benefits of a proposed restriction on Stage 2 aircraft under 75,000 pounds, if such aircraft are operated at the airport. Such action would reflect the specific focus of the Act in section 9305 on restrictions on Stage 2 aircraft weighing less than 75,000 pounds. In addition, the FAA anticipates that a comprehensive analysis of a proposed restriction would typically examine the proposal's impact on each class of aviation user at the airport that may be affected by the restriction. This detailed consideration of impacts should create a more appropriate restriction. If a separate analysis did indicate that light Stage 2 aircraft do not significantly contribute to airport noise, the additional analysis may permit the airport operator to afford relief to light Stage 2 aircraft.

The final option would be to permit restrictions on Stage 2 aircraft under 75,000 pounds based on absolute noise levels compared to the noisiest Stage 3 aircraft at an airport. However, stage categorization of aircraft has historically been defined in terms of aircraft noise levels and weight capacities. The noise level related to approach, takeoff, and sideline noise parameters is perceived differently depending on the environment in which the noise occurs. This option could be viewed as arbitrary and relatively ineffective by both affected aircraft operators and airport-area residents.

The final FAA report, "Study of the Application of Notice and Analysis Requirements to Operating Noise/Access Restrictions on Subsonic Jets Under 75,000 Pounds," concluded, after careful consideration of the various issues involved and the comments received from the public, that section 9304, as it pertains to Stage 2 aircraft, provides protection to all segments of aviation and to the general public. The study also found that all these interests would be better served if the analyses of the impacts of the proposed restriction on Stage 2 aircraft at an airport also include separate detail on the costs and benefits of the proposed restriction with respect to the operations of Stage 2 aircraft weighing less than 75,000 pounds.

After extensive consideration of the above options, comments, and the FAA final report, the FAA has determined that restrictions on the operation of all Stage 2 aircraft should be treated under subpart C, with the requirement that the analysis provide specific detail on the benefits and costs of the restriction with respect to Stage 2 aircraft weighing less than 75,000 pounds.

Burden of Notice and Analysis Requirements

Consistent with the Act, the proposed rule would require notice and analysis of proposed restrictions on aircraft operations. At issue is the level of burden imposed by the notice and analytical requirements: did the proposed rule strike an appropriate balance between informing interested parties of the details necessary to adequately evaluate a proposed restriction and the burden on the applicant to provide notice and produce such analysis?

The proposed requirements for notice were essentially the same for restrictions on Stage 2 and Stage 3 aircraft operations. They included publication in a newspaper with national circulation; in an areawide newspaper of general circulation; and in aviation trade publications. The airport operator would be required to notify, in writing, aircraft operators serving the airport; those interested in serving the airport; the FAA; and each Federal, state, and local agency with land-use control jurisdiction or facilities within the noise study area. The notice was required to include a description of the restriction, discussion of the need for the restriction, identification of aircraft expected to be affected, and an analysis

of the proposed restriction or announcement of the availability of the analysis.

Proposed analytical requirements for restrictions on the operation of Stage 2 aircraft were less stringent than those for Stage 3 aircraft. Proposed restrictions on Stage 2 aircraft operations were to be analyzed with respect to requirements set forth in the statute: (1) Costs and benefits of the restrictions; (2) alternative options considered; and (3) comparative costs and benefits of imposing nonaircraft alternatives. The proposed rule required the use of accepted noise measurement systems and economic methodology in preparing the analysis. It did not specify detailed, required analytical components, but rather referenced the suggested analysis for subpart D (restrictions on Stage 3 operations) as helpful guidance regarding analytical elements. Analytical requirements for proposed Stage 3 restrictions were more prescriptive, requiring that applicants submit specific information and recommending other types of analysis that might be considered adequate evidence of fulfillment of the six statutory conditions for approval.

A number of questions were posed in the NPRM about the notice and analysis requirements. They included whether detailed analysis requirements for restrictions on Stage 2 aircraft operations, similar to those proposed for stage 3 aircraft operations, should be specified in the rule; whether all applicants should be required to consider a specific list of costs and benefits in the analysis of proposed restrictions on Stage 3 aircraft operations; and whether the proposed analysis requirements were appropriate. Commenters addressed these questions and the general issue of burden of notice and analysis requirements.

Comments: Comments from air carriers generally support the notice requirements or recommend stricter requirements, and airport comments typically maintain that the requirements are too costly and burdensome. Many airports comment that the proposed notice requirements far exceed the requirements of the statute. The Port Authority of New York and New Jersey recommends no direct notice, arguing that it is too costly and difficult to know specifically who should be notified. They state that identifying all agencies in the 65 L_{dn} would be impossible and that the Act requires only publication notice. A number of airports and towns from Massachusetts comment that requirements are burdensome and that airports should instead be allowed to follow their normal local notice procedures and let FAA take more responsibility for national notice. Several airports comment that the rule should allow airports to provide notice as required under state or local laws rather than specifying notice in the rule.

The City of Long Beach, California, and AAAE/AOCI believe direct notice is too burdensome, especially for general aviation, and that notice should be provided solely through publication. The NBAA supports direct notice, but believes that direct notice requirements alone are not adequate to reach general aviation users and that notice should also be served on the NBAA and other trade associations for members who operate infrequent itineraries.

SAFE believes publication alone is not adequate and that direct notice is necessary. Carriers generally support the proposed notice requirements, and Federal Express and Airborne Express recommend that notice be given directly to the office of the President of each aircraft operator serving the airport.

While not an aircraft operator, Gulfstream Aerospace Corporation would like to receive notice of restrictions as they affect Gulfstream-manufactured aircraft. Northwest Airlines comments that all aircraft operators serving an airport should receive notice, not just those expected to be affected by the restriction, since equipment type is frequently changed.

With regard to notice requirements for agreements, CLASS and the City of Long Beach, California, believe that direct notice for agreements should be deleted. A number of airports believe that parties to agreements will have already received notice and no more than publication is required for potential new entrants, because new entrants with serious interest in the airport would have already contacted them. Several Massachusetts municipalities state that there should be only limited information required in a notice of an agreement, as an operator can contact airports for more information. The ALPA, on the other hand, believes that the notice requirements for agreements and restrictions on Stage 2 aircraft operations are reasonable and necessary.

A number of organizations, such as the Air Freight Association, Airborne Express, Florida West Airlines, McDonnell Douglas, and the Aerospace Industries Association (AIA) recommend that the FAA provide notice of Stage 2 restrictions in the **Federal Register**, as is required for Stage 3 restrictions.

Response: The notice requirements for agreements and restrictions have been modified as a result of the comments. The requirement for notice publication in a newspaper with national circulation and in aviation trade publications has been deleted. The cost of these requirements could be as much as $20,000, which is burdensome, especially for smaller airports. By eliminating the requirement for published notice in a national circulation newspaper, the cost of public notice is reduced.

In place of broader applicant published notice, FAA will provide national notice by publishing a brief announcement of proposed restrictions on Stage 2 aircraft operations in the **Federal Register**. (The rule retains the more comprehensive FAA notice in the **Federal Register** for proposed restrictions on Stage 3 aircraft operations.) This process should ensure wide notice to all interested parties. In addition, airports will be required to post a notice of the proposed restriction or agreement in the airport in a prominent location accessible to airport users and the public.

Requirements for direct notice are retained because this is the most effective method to ensure sufficient notice. However, the rule more clearly defines who is to be notified. For example, the requirement to notify air carriers has been changed. The proposed rule required notice to aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that were expected to be affected by the restrictions. The final rule continues the requirement to notify potential new entrants that are known to be interested in serving the airport. But rather than notify all of the operators serving the airport, the rule requires notice to aircraft operators providing regularly scheduled passenger or cargo service, operators of aircraft based at the airport, and operators of aircraft known to routinely provide nonscheduled service to the airport that are expected to be affected.

Airport operators are still required to publish notice in an areawide newspaper of general circulation, but the newspaper's circulation must cover all land-use planning jurisdictions included in the airport noise study area. The requirement to directly notify Federal, state and local agencies has been limited to those with land-use control jurisdiction within the airport noise study area, such as the Department of the Interior. The requirement to notify all agencies with facilities in the airport noise study area

has been deleted. The only change to the information required in the notice is that, for Stage 3 restrictions, the airport operator must indicate any alternative restrictions being considered and submitted. The final rule attempts to minimize the notice requirements while ensuring that all interested parties are informed.

Comments: Comments on the burden of analytical requirements for proposed restrictions on Stage 2 aircraft operations were divided, with air carriers and aircraft manufacturers supporting more stringent analytical requirements, and local airports and noise groups contending that the proposed analytical requirements were burdensome and exceeded FAA's statutory authority.

The Air Freight Association, Federal Express, Airborne, ATA, McDonnell Douglas, and Northwest Airlines all generally agree that the analysis required for proposed restrictions on Stage 2 aircraft operations should be the same as that for restrictions on Stage 3 aircraft operations to insure uniformity across airports. They maintain that analysis should be mandatory and sufficiently detailed to insure that a complete evaluation of the restriction has been conducted.

While stating that the requirements are reasonable and necessary, ALPA would like to see safety analysis of the restriction, prior to the comment period, as a precondition if the proposed restriction affects flight procedures in any way and, if so, a showing of no safety impact.

The National Airport Watch Group (NAWG); NOISE; the Port Authority of New York and New Jersey; the City of Long Beach, California; the towns of Bedford, Lincoln, Lexington, and Concord, Massachusetts; and the Suburban O'Hare Commission comment that the requirements for Stage 2 analysis are specified in the Act—FAA has no authority to impose any further requirements on airports. These commenters note that the proposed analytical requirements will stymie local attempts to restrict aircraft.

Response: The FAA considered four options in responding to the concerns of commenters. The first option would be retention of existing analysis requirements. There were several advantages to this option. By restating the statutory provisions, the final rule text provides applicants with one central source of information on the analysis requirements. By adding the requirement to use noise measurement methodologies specified in 14 CFR part 150, and accepted economic methodology, an element of standardization would result, facilitating review of the proposals by both the public and air carriers. Finally, it is important to note that the proposed text's reference to the analysis requirements for proposed restrictions on Stage 3 aircraft operations as suggesting useful elements of an adequate Stage 2 restriction analysis was not a requirement, but rather a source of information.

Conversely, the use of prescribed noise measurement systems and accepted economic methodology may be burdensome for some selected restrictions at some airports (probably at smaller airports).

The second option considered was deletion of the requirement to use the noise measurement systems consistent with 14 CFR part 150.

While the perception of burden would be reduced, and airport operators would be allowed to utilize whatever noise measurement systems they deemed appropriate to the airport, valuable consistency in measurement across airports would be lessened. It would probably result in the public and, particularly, air carriers having considerable difficulty in effectively analyzing the effects of a proposed restriction.

A third option considered was deletion of the reference, in Stage 2 analysis requirements, to the analysis requirements for proposed restrictions on Stage 3 aircraft as providing useful information. Again, the perception of burden would be reduced, but some airports with little experience in analyzing operating restrictions may be disadvantaged by deleting reference to information that may be useful.

Finally, a fourth option considered was to require mandatory analysis similar to that for proposed restrictions on Stage 3 aircraft operations (subpart D) for a proposed restriction on Stage 2 aircraft operations. This option would insure that proposed restrictions on Stage 2 aircraft would receive a comprehensive evaluation that may, in some instances, cause airports to reconsider the merits of the proposal.

Conversely, many noise groups and airports would consider this option onerous, and an intrusion on the powers of state and local governments. Airports indicate in their comments that they consider the Act to give them complete authority to restrict Stage 2 operations without Federal intervention.

The final rule retains the analytical requirements in the NPRM, except that the requirement that analysis must reflect current airline industry practice is deleted. As noted above, for airports proposing to restrict the operations of Stage 2 aircraft weighing less than 75,000 pounds, a separate analysis for this class of aircraft must be conducted.

Comments: Regarding the analysis requirements for proposed restrictions of Stage 3 aircraft operations, airports and noise groups again view the analysis required for restrictions on Stage 3 operations as too burdensome and beyond the scope of the Act, questioning how they would be able to comply with the requirements. Conversely, air carriers and aircraft manufacturers favor more detailed, mandatory analytical requirements to ensure standardization and even-handedness.

The ATA comments that requisite analysis content must be spelled out precisely. The Air Freight Association wants FAA to explain in the preamble how the analysis relates to answering the six statutory conditions. ALPA comments that, as with Stage 2, safety analysis should be a precondition to notice, comment, and approval.

The Chicago Association of Commerce and Industry states that beyond immediate financial impacts, the analysis must include the negative effect on travelers and shippers as needed air service is lost. The benefit side of analysis is highly susceptible to exaggeration—real estate values and other speculative benefits should be eliminated, according to this commenter.

The United Parcel Service (UPS) comments that any restriction on Stage 3 nighttime operations should be viewed as a per se burden on interstate commerce.

Airborne Express supports requirement of precise analytical components, contending that a general statement supporting six conditions for approval is not sufficient—there must be substantial evidence.

NAWG states that the proposed requirements deliberately stack the deck against local restrictions on Stage 3 aircraft operations. They want the analysis to include major health costs, occupational injuries, and the detrimental effect of noise on education.

NOISE wants FAA to add health effects in the cost/benefit calculation—they believe that the proposed analytical components are weighted more heavily toward costs, not benefits. This commenter also believes that the FAA, not the applicant, should make a determination on whether the six statutory conditions have been met.

The Metropolitan Washington Council of Governments believes that the proposed analysis requirements go far beyond the Act. It does not believe a mechanism is available for obtaining

airline specific cost and operational data. It notes further that many arcane and speculative cost categories should be deleted as few categories of benefits are mentioned.

The City of Los Angeles wants FAA to delete the requirement of a "complete draft environmental assessment," stating that review and approval/disapproval does not constitute a major Federal action: therefore no environmental assessment is needed. This commenter recommends that only an environmental checklist be prepared.

The Port Authority of New York and New Jersey notes that the terms "currently accepted economic methodology" and "reflecting current industry practice" are vague, undefined, and confusing.

The Suburban O'Hare Commission believes that benefits of noise reduction are not adequately addressed, suggesting that the FAA and communities work together to develop mutually acceptable methodology for determining the benefits of noise reduction to communities.

Response: Again, four options were considered in responding to concerns of commenters. The first was to retain the analysis requirements in the NPRM.

These analysis requirements were developed to allow the FAA to make an informed decision regarding the merits of the proposal and the adequacy of information to support, through substantial evidence, the six statutory conditions for approval.

However, as structured in the NPRM text, the analysis requirements were perceived by some commenters as excessively burdensome. Moreover, they did not understand how the information would be utilized in the decision process.

The second option considered was to restructure the analysis requirements to more effectively align the requirements with the conditions for approval. Under this option, the burden would be reduced as applicants better understand how their analysis will be used in evaluating the adequacy of substantial evidence. Further, based on the restructuring of that section, applicants may be able to eliminate portions of the analysis not deemed to be appropriate to their proposal. But by assigning all analytical components to the requirements of substantial evidence of the six statutory conditions, some flexibility afforded to the applicant may be lost.

Another option considered would be to require that all applicants respond to a specific mandatory list of analysis components. All airport restrictions would be evaluated utilizing standardized requirements, thereby eliminating inconsistent treatment among airports. Furthermore, all proposed restrictions would receive a thorough evaluation, satisfying aircraft operator concerns.

On the negative side, however, a mandatory list of analysis components would force all applicant airports to provide data that may be irrelevant to a specific airport or type of restriction. The Noise groups already view the analytical requirements as too burdensome, infringing upon local airports' ability to control noise. In addition, the costs associated with a comprehensive analysis requirement for all airports may prove to be too expensive for some airports.

The suggestion to shift the burden of analysis to the Federal government was explored. Through this alternative, consistency would be assured, and costs to the airport proposing a restriction would be minimized. However, since the FAA has only 180 days in which to evaluate a proposal, there would be insufficient time and resources to conduct the research necessary to analyze a proposed restriction.

The final rule restructures the analysis components to more clearly align the analysis requirements with the required evidence for the six conditions for approval. This realignment does not add any requirements to those stated in the NPRM. The FAA finds these analysis requirements are the minimum necessary to ensure that the six conditions for approval are met. Restructuring the proposed text in the final rule should clarify which components of the analysis correspond to the conditions for approval and thereby facilitate preparation of relevant information by the applicant.

Comments: Several other issues regarding the general burden of the process were raised in comments and are appropriately addressed here. Among the comments that generally address the application process, the City of Long Beach urges that the applicant, rather than the FAA, determine whether an application is complete; and that the FAA act upon the merits of the submission instead of requesting further information.

Response: The FAA is cognizant of the time and expense involved in preparing an application. However, it is FAA's opinion that applicants are better served by an opportunity to supplement an application rather than restart the application process merely due to the lack of certain information. Moreover, the choice to submit requested supplemental information remains with the applicant. The applicant can either resubmit and supplement its application, not respond to the information request, or advise the FAA that it will not provide additional information. FAA disapproval of an initial incomplete application would be unfairly prejudicial to an applicant, and the potential ramifications of disapproval necessitate that such action be taken only when all requisite information has been provided.

Comments: The City of Long Beach also requests that the applicant be allowed to respond to comments submitted on the proposal or during reevaluation at any stage of the process.

Response: While not explicitly addressed in the regulatory text, both the NPRM and the final rule permit applicant response to comments, either through formal submissions to the applicant's own docket or to the FAA, as appropriate. Thus, the FAA finds that no additional clarification is needed.

Comments: There were a number of general comments that the application process is too lengthy and excessively time consuming.

Response: It should be noted that the time required for analysis and other document preparation is outside of FAA purview as it is determined largely by the Act and by the applicant—depending upon what data, analysis, and evidence is necessary to substantiate a proposal. These requirements will vary with the unique situation of the applicant and the restriction proposal. Moreover, the FAA will make a determination on an application within 180 days of receipt of a complete application. Further, the requirements for notice and opportunity for comment, while time consuming, are statutorily required, and serve a valuable function.

Comments: The Maryland Aviation Administration and the Minneapolis/St. Paul Metropolitan Airports Commission suggest that the rule provide for coordination between the FAA and the applicant, before formal application submittal, to ensure early identification and resolution of problems.

Response: The FAA finds that such a provision is unnecessary since FAA program office staff are typically available for queries regarding program requirements. Additionally, as usual with a new program, the FAA recognizes the particular importance and value of program staff accessibility to advise and direct applicants during the preparation of applications under new-program requirements, and will make such assistance available on an informal, as-requested basis.

Noise Study Area and Metrics

The proposed rule defined the study area for part 161 analyses as that area surrounding the airport within the Day-Night Average Sound Level (DNL) 65 dB contour, as defined in 14 CFR part 150, that contains noise-sensitive land uses (typically residential neighborhoods; educational, health, or religious structures; cultural and historic sites). Part 150 defines, for its purposes, all land uses outside the DNL 65 dB contour (noise levels less than 65 dB) as normally compatible. Additionally, the part 150 definition states that local needs or values may dictate further delineation based on local requirements or determinations. The FAA has approved, under the part 150 program, definitions of noncompatibility that are broader than those delineated by the DNL 65 and that are at some variance with Table 1 of part 150. In each case the FAA found that, in view of the particular local circumstance, the broader definition of noncompatibility was reasonable. The FAA has never taken the position that such an action would set a precedent for changing the overall definition of compatible land uses as shown in Table 1 of part 150. Thus, part 150 permits, for reasonable circumstances, a degree of flexibility in determining a study area and the compatibility of land uses to noise.

The proposed rule prescribed the yearly DNL calculated in accordance with the specifications and methods prescribed in appendix A of 14 CFR part 150 as the noise measurement methodology for use in part 161 analyses (§ 161.9(b)).

The first issue is: Should the DNL be prescribed as the only noise measurement for part 161, or should other factors be considered?

Comments: Comments from two major aircraft operator groups, NBAA and ALPA, support the proposed rule in prescribing the DNL as the only noise methodology for use in part 161. The ALPA comments specifically support the DNL methodology and criteria as the baseline requirement, as used in part 150. The NBAA comments that the noise measurement systems and land-use categories used in part 150 should be employed in this regulation.

Comments from two major air freight operators, Airborne Express and Federal Express, support use of the DNL methodology, but with the deletion of the 10 dB nighttime noise penalty that is built into that methodology. They believe that the 10 dB penalty would exaggerate the benefits.

Responses from airport operators, environmental groups, and private citizens generally request that additional metrics, especially the single-event, be included in the required analyses. These commenters believe that the noise measurement system should include both single-event and cumulative metrics.

San Francisco International Airport suggests that each airport operator be permitted to use any reasonable or accepted noise measurement system. Some airport area-residents request that the FAA incorporate airport ground noise into the DNL.

One commenter notes that the DNL does not pick up effects of individual jetliners and large numbers of small aircraft. The Citizens Air Rights Organization comments that DNL underestimates the importance of the frequency of noise events.

The Environmental Protection Agency (EPA) comments that noise-related impacts, such as sleep disturbance and speech disruption (measured over a less-than-24-hour period), must use another noise-measuring metric, perhaps single event (SEL) or equivalent sound level (Leq).

The City of Grapevine, Texas, comments that a national noise policy should abolish what it calls the outdated, arbitrary DNL noise metric for noise compatibility and utilize instead numerous comprehensive noise metrics. This commenter recommends that the rule mandate a comprehensive set of metrics such as Ldn, Lmax, SEL, TA, etc., to determine true impacts caused by all aircraft, regardless of weight or altitude. This commenter suggests that the 24-hour averaging methodology is inadequate and that noise events are underemphasized.

NOISE comments that the DNL metric is increasingly seen as an inadequate measure of the actuality of aviation noise experience. Thomas Murray comments that the DNL is not realistic and is based on synthetic simulations rather than measurement. This commenter does not believe that DNL is current with recent research results. Dennis O'Sullivan comments that the DNL is based on having windows closed; he likes to leave windows open during pleasant weather and not be a prisoner in his own home.

James Shrader, Raleigh-Durham, insists that the DNL does not work for noncontinuous noise environments and suggests that DNL consider noisy periods of a few days or weeks in addition to the yearly average. He emphasizes that adverse impact occurs if one's speech is disrupted an average of ten times in any single day.

Response: The FAA has considered several options in resolving the noise metric issue. The first option would retain the proposal without change. This option recognizes that the DNL metric is well-tested, has been used extensively with excellent results, and is fully compatible with part 150 and the environmental metric used by the FAA and several other Federal agencies. If this option is abandoned, untested and potentially nonuniform noise metrics would be introduced into the part 161 process. The part 161 criteria would no longer be compatible with 14 CFR part 150, or with the environmental analysis criteria utilized by the FAA and several other federal agencies.

The second option would modify the proposal by removing all prescription of noise metric from the regulatory text and only referencing 14 CFR part 150, which has historically included the DNL metric and the 65 dB contour among its requirements. However, as previously discussed, the flexibility available under 14 CFR part 150 responds to most of the concerns expressed by the commenters. While this option would retain the FAA's tested and proven metric, it would assure that the flexibility inherent in noise assessment under 14 CFR part 150 to supplement DNL with other analyses is also fully available to part 161 applicants. In addition, it would guarantee full compatibility between the two regulatory parts, and any future changes made to the part 150 metric would automatically be incorporated into part 161 by reference.

However, some commenters complain that the NPRM is already too much like part 150. NOISE comments that the part 150 process is used to prevent localities from devising and enacting noise restrictions tailored to local circumstances; to discourage innovation; and to further sanctify the DNL metric. NOISE recommends that alternative approaches to the mandated part 150 process be permitted. Other commenters object to the 10 dB noise penalty incorporated into the DNL for assessment of "benefits," but not for part 150's noise compatibility purposes.

The third option would modify the metric to explicitly incorporate other criteria that would provide data on aircraft single-event and ground noise, less-than-full-year noise averaging, and windows-open situations. The cumulative effects of all the single events are already incorporated into the yearly DNL. The part 150 process permits consideration of ground noise. Long-term noise exposure is the accurate measure of community annoyance and land-use compatibility. In regions having significant "windows-open" conditions, the part 150 process

permits a degree of local adjustment to the guidelines for noise-compatible land uses in Table 1 of 14 CFR part 150.

The fourth option would permit each airport operator to select the metric(s) and methodology best suited to its own particular local conditions in lieu of using the DNL. Although offering maximum flexibility, this could quickly lead to a confusing array of approaches with significant room for error or nonuniform treatment of airport users and airport neighbors. Further this option would put the part 161 criteria at odds with all other noise compatibility criteria, including criteria jointly agreed to by the FAA and several other Federal agencies, and would create chaotic mix of noise standards across the country.

After careful consideration of comments received, the FAA has determined that the proposed rule text should be modified by removing the prescription of noise metric from part 161 entirely and referring specifically to 14 CFR part 150. Such reference both accommodates the statutory requirements of the Aviation Safety and Noise Abatement Act of 1979 and provides a degree of local adjustment to noise impact, as noted above.

The second issue is: Should the DNL 65 dB contour be prescribed as the outer limit of the Airport Noise Study Area (ANSA)?

Comments: Comments from NBAA and ALPA support adoption of the 14 CFR part 150 methods and criteria for determining the airport noise study area.

Responses from airport operators, environmental groups, community organizations, and private citizens generally request that communities and airport operators be permitted to select their own study areas. In a joint submission, the Massachusetts towns of Bedford, Concord, Lexington, and Lincoln comment that airport operators should define their own ANSA's by reference to local land-use patterns and local noise-attenuation needs; the airport operator could demonstrate the need for a restriction by referring to local needs and expectations.

Joan Bell, Seattle, comments that adoption of the 65 DNL has not been through the public comment process required for a regulation. Arguing that the DNL 65 is outdated and its assumptions should be reassessed in response to evolving public opinion, this commenter insists that noise levels up to DNL 64 over residential areas are unacceptable.

Another individual comments that citizens are disturbed by aircraft noise in areas reaching far beyond the official DNL 65 noise contour. Citizens for Abatement of Aircraft Noise comment that the DNL 65 is not adequate to predict where aircraft noise begins to exact real social costs. This commenter states that there is anecdotal evidence that there are serious effects well below DNL 65. DeKalb County, Georgia, comments that noise policy should be based upon properly measured local noise contours.

The EPA recommends that the FAA modify the definition of ANSA so as to eliminate the perception that the area within the DNL 65 dB contour is the sole area to be considered for noise impacts, while retaining the flexibility of extending beyond the DNL 65 dB contour.

Grant Godwin asks that the FAA amend ANSA for "rural-urban" airports to "that geographical area surrounding an airport within the DNL 50 (versus 65) dB contour." This commenter believes that legitimate noise concerns certainly extend to the 55 DNL contour and, in many cases, beyond this point.

NAWG comments that the DNL 65 dB contour is used to minimize the actual noise problem and that every DNL 65 dB contour in the country encloses only one-fourth to one-third the actual area subjected to severe aircraft noise pollution.

The Port Authority of New York and New Jersey comments that the DNL 65 dB contour is not relevant in totally built up areas, and the only gauge as to the effectiveness of a noise restriction is the amount of the noise reduction in the appropriate DNL contour.

James Shrader, Raleigh-Durham, comments that the real threshold for the beginning of noise evaluation and general annoyance is DNL 55 dB. This commenter suggests that the FAA should not allow addition or modification of flight tracks or other procedures at an airport until the airport operator has obtained airport-compatible zoning or easements for properties that will become residentially incompatible.

The City of Torrance, California, comments that the average DNL 65 dB noise criteria does not adequately address the noise discomfort experienced by local residents, nor the actual conditions at general aviation airports. This commenter recommends that the criteria be lowered to the DNL 55 dB contour.

The Triangle Airport Noise Coalition comments that use of the DNL 65 dB contour to define "unsuitable for residential use" is totally inadequate, particularly for airports impacting suburban neighborhoods where the background noise is on the order of DNL 40 dB.

Response: The FAA has considered several options in resolving the noise study area issue. The first would adopt the proposal contained in the NPRM without change. As with the DNL metric, use of the DNL 65 dB contour for noise compatibility is well-tested, and is fully compatible with part 150 and the environmental methodology used by the FAA and several other Federal agencies. Further, it has had widespread Federal agency acceptance for a decade.

The second option would change the definition of the ANSA to permit unlimited flexibility to address all local conditions. This would allow an applicant to tailor the process to best suit that airport. The second option would also respond to most of the comments expressed by noise groups regarding the size of the study area.

Conversely, unlimited flexibility in defining the ANSA could result in each airport presenting a unique situation. Aircraft operators could be subject to a different set of rules at each airport. This option could also put the part 161 noise criteria at odds with all other noise compatibility criteria, including criteria established by the FAA and several other federal agencies, and create a chaotic mix of noise standards across the country.

The third option would revise the definition of the ANSA to refer exclusively to 14 CFR part 150. This overcomes the essence of the objections cited by the noise groups, as it incorporates the flexibility inherent in 14 CFR part 150. It also assures full compatibility between the two regulatory programs, including any future changes to part 150. Moreover, applicants would therefore need to be familiar with only one regulation regarding noise measurement.

Conversely, some commenters complain that the NPRM is already too much like part 150. Some proponents of greater flexibility in the rule would still be unsatisfied.

After consideration of the above options and pertinent comments, the FAA has revised the definition of the ANSA in the final rule to permit the applicant airport operator the same flexibility as that provided under part 150.

The Relationship Among Part 161, Local Land-Use Responsibilities, and Noise Liability

In the preamble to the NPRM, the FAA noted that section 9306 of the Act provides for Federal liability "only" to the extent that a taking has occurred as a "direct result" of that disapproval. Based on this statutory language, the

FAA suggested that one factor to be considered in determining whether Federal noise liability can attach to a particular disapproval would be whether the airport operator has made a reasonable effort in its own behalf to assure land-use compatibility in the vicinity of the airport. If a pattern of land-use management by local government has resulted in land-use incompatibilities that have led the airport to propose Stage 3 restrictions that cannot meet the approval requirements of the Act or part 161, those land-use incompatibilities should be considered in determining whether any takings that occur following disapproval are in fact the "direct result" of the disapproval itself.

The preamble of Notice No. 91-8 also noted that among the factors to be considered by the FAA in approving or disapproving a restriction on Stage 3 aircraft would be nonaircraft alternative measures that have been employed to achieve land-use compatibility. In particular, the preamble cautioned airport operators, local jurisdictions, and others not to "interpret sections 9304(d)(2) and 9306 as an invitation to relax or delay responsible programs for compatible land use," and encouraged use of the part 150 planning process. It also referred to airport development aid grant assurances that contractually obligate federally funded airports to use all reasonable means to restrict the use of land near the airport to compatible activities.

Consistent with the above, the preamble explained that the proposed regulation was not intended to affect traditional local responsibility for land-use measures.

Comments: Several comments were received on this issue. The airport trade associations and Adams County, Colorado, request that the rule be silent on this issue and allow the issue to be resolved by the courts. This view is shared by other communities and by various citizens groups, including the Maine/New Hampshire Voice, that finds the land-use question raising issues of state's rights. The National Association of State Aviation Officials (NASAO) also asserts that land-use planning responsibilities should be left to the state.

The City of Grapevine, Texas, requests that the final rule require airport operators to cooperate with local community governments adjacent to the airport. In contrast, NOISE argues that an airport's land-use policies should be irrelevant because in many cases other jurisdictions have land-use authority.

NAWG points out that the scheme of judicial remedies can be complex. It urges the FAA to state specifically how the Act and this rule affect state and local liability and to define the scope of Federal liability. This commenter notes, in particular, that the NPRM does not address shared liability where part of the injury (the taking) is the Federal share and other parts (e.g., nuisance, property repair) remain State-law claims against the airport. NAWG expresses concern that failure to clarify this issue may leave homeowners without remedy. The City of Raleigh-Durham also urges the FAA to further define the factors it would consider in determining whether to accept liability.

Two airport operators suggest that the FAA has attempted to improperly avoid liability for disapproval of restrictions on Stage 3 aircraft by tying Federal liability to local land-use planning efforts. They argue that, in some cases, operating restrictions may be the only feasible means of assuring noise compatibility.

Response: After careful review and consideration of these comments, the FAA has determined that it would not be appropriate to address the issue of liability in the regulation itself. The FAA agrees with the argument that this is an issue that will ultimately be resolved by the courts on the basis of specific claims for damages following specific FAA actions. However, the following discussion is intended to guide airport operators, FAA personnel, and airport neighbors concerning the vital role played by land use controls in the ultimate exposure of specific properties to certain noise levels. It should be noted that this discussion is advisory only, and does not constitute part of the regulation adopted herein. It is merely intended to further explain the FAA's understanding of the effect of the Act on the issue of liability.

The FAA agrees that land-use control is exclusively a state and local responsibility, and cannot be regulated by the FAA. Accordingly, the FAA has no authority to adopt suggestions that the regulation require land-use cooperation between the airport operator and other jurisdictions surrounding the airport. The FAA also agrees that, except for the limited case of the taking-based liability specified in section 9306 of the Act with respect to disapproved restrictions on Stage 3 aircraft, the Act did not change the liability normally borne by the airport operator under *Griggs* v. *Allegheny County*, 369 U.S.C. 84 (1962). Neither the Act nor part 161 alter any of the remedies previously available under state or local law with respect to airport noise.

Contrary to the opinions expressed by some commenters, the FAA continues to be of the view that the Act provides a basis for retaining the placement of liability where it was before the passage of the Act, and where the failure to adopt appropriate land-use controls has been a significant cause of noise impact on neighboring properties. Thus, the language of the statute suggests that the scope of liability is narrow. The statute specifies that the Federal government "shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of such disapproval." The "direct result" language in particular suggests that the purpose of section 9306 was not a wholesale shift of liability to the Federal government. This will be an important consideration in determining whether a taking has occurred as a "direct result" of the disapproval of a Stage 3 restriction.

In addition, section 9304 of the Act explicitly states that the statute does not supersede existing law. Under the Airport Improvement Program (AIP) grant assurances and section 511(a) of the Airport and Airway Improvement Act of 1982 (AAIA), airport operators have an obligation to undertake reasonable land-use compatibility measures. The Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. App. 2101 *et seq.*) provides for Federal approval of comprehensive noise compatibility programs, including effective land-use measures, with incentives provided in the form of Federal financial assistance. Interpreting section 9306 to allow airport operators to avoid liability for inadequate land-use planning efforts merely by proposing an impermissible restriction on Stage 3 aircraft would vitiate these provisions.

Consistent with the above, the airport operator's efforts at land-use control should be a factor to be considered in determining, under the Act, whether there are nonaircraft restrictions that could achieve noise benefits more effectively than a restriction on Stage 3 aircraft. The ability of an airport operator to attain the benefits of an access restriction through the reasonable exercise of land use control powers may be a factor to be considered in determining the reasonableness of a proposed restriction. These determinations will be made on a case-by-case basis.

Comments by Subpart

Having discussed above seven general issues, comments thereon, and FAA responses that influence the

overall character of the final rule, the following sections discuss comments on individual subparts of the rule and FAA's response to these comments.

Subpart A proposes general provisions and addresses the purpose, applicability, and limitations of the rule as outlined in the Act. It defines common terms used throughout the proposed regulation, specifies limitations, and designates noise measurement systems.

Section 161.1 Purpose

This section remains unchanged from the proposed rule language in its delineation of the general purpose of this part.

Section 161.3 Applicability

This section addresses general applicability of this part. As mandated by section 9304 of the Act, this part applies to restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to restrictions on Stage 3 aircraft operations that become effective after October 1, 1990. The rule also applies to agreements entered into after the effective date of the rule. One revision to the proposed text was made in the rule with the addition of a new paragraph (b) to clarify that this part applies to amendments made after October 1, 1990, to restrictions in effect on that date where the amendment reduces or limits aircraft operations or affects aircraft safety.

Under section 9304(a)(2)(B), the Act applies to restrictions on Stage 3 aircraft "that first become effective after October 1, 1990." In considering the applicability of requirements set forth in section 9304 (b) and (d) for restrictions on Stage 3 aircraft operations, as a matter of policy, the FAA will interpret the phrase "first become effective" in section 9304(a)(2)(B) to refer to the date that a regulatory document itself is effective and not to individual compliance dates within the regulatory document.

Comments: Several types of comments were received with respect to the applicability and limitations of the rule. As required by the Act, the rule covers "noise" and "access" restrictions on the operation of Stage 2 and Stage 3 aircraft. Comments on the definition of "noise" and "access," and responses to questions pertaining to the definition posed in Notice No. 91–8, are discussed in detail above under the general issue of "Applicability of the Rule." As stated in that discussion, there was no consensus of opinion among commenters. Responses from airport operators, environmental groups, and a few private citizens argue that the proposed definitions are too broad, especially with respect to access restrictions. Comments from aircraft operators and allied groups, individual businesses that rely on air cargo shipments, and ALPA either affirm the proposed definitions or advocate more inclusive definitions.

Response: No compelling argument or evidence was presented by commenters that the intent of the Act was to include or exclude classes of "noise" and "access" restrictions other than those covered in the definitions in the proposed rule. The proposed definition was constructed by reciting the list of covered restrictions on Stage 3 aircraft operations specified in section 9304 of the Act, adding similar restrictions on Stage 2 aircraft operations, and explicitly including airport use charges that control airport noise. Upon reviewing the comments on the definition of "noise" and "access" restrictions, it is apparent that it would be beneficial to specify some potential sources of restrictions as a means of clarifying the definition. The definition contained in the rule therefore indicates that restrictions include, but are not limited to, provisions of ordinances and leases that limit or control noise and access.

Comments: The proposed rule is applicable to airport restrictions that become effective after October 1, 1990, and affect Stage 3 aircraft operations. Some commenters, including the Massachusetts Port Authority and the Raleigh-Durham Airport Authority, argue that a restriction on Stage 3 aircraft operations that was formally adopted prior to October 1, 1990, is not subject to the rule even if the implementation date of the restriction occurs after October 1, 1990. Comments from ATA urge that the rule be clarified to prevent misinterpretation with respect to the effective date of the restriction.

Response: Consistent with the Act, the proposed rule would apply only to restrictions on Stage 3 aircraft operations that become effective after October 1, 1990. However, a restriction may be effective before the date of its implementation. A restriction is effective when it is formally adopted or when final action on it is completed. The proposed rule appears clear with respect to this issue and the language of the rule therefore remains as initially proposed.

Secretary Skinner recently announced this policy in relation to the regulations adopted by the Raleigh-Durham Airport Authority. See, letter of Samuel Skinner to the Honorable James L. Oberstar dated April 25, 1991, in docket.

Section 161.5 Definitions

This section defines terms as used throughout the rule. Aside from minor editorial changes, there were two changes in the proposed rule text of some significance.

The definition of "agreement" was revised to define the class of new entrants whose signature is required to implement a restriction to include only those who, in addition to submitting a plan to commence operations within 180 days of the effective date of the proposed restriction, respond to the notice of proposed restriction. The rule uses the phrase "all new entrants that have submitted the information required under § 161.105(a)" to indicate that a new entrant may not prevent an agreement by failing to respond to the notice. This definition is also set forth in §§ 161.101(b) and 161.107. New entrants who fail to respond to the notice waive the right to claim lack of consent to the agreed-to restriction for two years. Such persons are also ineligible to use lack of signature as ground to apply for sanctions under subpart F for two years. For public policy reasons, all other new entrants that are not qualified to object because they plan to commence service after 180 days or at some indefinite time in the future are also deemed ineligible to apply for sanctions under subpart F for two years based on lack of signature.

As proposed, the "airport noise study area" would be defined by the DNL 65 dB contour, and the day-night average sound level (DNL) would be specified as the measure for noise exposure of individuals. In response to many comments requesting greater flexibility, this definition has been revised. (Comments are fully discussed above in the general issue section "Noise Study Area and Metrics.") The revised definition of "airport noise study area" highlights applicant determination of the study area within the limitations of part 150. While reference to the DNL 65 dB was deleted, it is a contour that is included in the noise contours required under part 150. This revision makes more explicit the latitude allowed airports in selecting noise contours for study, as long as certain required contours are addressed.

Section 161.7 Limitations

This section delineates what restrictions are subject to this part by identifying those that are statutorily excepted or otherwise not covered by this part. Paragraph (a) has undergone minor textual revision to better identify those airport-imposed noise abatement operational procedures that are not

subject to this part. There are no other changes to the proposed text of this section.

Notice No. 91-8 invited comments on what procedure, if any, should the FAA adopt to resolve any dispute over whether a restriction is subject to this regulation. While providing a statement of applicability, a definition of noise and access restrictions, and a statement of limitations, the proposed rule contains no method for resolving applicability disputes apart from the process of investigating compliance and imposing sanctions (subpart F), as noted by a few commenters. If there is doubt regarding coverage under the rule of a proposed restriction, informal inquiry can be made to the FAA for an opinion on applicability of the rule to a potential restriction. No formal process for resolving applicability questions independent of subpart F is included in the final rule, partly because the FAA may not be able to provide a binding opinion or resolution may be impossible without obtaining input from affected third parties.

Section 161.9 Designation of Noise Measurement Systems

The proposed rule text has been revised to emphasize applicants' latitude with regard to noise measurement within the limitations of part 150, which generally encompasses the proposed text requirements.

Comments: Many comments were received on methods of noise measurement. These comments are discussed in detail above under the general issue "Noise Study Area and Metrics." While there was no consensus among commenters on this topic, expressions by airport operators, environmental groups, individual citizens, and the EPA of the need and desire for flexibility with respect to both the boundaries of the airport noise study area and the noise measurement system were more prevalent than arguments by aircraft operators and allied groups to retain the proposed definition and specification of noise metric.

Response: The DNL is an appropriate and sufficient measure of noise exposure. However, the use of supplementary metrics to provide additional noise analysis when desired by airport operators is not disallowed in 14 CFR part 150, appendix A, which is referenced in the proposed rule.

It is advantageous to specify noise measurement standards for airport noise in only one part of the Federal Aviation Regulations—14 CFR part 150. If changes in noise metric or measurement systems are adopted in the future, the FAA standard contained in 14 CFR part 150 would automatically apply to part 161.

Further, the airport noise study area is intended for organizing information regarding noise exposure with and without proposed restrictions. Anticipated change in noise exposure as a result of proposed restrictions on aircraft operations is only one factor to be considered in determining the justification of proposed restrictions. Other factors, such as relative effectiveness, cost, or burden of the restrictions, must also be considered. Thus, there is no need to limit the boundaries of the airport study area so long as the area encompasses the noise contours required to be developed for noise exposure maps as specified in 14 CFR part 150.

For these reasons, the applicant may select the airport noise study area. However, that area must include the lowest noise contour required for noise exposure maps as specified in 14 CFR part 150. In addition, the rule now requires measurement of sound levels and noise exposure of individuals as established in Appendix A of 14 CFR part 150. There is no further specification of noise study area size, metrics, or noise measurement systems in this subpart, and the use of supplementary metrics is permitted.

Comments: Several commenters express the view that the proposed rule will increase opposition to airport expansion. Some of these commenters add that the rule should specifically state that the FAA is not mandating that airports expand their physical facilities. One commenter recommends that a separate section of the rule be devoted to establishing restrictions at new airports.

Response: These comments focus on the language of the Act, rather than on the proposed rule. The Act does not mandate that airports expand their existing physical facilities. Moreover, the FAA does not believe that this point is sufficiantly ambiguous in the Act to require clarification in the rule. Neither does the Act provide separate provisions for new airports, as opposed to existing airports; therefore, the rule does not go beyond the statutory provisions in this regard.

Comments: One commenter wants more weight and protection given in the proposed rule to existing conditions presently in effect at airports so as not to undo previous noise abatement efforts.

Response: The Act already provides for "grandfathering" restrictions in effect at the time of the Act's passage and for other specifically described exemptions, reflected in § 161.7 of the rule. The Act does not give the FAA the discretion to add to these exceptions.

Subpart B pertains to noise or access restrictions on operations of Stage 3 aircraft that are implemented pursuant to an agreement between the airport operator and all aircraft operators at the airport affected by the proposed restriction.

Under the provisions of the rule, once an airport operator has obtained an agreement (in writing) of all aircraft operators affected by the proposed restriction that are serving the airport or will be within 180 days, including new entrants that respond to the notice, the operator may implement the restriction. Such restrictions have the same force and effect as Federally approved restrictions except that, for policy reasons, subpart B recognizes a limited exception for new entrants. To afford some protection to the agreement, the rule provides that new entrants not objecting to the proposed restriction within the 45-day comment period have waived their right to any objection based on lack of signature and are ineligible to seek sanctions under subpart F for two years.

The rule now excludes agreements regarding Stage 2 aircraft operations from this subpart. Similarly, the term "voluntary agreement" has no meaning under the Act and has been deleted.

The critical distinction under subpart B as adopted is between restrictions implemented pursuant to agreement of all aircraft operators (under this subpart) and other, less inclusive agreements that have no effect on new entrants. The rule clarifies that airport operators may continue to enter into agreements with one or more aircraft operators to restrict operations of Stage 2 and Stage 3 aircraft, provided the restrictions in those agreements are not enforced outside of the agreement's parameters. The final regulation excludes these agreements from coverage under subpart B. For these agreements, remedies are available under the Act and the final regulation only if an airport operator seeks to make the restriction in such an agreement mandatory outside of the agreement's terms. In such a case, the final rule provides that an aircraft operator may seek sanctions under subpart F for an airport operator's failure to comply with subparts C and/or D.

Section 161.101 Scope

This section sets forth the applicability of subpart B. As proposed, this section would require agreement by all affected aircraft operators at the airport and affected new entrants that

have applied to serve at the airport within 180 days of the agreement's effective date.

In the NPRM, the FAA requested comments on whether the proposed requirement of agreement by aircraft operators serving the airport or intending to do so within 180 days is reasonable in light of the statutory reference to "all aircraft operators." Also posed in the NPRM were the following questions: What recourse, if any, should be available to an aircraft operator not covered by the 180-day new entrant limitation? If an aircraft operator wants to initiate service some months or years after the agreement has gone into effect, to what extent may it appropriately be barred by the terms of the agreement? Should the FAA treat an agreed-to restriction on a new entrant as a subpart C or subpart D restriction, which would then be subject to FAA approval with respect to the new entrant? Should it matter whether the new entrant was in existence at the time the original agreement was announced? Would other remedies be sufficient to protect the interests of new entrants against exclusionary agreements? Is it appropriate to allow agreements to cover Stage 2 operations as well as Stage 3 operations? Is there a need to require an economic analysis and 180 days' notice on Stage 2 restrictions, as contemplated by the Act, if the airport operator and the affected aircraft operators can agree?

Comments: Some commenters, including AOCI and AAAE, advise that new entrants will have already contacted the airport within sufficient time to be considered for participation in the agreement process. Conversely, The Massachusetts towns of Bedford, Concord, Lexington, and Lincoln suggest that only existing aircraft operators be required to agree. The UPS contends that an agreement would be good for those who are "in" as opposed to those who are "out." The Maryland Aviation Administration suggests an alternative method of compliance with notice requirements, where potential new entrants and industry organizations would preregister with the airport for receipt of restriction proposals.

A number of comments address the definition of "all aircraft operators." Comments from communities and airport operator associations generally endorse a narrow definition of agreement participants, as do air freight carriers to some extent. Commenters fear empowering those aircraft operators not immediately affected by the proposed restrictions with the ability to frustrate an expeditious agreement. Air freight carriers' comments argue for a limited expansion of the proposed definition of "affected aircraft operators," stating that FAA exceeded the Act in its inclusion—and narrow definition—of "new entrants." They further note that the new entrant category should not be limited to those expressing a desire to serve an airport within a certain number of days.

Response: Subpart B implements the section of the Act which provides that "no airport noise or access restriction on the operation of a Stage 3 aircraft * * * shall be effective unless it has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary * * *" (section 9304(b)(5)). The FAA concludes that the purpose of the Act was not to exempt agreements from Federal oversight, but rather to establish a procedure by which an airport operator may establish a restriction on operations of Stage 3 aircraft pursuant to an agreement with all aircraft operators at the airport that is, to the extent practicable, as effective as a Federally approved retriction. The FAA interprets the Act to authorize agreements that, once implemented, have largely the same force and effect as a Federally approved restriction. As adopted, subpart B provides an alternative procedure for the airport operator to establish a Stage 3 restriction having such force and effect. The term "voluntary agreement" is no longer meaningful under this interpretation, and is deleted from the final rule. The critical distinction under subpart B is between restrictions implemented pursuant to agreement of all affected aircraft operators (under subpart B) and other, less sweeping agreements that do not affect new entrants.

As proposed and adopted, subpart B allows an airport operator that obtains the signature of all aircraft operators affected by the restriction and new entrants planning to serve the airport in the near future to implement a restriction after providing proper notice and a minimum 45-day comment period. Compliance with the detailed analysis and other Federal approval requirements under subpart D is not required.

Implementation of restrictions on Stage 3 aircraft operations by agreement provides a simpler, streamlined process for the airport and airlines to reduce aircraft-generated noise on surrounding communities voluntarily. By limiting the process requirements, reducing attendant costs, and minimizing the involvement of the Federal government, the FAA views subpart B as advantageous to all concerned.

In addition, the final rule provides that a restriction cannot be implemented by agreement under this part unless all affected carriers currently operating at the airport, and all affected new entrants that have applied to serve at the airport within 180 days of the effective date of the proposed restriction and have responded to the notice, agree to the restriction. The requirement for a signed, written agreement is retained to clarify the scope of the subpart, although it is also set forth in § 161.107(a). The restriction cannot be applied to any entity, including those that have signed the agreement, unless all affected parties sign the agreement, with the exception of new entrants (discussed in § 161.105 below).

Minimal Federal involvement is appropriate with respect to restrictions implemented by agreement. Attempts by airport operators to force the terms of an agreement on parties that have not evidenced their consent by signature (other than on new entrants failing to object after notice, as explained below) transforms the agreement into a mandatory restriction, and therefore subject to the requirements of subpart D of this part.

Few comments were received in response to the series of questions as to agreements for Stage 2 restrictions and the need for analysis and notice. However, because the Act specifically provides that "no airport noise or access restriction on the operation of a Stage 3 aircraft * * * shall be effective unless it has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary * * *" (section 9304(b)(5)), the FAA has excluded Stage 2 restrictions from the coverage of subpart B. Given the absence of express authorization in the Act to establish a parallel procedure for agreements regarding Stage 2 aircraft restrictions, the FAA concludes that the rule will not encompass Stage 2 aircraft restrictions in such agreements.

As stated in § 161.101(d), however, this subpart does not limit the existing right of an airport operator to enter into an agreement with one or more Stage 2 or Stage 3 aircraft operators regarding their operations as long as the restriction is not enforced against aircraft operators not party to the agreement. This is consistent with the Act, which provides that rights under existing law are retained except to the extent required by the application of the provisions of section 9304(h). Because the Act does not require the elimination,

invalidation, or preemption of existing law regarding agreed-to restrictions, the FAA concludes that the Act intended to allow airport operators and aircraft operators to continue to enter into agreements restricting the operations of Stage 2 and Stage 3 aircraft.

As the Act was not intended to disturb or interfere with these less sweeping agreements, subpart B provides that such an agreement is not covered by this subpart. However, an aircraft operator may apply for sanctions pursuant to subpart F for restrictions the airport operator seeks to impose that exceed the agreed-to limitations. Furthermore, an airport operator cannot establish and apply a Stage 2 restriction that is not included in an agreement with the affected aircraft operator(s) unless the requirements of subpart C of this part have been satisfied.

One commenter requests that aircraft weighing less than 75,000 pounds be exempted from restrictions implemented by agreement. Applicability of the rule to these aircraft is discusssd above under the general issue "Treatment of Aircraft Weighing Less Than 75,000 Pounds." No operator of any aircraft, including those less than 75,000 pounds, may be compelled to sign an agreement.

Section 161.103 Notice of the Proposed Restriction

As proposed, this section established published and direct notice requirements for restrictions contained in agreements. It also set forth the information that must be contained in each notice, as well as a 45-day period for new entrants to apply for inclusion in the agreement.

The FAA requested comments on the following specific questions regarding notice: Are the notice requirements proposed for agreements reasonable? Although the Act does not expressly require the form of notice proposed, should this rulemaking require it? If published and direct notification should be mandatory, can the requirements be made less burdensome? Would publication alone be sufficient notice? Is 45 days reasonable for reply to published notices? Is it reasonable to require that the FAA be notified of the implementation and termination of agreements?

Comments: Many commenters believe that the notice requirements proposed throughout the rule are excessive. Commenters such as the City of Long Beach, AOCI and AAAE, and Massachusetts towns of Bedford, Concord, Lexington, and Lincoln find that direct notice is repetitive, because parties to the agreement will already know about it. Conversely, the Air Freight Association requests that additional direct notice be provided to general corporate headquarters to ensure that the chief executives are notified. Some commenters suggest that publication of notice in local papers of general circulation and notice to the FAA is sufficient. A few commenters recommend that the FAA publish notice of a proposed restriction in the **Federal Register** instead of the requirement to notify certain Federal, state, and local government agencies. Other commenters, such as CLASS, believe that it will be difficult to identify those known to be interested in serving the airport that are expected to be affected, and that notice in national newspapers and trade publications will be costly and repetitive. Other commenters, including Wayne County, Michigan;: the Airports Commission of the City and County of San Francisco; and the towns of Bedford, Concord, Lexington, and Lincoln, Massachusetts, suggest that any published notice be simply a brief notice identifying a contact for further information.

Other commenters, including the Air Freight Association and ALPA, are satisfied with the requirements. The Port of Seattle and SAFE request that FAA require notice to local citizens and citizens' groups. Airborne Express requests that the FAA publish notice in the **Federal Register** in addition to the notice requirements in the NPRM.

Response: FAA established subpart B in response to the Act's reference to restrictions on Stage 3 aircraft operators agreed to by the airport operator and all aircraft operators. FAA has spent considerable time evaluating subpart B in light of comments received, and is of the opinion that notice requirements, particularly for new entrants, remain extremely important because this subpart prohibits, for two years, the implementation of sanctions for restrictions that are enforced against a new entrant that failed to object to the proposed restriction. The Act requires that adequate public notice and comment opportunity be provided for restrictions covered by this part. However, the FAA has substantially modified the notice requirements of subpart B in an effort to reduce the burden of compliance for airport operators.

Requirements for notice publication in a newspaper with national circulation and in aviation trade publications have been deleted from the rule. The rule includes a new requirement that FAA provide national notice by publishing a brief announcement of the proposed agreement on restrictions in the **Federal Register**. Although this process should ensure wide notice to all interested parties, airport operators continue to be required to publish a notice in an areawide newspaper(s) of general circulation. Further, a requirement has been added to post a notice of the restriction in a prominent location at the airport.

The NPRM proposed notice to aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that were expected to be affected by the restriction. The final rule retains the requirement to notify potential new entrants that are known to be interested in serving the airport. The FAA finds that this requirement is not vague and should not be difficult for airports to implement. In addition, rather than requiring notice to all operators serving the airport, the rule now specifies those parties that must be notified. They include aircraft operators providing scheduled passenger or cargo service at the airport, operators of aircraft based at the airport, and aircraft operators known to be routinely providing nonscheduled service. The rule also requires that the airport operator contact other parties that may be interested in the agreement, such as community and business groups, agencies with land-use control jurisdiction in the vicinity of the airport, and fixed-base operators and airport tenants. The requirement to contact all government agencies with facilities in the vicinity of the airport is deleted.

Section 161.105 Requirements for New Entrants

This is a new section in the final rule. The proposed rule assumed that agreements entered into under the Act would affect new entrants to some unspecified degree and included provisions to protect potential new entrants. The preamble posed questions about what recourse new entrants should have with respect to an agreement authorized under subpart B. Upon consideration of the comments received, the FAA has substantially clarified the rule's treatment of new entrants. The FAA has determined that, while protection should be afforded new entrants planning to start service in 180 days, protections provided in this subpart should not effectively prevent an agreed-to restriction from being implemented once the notice and comment period has been provided.

In the final rule new entrants, defined as aircraft operators that plan to start service within 180 days of the proposed implementation date of the agreement,

must contact the airport and indicate whether they agree or object to the restriction. If the new entrant responds and objects, the airport operator cannot implement a restriction based on an agreement under subpart B. However, after providing the requisite notice and opportunity for a new entrant to comment, and receiving no objection, an airport operator may proceed to implement a restriction agreed to by all affected aircraft operators. Aircraft operators not serving the airport and without plans to serve the airport in the near future, or that fail to object to the proposed restriction, will not be able to prevent the establishment of a restriction. Agreement of new entrants that do not respond to the notice is not required, and their failure to respond renders their signatures unnecessary. Based upon their lack of signature, such new entrants are deemed to have waived, for two years following implementation of the agreement, their right to claim that they did not consent to the agreement. Such entities are also ineligible for two years to apply for sanctions under subpart F on the ground that they have not signed the agreement.

The two-year period strikes the proper balance between several competing interests. On the one hand, there is the interest of a new entrant in immediately overturning the restriction. Particularly the new entrant that, in good faith, did not object to a proposed restriction either because it could not foresee how circumstances would change, or because the new entrant did not exist at the time of the proposed restriction. On the other hand, there are the interests of the airport operator, aircraft operators at the airport, and the community in stability and an opportunity to enjoy the benefits of the agreed-to restriction.

Section 161.107 Implementation of the Restriction

Proposed as § 161.105 in the NPRM, this section required agreement by all affected aircraft operators for implementation of a restriction. It also stipulated notice to the FAA of the agreement, and submission to the FAA of evidence of notice, as well as a copy of the written, signed agreement.

The FAA requested comments on whether the proposed requirement for a written and signed agreement was reasonable.

Comments: Dade County Aviation Department comments that agreements of a minor nature need not be in writing. The Port of Seattle asserts that written and signed agreements could delay the agreement process. Other commenters, including Mr. Thomas Murray, ALPA, the Air Freight Association, and the Maryland Aviation Administration, maintain that written and signed agreements are essential to avoid misunderstandings.

Response. Section 161.107 retains the requirement for a written and signed agreement. Also retained is the proposed requirement for notice to FAA that the restriction has been implemented, including a copy of the signed agreement and evidence of compliance with the notice and comment requirements under § 161.103. The requirement to include in the notice "evidence of the agreement" has been deleted as unnecessary. The requirement for written and signed agreements in this section (also set forth now in § 161.101(b)) is needed to ensure that the terms of the agreement will be clear, not only to the parties, but to the FAA as well. Written, signed agreements will facilitate consideration of requests for sanctions for alleged noncompliance with the requirements of subpart D. Written, signed agreements can also be useful to the FAA should a reevaluation be warranted at some future date.

Section 161.109 Notice of Termination of a Restriction Pursuant to an Agreement

Formerly § 161.107, this section was slightly modified to focus on restrictions pursuant to an agreement. It requires that the airport operator must inform the FAA when a restriction is terminated. Termination of a restriction may be a result of the terms of expiration contained in the restriction or by mutual consent. Any continuation of a restriction after it has been terminated by the terms of the agreement would require compliance with subpart D, unless it is implemented by a new agreement.

Section 161.111 Availability of Data and Comments on a Restriction Implemented Pursuant to an Agreement

This is a new section that was not contained in the proposed rule. It adds a new requirement that the airport operator retain all relevant supporting data and comments received regarding a restriction implemented by agreement for as long as the restriction is in effect. It also mandates that the airport operator make this information available for inspection upon request by the FAA or an aircraft operator whose request for reevaluation was deemed justified by the FAA.

This additional section is responsive to commenters' concerns that necessary data and information from the initiation of the agreed-to restriction will later be unavailable when reevaluation of an agreed-to Stage 3 aircraft operation restriction is pending.

Section 161.113 Effect of Agreements; Limitation on Reevaluation Restrictions

A new section has been added to the rule to clarify that a restriction implemented pusuant to subpart B has the same force and effect as a restriction implemented in accordance with subpart D, except as otherwise specifically provided in subpart B. This section also clarifies the recourse available to dissatisfied aircraft operators that have agreed to a restriction under this subpart. The FAA generally will not accept requests for reevaluation under subpart E of restrictions agreed to under subpart B for a period of two years following implementation, but exceptions may be made on a case-by-case basis. This waiting period is based on the provisions of the Act (section 9304(f)).

Subpart C pertains to notice and review of proposed restrictions on Stage 2 aircraft operations. The Act permits airport operators to impose restrictions on Stage 2 aircraft operations, subject to two conditions.

First, the airport operator must prepare an analysis of the anticipated costs and benfits of the proposed restriction.

Second, the operator must provide notice of the proposed restriction, together with its analysis, at least 180 days before the effective date. Interested parties would then have an opportunity to comment. The statute requires the analysis to include: (1) Anticipated or actual costs and benefits of the existing or proposed noise or access restriction; (2) a description of alternative restrictions on aircraft; and (3) a description of the alternative measures considered that do not involve aircraft restrictions, along with a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access restriction. The Act applies to Stage 2 restrictions proposed after October 1, 1990.

Further, the Act maintains the discretion and pre-existing authority of airport operators (and limitations thereon) to restrict this operation of Stage 2 aircraft. Airport operators are not required to obtain approval by the FAA of a restriction imposed on Stage 2 aircraft operations. However, the Act also directs the Secretary to determine the applicability of these requirements to operators of Stage 2 aircraft weighing less than 75,000 pounds.

The statutory requirement for review of restrictions on Stage 2 aircraft

operations does not apply to those exempted by the Act. The Act specifically exempts amendments to existing restrictions on Stage 2 aircraft operations that do not reduce or limit aircraft operations or affect aircraft safety.

In implementing the statutory requirement for analysis, notice, and comment, FAA attempted to limit the burden of requirements while still ensuring that adequate information is available to provide a clear understanding of the proposed restriction and its effects.

Section 161.201 Scope

The proposed rule applied the requirements of this subpart to noise and access restrictions on the operation of Stage 2 aircraft proposed after October 1, 1990, and amendments to existing restrictions on Stage 2 aircraft if the amendment became effective after November 5, 1990. It did not apply to restrictions on Stage 2 aircraft operations specifically exempted in § 161.7.

The rule has been revised to apply the requirements of the subpart to amendments if they "are proposed after October 1, 1990," rather than if they "become effective after November 5, 1990." The Act clearly states that required notice and analysis of restrictions on Stage 2 aircraft operations apply only to those proposed after October 1, 1990. Thus, this would also apply to amendments.

Section 161.203 Notice of Proposed Restrictions

The proposed rule requirements for notice for restrictions on Stage 2 aircraft operations included publication in a newspaper with national circulation; in a newspaper of general circulation; and in aviation trade publications. The airport operator would have been required to notify, in writing, aircraft operators serving the airport; those interested in serving the airport; the FAA; and each Federal, state and local agency with facilities or land-use control jurisdiction within the airport noise study area. As proposed, the notice was required to include a description of the restriction, discussion of the need for that restriction, identification of aircraft expected to be affected, and an analysis of the proposed restriction or announcement of its availability.

Comments: Comments from air carriers typically support the notice requirements or recommend stricter requirements, whereas airports typically assert that the requirements are too costly and burdensome.

In general, airports and noise groups are of the opinion that the proposed notice requirements far exceed the requirements of the Act. They note that the Act requires only publication and they do not support direct notice, arguing that it would be too costly and difficult to determine whom to notify. The NAWG, for example, supports publication of notice only in an areawide newspaper of general circulation. They state that the requirement to directly notify aircraft operators known to be interested in serving the airport is too vague to enforce. A number of airports comment that they should be allowed to follow their normal local notice procedures, and that the FAA should take more responsibility for national notice. Organizations such as the Air Freight Association, Airborne Express, Florida West Airlines, McDonnell Douglas, and AIA recommend that the FAA provide notice of Stage 2 restrictions in the **Federal Register**, as is proposed for Stage 3 restrictions.

Air carriers either support the proposed notice requirements or maintain that they should be more stringent. Some would require that notice be given directly to the president of each aircraft operator serving the airport. The ALPA comments that the notice requirements in the proposed rule are reasonable and necessary. The SAFE argues publication alone is not adequate and that direct notice is necessary.

Airborne Express maintains that the rule does not affirmatively mandate that airports provide a minimum 45-day comment period, and recommends that a minimum 60-day comment period be mandated. On the other hand, Westchester County, New York, claims that the time period for notice and comment is too lengthy. Northwest Airlines is concerned that there are no assurances that airports will consider views received during the notice and comment period.

Response: As a result of the comments, the notice requirement for Stage 2 restrictions in the rule have been modified. A number of changes have been made to the rule to reduce unnecessary burdens on those proposing restrictions, while providing the same level of notice proposed in the NPRM. The FAA agrees with a number of commenters that direct notice is essential, but finds that some of the costly publication requirements can be reduced without adversely affecting awareness of the proposed restrictions. The FAA does not agree with commenters that would allow airports to apply local notice procedures, because these varied procedures would not ensure provision of complete and consistent information to affected or interested parties.

In the rule, requirements for publication in a newspaper with national circulation and in aviation trade publications have been deleted. The FAA will provide national notice by publishing a brief announcement of proposed restrictions on Stage 2 aircraft operations in the **Federal Register**. This should ensure wide notification.

Airport operators are still required to publish a notice in an areawide newspaper of general circulation, but circulation of the newspaper or newspapers must cover all land-use planning jurisdictions included in the airport noise study area. In addition, airports will be required to post a notice of proposed restrictions in the airport in a prominent location accessible to airport users and the public. This requirement will provide an additional local source of information and will be of minimal cost to the airport. The rule also includes a requirement to directly notify community groups and business organizations in the affected area known to be interested in noise restrictions, as well as fixed-base operators and other airport tenants whose operations would normally be affected by the restriction.

The requirement to directly notify Federal, state, and local agencies has been limited to those with land-use control jurisdiction within the airport noise study area, deleting the requirement to notify all agencies with facilities within that area. This revision further limits the burden of notification while still ensuring that agencies with jurisdiction in the airport noise study area are notified.

The requirement to notify carriers has been changed. The NPRM proposed notification of aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that were expected to be affected by the restrictions. The rule retains the requirement to notify potential new entrants. The FAA does not believe that this requirement is vague, and does not expect it to present any implementation difficulties to airports. In addition, rather than requiring notification of all operators serving the airport, the rule now specifies those parties that should be notified. They include aircraft operators providing scheduled passenger or cargo service at the airport, operators of aircraft based at the airport, and aircraft operators known to be routinely providing nonscheduled

service at the airport that may be affected by the proposed restriction.

The FAA has retained the requirement of a minimum 45-day comment period as this is an affirmative obligation for airports to receive comments. The requirement is only a minimum, however, and airports would be free to allow for receipt of comments for 60 days or longer. The final rule does not impose a specific duty on airports to consider views received during the comment period. The Act only requires that airports provide for notice and comment, and does not mandate an evaluation of, or response to, the comments. However, airports will consider the views of commenters, and the FAA will consider these commenters' opinions in determining whether to consider action against a restriction that is alleged to be unreasonable, an undue burden, or discriminatory.

There are no changes to the information required to be included in the notice. These information requirements are minimal and necessary so that interested parties are able to fully understand the proposed restriction.

Section 161.205 Required Analysis of Proposed Restriction and Alternatives

With respect to implementing the statutory requirement for analysis of the proposed restriction, the proposed rule reiterated the language in the Act requiring analysis of anticipated or actual costs and benefits, description of alternative restrictions, and a description and cost/benefit comparison of the alternative nonaircraft measures considered. It further proposed to require that the analyses be conducted in accordance with generally accepted economic analysis methods and reflect current airline industry practice. As proposed, noise measurement systems and the identification of the airport noise study area would conform to the requirements of 14 CFR part 150. Notice 91–8 further proposed that the airport operator specify the methods used to analyze costs and benefits so that interested parties are able to conduct an informed review.

In addition to the analysis required by the Act, the proposed rule referenced the information for analysis of restrictions on Stage 3 operations as providing useful elements of an adequate analysis for a proposed restriction on Stage 2 aircraft operations. The airport operator would be given discretion in applying this guidance to its specific restriction because each proposed restriction may require a unique approach to properly estimate its effect. The FAA sought comment on specifying in the rule detailed analysis requirements for restrictions on Stage 2 aircraft operations, similar to those required for restrictions on Stage 3 aircraft operations, and the desirability of suggesting analysis standards. Alternatively, the NPRM sought comment on whether optional detailed analysis requirements should be described in an advisory circular. The FAA also queried whether, beyond the requirements of the statute, any specific analysis should be required or encouraged in the final rule?

Because the types of restrictions may vary considerably, and it may be difficult to adequately apply all the analysis requirements to various specific situations, FAA also sought comments on whether the analysis required for restrictions on Stage 2 aircraft operations should vary with either type of airport or type of restriction and, if so, what should be the basis for differentiating analysis requirements.

Finally, the FAA invited the public to specifically comment on whether the airport proposing a restriction on Stage 2 aircraft operations should be required to explain explicitly why the restriction is not unreasonable, arbitrary, or discriminatory; an undue burden on interstate or foreign commerce; or an undue burden on the national aviation system.

Comments: Substantial comment was received in response to questions on whether detailed analysis requirements for restrictions on Stage 2 aircraft operations, similar to those required for restrictions on Stage 3 operations, should be specified in the rule. Generally, air carriers and aircraft manufacturers support detailed analytical requirements, while airports and noise groups argue that stringent analytical requirements will be so costly that airports will be unable to undertake restrictions.

The ATA states that elements of the supporting analysis for a restriction on Stage 2 aircraft operations should not be left to the discretion of the individual proponent of a restriction, but rather the detailed requirements should be spelled out precisely.

In addition to favoring application of the analytical components for Stage 3 restrictions to Stage 2 analysis, ATA supports additional requirements. Specifically, ATA argues that the regulation must also require airport operators to develop a detailed economic analysis of "the impact of the airport's proposed phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry, the impact of competition within the airlines and air cargo industries, the impact on nonhub and small community air service and the impact on new entry."

Also supporting the application of Stage 3 analytical requirements to Stage 2 restrictions, the Air Freight Association and UPS point out that, while no specific FAA approval is necessary for proposed Stage 2 restrictions, FAA is still obligated to measure proposed restrictions against requirements of pre-existing law, and they claim such data is necessary to make this assessment.

Airborne Express urges mandatory detailed analysis, stating if an airport operator has a documented airport noise problem related specifically to identifiable aircraft operations, it should have no problem submitting detailed Stage 3-type analysis.

Federal Express believes it is essential to define elements of cost-benefit analysis in the regulation, arguing that a detailed and thorough economic-based financial procedure should be mandatory for proposed Stage 2 and Stage 3 restrictions.

The ALPA believes that, at a minimum, the analytical requirements in subpart C are both reasonable and necessary. The Wisconsin Department of Transportation comments that the rule dictates a very intensive process that will probably hinder the proposal of a large number of restrictions that would defeat the intent of developing a national noise policy.

Representing the opposing view were commenters including NAWG; the City of Long Beach; the Suburban O'Hare Commission; the towns of Bedford, Concord, Lexington and Lincoln, Massachusetts (in a joint submission); Airport Impact Relief; and AOCI and AAAE (in a joint comment). They argue that nothing in the rule should require analysis beyond that required in the statute. They further assert that there is no role for FAA in this process. The NAWG believes that the proposed rule expressly violates Congressional intent that airport operators have unrestricted authority to control Stage 2 aircraft. They argue that it is unwarranted for the regulator to add additional requirements when Congress specifies in detail the analysis needed. The NAWG claims that in suggesting that specific information components will constitute useful elements of an adequate analysis, the FAA invites a challenge to an airport

operator's analyses that do not include Stage 3 analytical components.

The Port Authority of New York and New Jersey; the Airports Commission of the City and County of San Francisco; Wayne County, Michigan; and the joint comment for Adams County (Colorado) Coordinating Committee, Raleigh-Durham Airport Authority, the city of Redlands, California, and the city of Tempe, Arizona, not only object to applying Stage 3 analysis to Stage 2, but also oppose FAA's proposal to specify accepted economic methodologies and noise measurement system specified in 14 CFR part 150.

Several communities, such as the towns of San Jose and West Palm Beach, cite costs associated with detailed analytical requirements as a de facto barrier to local operators seeking to establish access restrictions on Stage 2 aircraft. With respect to the question of whether detailed analysis requirements should be described in an FAA Advisory Circular, comments specify that the requirements should be included in the final rule, although the Air Freight Association notes that publication in an Advisory Circular is better than no requirement being issued.

The NPRM also sought comment on whether any specific analysis beyond that required in the statute should be required or encouraged in the final rule.

The ATA advises requiring that analysis include an identification of any communities likely to be adversely impacted due to a reduction in the aircraft fleet (i.e., those cities likely to experience an elimination or decline in service). It suggests that those affected should be invited to comment on the proposed restriction.

The NBAA holds that if this subpart is applicable to restrictions on aircraft weighing less than 75,000 pounds, the airport operator's analysis should provide specific detail of the cost and benefits of the restriction with respect to light Stage 2 aircraft.

The NATA recommends that the FAA require restriction proponents to analyze the impact of a restriction on an affected fixed-base operator. The Chamber of Commerce urges FAA to include the impacts on business, competition and interstate commerce in its economic analysis.

Northwest Airlines suggests that analysis of a proposed restriction include an assessment of the proposal's impact on small communities that are often served by Stage 2 aircraft. Northwest recommends that restrictions on Stage 2 aircraft operations be submitted to FAA for prior approval. The air carrier further recommends that the FAA review within 14 days an airport's proposed restriction for compliance with section 9304(c) of the Act.

Florida West Airlines believes the FAA should review proposed restrictions, not for approval, but to advise airport operators when a proposed restriction may jeopardize Federal funding.

Gulfstream supports requiring the restriction proponent to address and analyze comments and concerns of interested parties, and either revise restrictions according to valid comments or refute comments.

Several commenters, including the NAWG, the Massachusetts Port Authority, and the Port Authority of New York and New Jersey, seek either deletion or clarification through further delineation of terms such as "currently accepted economic methodology" and "reflect current airline industry practice." The Metropolitan Washington Council of Governments recommends eliminating arcane, speculative cost categories and enhancing the benefits side of the equation. The Suburban O'Hare Commission suggests that the FAA work with communities and experts to develop a mutually acceptable methodology for determining the benefits of noise reduction to the communities. Dade County, Florida, Aviation Department is concerned with the availability of much of the required data, while Federal Express Corporation suggests that the requisite proficiency of those conducting and performing such analyses should be set forth.

The FAA, as noted earlier, sought comments on whether the analysis required for proposed restrictions on Stage 2 aircraft operations should vary with either type of airport or type of restriction and, if so, what should be the basis for differentiating analysis requirements?

Comments submitted by Federal Express state that analysis of proposed restrictions on Stage 2 operations should not vary by type of airport or type of restriction, because the type of restriction or airport have a different meaning for each carrier, noting that one type of restriction may be crucial at one airport while of very little importance to another carrier. This commenter adds that standardization and equal treatment must be maintained.

The Air Freight Association, McDonnell Douglas, and NBAA submit that uniform rules will be easier to understand and administer and should be applied in all cases.

The ATA points out that the level of sophistication and intricacy of analysis will clearly vary as to type of airport and type of restriction, but suggests that there is no point in establishing a different fundamental standard.

Florida West Airlines, however, suggests that, for general aviation airports, the data should be tailored for general aviation uses and economic impact. Maine/New Hampshire V.O.I.C.E. favors varying analysis by type of airport or type of restriction, suggesting also that the location of the airport and ambient noise characteristics should be considered. The City of Torrance wants to differentiate analytical requirements for general aviation airports (as opposed to commercial).

Finally, the FAA invited comment on whether restriction proponents should address questions of whether the restriction is not unreasonable, arbitrary or discriminatory; an undue burden on interstate or foreign commerce; or an undue burden on the national aviation system.

The AOCI and AAAE oppose requiring such analyses, stating there is nothing in the statute suggesting this is either necessary or appropriate. The ATA cautions FAA that application of an overly routine analysis or "checklist" approach to undue burden will fail to identify all possible permutations. The NACA wants airports to explain explicitly why the restriction is not unreasonable, arbitrary or discriminatory, etc., while the Boston Transportation Department believes that the burden of proof should rest with the airlines. The CLASS oppose this extra burden of demonstrating the validity of proposed Stage 2 restrictions.

Response: FAA carefully considered all the comments in an attempt to structure a rule that would effectively balance the need for careful evaluation of a restriction against the burden of costs and time of producing required analysis. Subsection 9304(a) of the Act authorizes the FAA to establish, by regulation, a national program for reviewing proposed airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft. Therefore, it is appropriate for FAA to determine the analytical components necessary for an adequate review.

As the Act is specific in its analytical requirements for Stage 2 analysis, FAA has concluded that restatement of the statutory requirements in the rule is appropriate. It is apparent from the Act that Congress intended to differentiate the analytical requirements for review of proposed Stage 2 and Stage 3 restrictions, in that it requires FAA approval of Stage 3 restrictions. Therefore, the final rule maintains a

distinction between Stage 2 and Stage 3 analysis.

It is essential to require standardization in the method of developing Stage 2 restriction analysis. To insure that the public is afforded an adequate opportunity to comment on the proposed restriction, it is imperative to require that noise analyses be conducted in accordance with an accepted methodology, specifically that prescribed in 14 CFR part 150. Enhanced understanding of the restriction will be facilitated if analysis conforms to accepted economic methodology, concepts of which are readily understood in the professional community. The final rule deletes the reference to current air carrier industry practices, which many commenters found confusing and vague. The proposed rule's references to elements of Stage 3 analysis are retained in the final rule: these analysis components are not mandatory, but reference to them will provide useful guidance to airports developing analyses by illustrating information that might be relevant.

A new provision is added to the rule to require that the analysis provide separate detail on costs and benefits of restrictions affecting Stage 2 aircraft weighing less than 75,000 pounds. A comprehensive analysis should, even in the absence of this stipulation, examine the impact of a restriction by aviation user class. The Secretary has determined, in response to the discretion granted in section 9305 of the Act, that airports may impose restrictions on the operations of Stage 2 aircraft weighing less than 75,000 pounds, subject only to the requirements of this subpart. However, given the Act's direction for a study of the impact of such restrictions in determining general applicability of this part, a requirement has been added to this section of the rule that the analysis must provide specific detail on the costs and benefits of a restriction with respect to light Stage 2 aircraft.

Because there was little support for issuance of an FAA Advisory Circular to describe elements of analysis, FAA has decided not to utilize this vehicle at the present time. Similarly, there were few advocates for differentiating analytical requirements according to either type of restriction or type of airport, and little direction (other than general aviation airport versus commercial) on the appropriate basis for differentiating requirements. Therefore, the final rule will provide for no differentiation according to type of restriction or type of airport.

Section 161.209 Requirement for New Notice

The proposed rule would require the airport operator to initiate a new notice if it makes substantial changes to the proposed restriction or the analysis during the 180-day notice period. The term "substantial change" included, but was not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft. The effective date of the restriction was to be at least 180 days after the date of the new notice.

Comments: A number of commenters, including CLASS, believe that the requirement of a new 180-day notice period for a revision is excessive, but they also argue that a substantial change should include a change that is less restrictive, as well as more restrictive. The NAWG believes that the new notice requirement would seriously impede the local rulemaking process and make airport operators unwilling to make changes as a result of comments. They also state that "substantial" was not defined, leaving the process open to continual dispute. The AOCI and AAAE comment that the process would be cumbersome and recommend instead a 30- or 60-day comment period for significant changes. Air carriers, such as Florida West, believe that any change to a proposal should trigger a new comment period.

Response: The rule is revised to define "substantial" change more clearly. A "substantial change" no longer categorically includes revisions that alter the way the impact is apportioned among aircraft operators, because that would have resulted in the majority of changes necessitating new notice. Further, the proposed rule would have automatically lengthened the review period for changes that may have actually reduced the burden or adverse impact on all aircraft operators, if such a reduction changed the apportionment of impact among aircraft operators. A "substantial" change now specifically includes a proposal that would increase the burden on any aviation user class. The FAA's primary concern is to ensure that interested parties are fully aware of, and able to comment on, restrictions that affect them. The FAA did not adopt the recommendation to define "substantial change" to include a proposed revision that reduces burden on aircraft operators; the only amendments within the scope of the Act are those that reduce or limit aircraft operations. Aircraft operators considering changes to a restriction proposal, and are uncertain as to whether the change is "substantial," may consult with the FAA for further guidance.

FAA considered reducing the time required for notice once a substantial change in the restriction or the analysis was made. However, it was difficult to differentiate between those that might require only 60 days and those that are so substantial that the full 180 days would be needed. Thus, the final rule continues the requirement for a new 180-day notice for substantial changes. Frequently, where a change is made immediately after review of the comments, the additional time for implementation of new notice may be as little as 60 days beyond the 180-day notice period.

Section 161.211 Optional Use of 14 CFR Part 150

As proposed, this section would allow the airport operator to use the notice and comment procedures contained in 14 CFR part 150 as an alternative to the corresponding procedures contained in this subpart. The proposed rule text also would allow inclusion of the analysis required in this subpart in the airport operator's part 150 program submission.

Comments: Several different types of comments were received on the proposed optional use of 14 CFR part 150 procedures. Most of the comments favored this option, although two commenters express a dislike for the part 150 process. On the other hand, one commenter recommends that the part 150 process be mandatory for proposed restrictions. Several commenters regard the part 150 process as inadequate for purposes of public notice of proposed restrictions. There were two comments suggesting that additional requirements be added to the optional use of part 150 procedures, and two other commenters recommend FAA financial assistance for airport operators to study restrictions.

Response: The FAA has decided to retain the part 150 process as an optional process. To make it mandatory would overstep statutory authority. For those airport operators that dislike this option, it need not be used for compliance with part 161. However, the part 150 option does make Federal financial assistance available to airport operators to analyze a proposed restriction.

Other revisions to proposed § 161.211 have been made in response to comments and to clarify the mechanics of using this optional procedure. The FAA found particular merit in commenters' concerns that using the part 150 process may not provide adequate notice with respect to a

proposed restriction. This may occur in the part 150 process because a restriction is likely to be one of many noise remedies under consideration and may not have been considered by the airport operator at the outset of the part 150 study. Therefore, although interested parties would be aware that a part 150 study is underway at a particular airport, they may not be aware that the part 150 study includes a proposed use restriction under part 161.

To remedy this, the rule now requires in § 161.211(b)(1) that the airport operator ensure that all parties identified in § 161.203 for direct notice of a proposed restriction on Stage 2 aircraft operations are notified that the part 150 program will include a part 161 restriction and are offered the opportunity to participate as consulted parties. The notification need only include this information, and no additional newspaper or public-display notice is required. If an airport operator anticipates including a proposed Stage 2 restriction in a part 150 program when initiating the process, the direct notification of all required parties must be accomplished at that time. On the other hand, if a proposed Stage 2 restriction on aircraft operations is considered later, after the part 150 study has begun, the airport operator must ensure that all appropriate parties are notified. The final rule therefore requires the airport operator to notify affected parties that are not already participating in the part 150 study; without such notice, these parties may be unaware of the inclusion of the proposed restriction. The FAA anticipates that most of these parties would, in fact, already be consulted parties, and that additional direct notifications could be held to a minimum. Section 161.211(b)(5) requires the airport operator to include in its part 150 submission evidence that all required parties have been notified and offered the opportunity to participate in the development of the part 150 program.

The FAA has now clarified in § 161.211(b)(4) that an airport operator must wait a minimum of 180 days, after completing all required notifications and making the analysis available for review, before implementing a proposed restriction on Stage 2 aircraft operations. The Act requires both notice and analysis 180 days before implementation of the restriction. If one requirement is fulfilled later than the other, which may occur in a part 150 process, the later time will govern the start of the 180-day waiting period. The rule permits implementation of a Stage 2 restriction under part 161 before either the completion of the part 150 program or the FAA's review of that program, as long as the notification, analysis availability, and 180-day waiting period requirements have been fulfilled. Section 161.211(b)(5) requires the part 150 submission to include evidence of fulfillment of the notice and other requirements.

The FAA encourages, but cannot require, an airport operator to wait until the FAA has reviewed and issued its determinations under part 150 before implementing a restriction on Stage 2 aircraft operations. Section 161.211(b)(5), added to the rule text, requires that the part 150 submission must identify the inclusion of a proposed part 161 restriction on Stage 2 aircraft operations. Also, as stipulated in new § 161.211(c), the FAA has no authority to either approve or disapprove proposed restrictions on Stage 2 aircraft operations under the Act, and so will not issue any such determinations under part 161. However, the FAA will issue appropriate part 150 approvals or disapprovals of all recommendations contained in a part 150 submission, including any recommended part 161 restrictions. The part 150 determination may provide valuable insight to the airport operator regarding the proposed restriction's consistency with existing laws, and the position of the FAA with respect to the restriction.

Section 161.211(d) has been added to clarify that an amendment of a restriction on Stage 2 aircraft operations, if subject to part 161, may also be processed using the part 150 option.

Subpart D concerns the approval of restrictions on Stage 3 aircraft operations that are not the product of agreements (within the scope of subpart B). In subsection 9304(c), the Act provides that no airport noise or access restriction on the operation of Stage 3 aircraft may be imposed unless it has been agreed to by the airport operator and all aircraft operators, or has been submitted to and approved by the Secretary pursuant to an airport or aircraft operator's request for approval. The Secretary is required by subsection 9304(d) of the Act to approve or disapprove a restriction application not later than the 180th day after receipt, and may not approve a restriction unless there is substantial evidence that six statutory conditions have been met. Secretarial authority has subsequently been delegated to the FAA Administrator. The Federal Government is only empowered with approval or disapproval authority for Stage 3 restrictions, and does not have similar authority with respect to agreements.

The conditions of approval, as defined in the Act, are that the proposed restriction: (1) Is reasonable, nonarbitrary, and nondiscriminatory; (2) does not create an undue burden on interstate or foreign commerce; (3) is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace; (4) does not conflict with any existing Federal statute or regulation; (5) has been available for an adequate public comment period; and (6) does not create an undue burden on the national aviation system.

To implement the requirements of the Act, the FAA proposed in the NPRM a four-step process that included: (1) An analysis of the restriction; (2) issuance of proposal and analysis for public comment; (3) submission of an application to FAA with a summary of substantial evidence of compliance with the six statutory conditions; and (4) FAA review process to approve or disapprove the application within 180 days.

Section 161.301 Scope

The proposed rule would have applied the requirements of this subpart to noise and access restrictions on the operation of Stage 3 aircraft that first became effective after October 1, 1990, and amendments to existing restrictions on Stage 3 aircraft operations if the amendment became effective after November 5, 1990. It did not apply to Stage 3 restrictions specifically exempted in § 161.7 or in an agreement under subpart B.

Consistent with subpart C, the rule has been revised to apply the requirements of the subpart to amendments of restrictions on Stage 3 aircraft operations if they become effective after October 1, 1990, rather than November 5, 1990. The Act explicitly states that limitations on Stage 3 restrictions apply only to those that first become effective after October 1, 1990. Thus, this limitation would also apply to amendments.

Section 161.303 Notice of Proposed Restrictions

The NPRM proposed to require notice of Stage 3 restrictions in a newspaper with national circulation; in an areawide newspaper of general circulation; and in aviation trade publications. The airport operator would be required to notify, in writing, aircraft operators serving the airport, those interested in serving the airport, the FAA, and each Federal, state and local agency with land-use control jurisdiction or facilities within the airport noise study area. The notice

was to include a description of the restriction, discussion of the need for the restriction, identification of aircraft expected to be affected, and an analysis of the proposed restriction or announcement of its availability.

Comments: As with subpart C, comments from air carriers generally support the notice requirements or recommend more stringent requirements. Sun Country Airlines comments that direct notification is necessary, and that the cost to aircraft operators to watch for notices in unspecified newspapers and trade journals would far exceed the cost to the airport operator of simply mailing a notice to aircraft operators. Northwest Airlines believes that the notice requirements should be expanded to include communities that receive service from the airport imposing restrictions. The Port of Seattle comments that notice in a newspaper alone is not sufficient, and SAFE supports direct notification to all interested parties.

As reflected in comment submissions, airports generally believe that the requirements are too costly and burdensome, and far exceed the requirements of the Act. The Port Authority of New York and New Jersey supports eliminating the requirement of individual notice because it is burdensome, unnecessary, and could create an alleged procedural defect due to the difficulty of determining who must be notified. The City of Cleveland comments that no regulation should be so vague as to require notice be sent to any aircraft operator known to the airport operator to be interested in serving the airport that could be affected by the restriction. It states that such a requirement leaves the operator uncertain as to whether it has satisfied the regulatory requirement.

Response: The notice requirements for proposed restrictions on Stage 3 aircraft operations in the rule have been modified as a result of the comments, and these revisions are consistent with the revised rule requirements for proposed restrictions on Stage 2 aircraft contained in subpart C. The FAA maintains that direct notification is essential, but has changed the rule to be more specific in identifying whom to notify. Some of the costly publication requirements have been eliminated. The rule requires that all airports follow these notice procedures to ensure that complete and consistent information is provided to affected or interested parties.

The rule eliminates the requirement for publication in a newspaper with national circulation and in aviation trade publications. Airport operators are still required to publish a notice in an areawide newspaper(s) of general circulation that covers all land-use planning jurisdictions included in the airport noise study area. The requirement to directly notify Federal, state, and local agencies has been limited to those with land-use control jurisdiction within the airport noise study area, rather than all agencies with facilities in that area, thus further easing the burden of notification.

As with Stage 2 notice requirements, the rule includes new requirements that airports must post a notice of a proposed restriction in the airport in a prominent location accessible to airport users and the public and must directly notify community groups and business organizations in the affected area known to be interested in the proposed restriction, fixed-base operators, and other airport tenants whose operations would normally be affected by the restriction. Under the rule, air carriers include potential new entrants that are known to be interested in serving the airport, aircraft operators providing scheduled passenger or cargo service, operators of aircraft based at the airport, and aircraft operators known to be routinely providing nonscheduled service at the airport that may be affected by the proposed restriction.

The rule includes one change to the information required in the notice. As the rule now allows for submittal of alternative restrictions to the FAA, the notice now must indicate if an alternative restriction(s) is being considered and an applicant must conduct an analysis for each alternative restriction submitted.

Section 161.305 Required Analysis and Conditions for Approval of Proposed Restrictions

The analysis requirements proposed in the NPRM were designed to provide the FAA with the information necessary to make the statutorily required finding, while limiting the compliance burden. As structured in the NPRM, the analysis requirements in § 161.305 were positioned separate from the evidence requirements supporting the conditions for approval in § 161.317.

To support the conditions for approval, FAA proposed the same cost-benefit analysis for Stage 3 restrictions as for Stage 2 restrictions. In addition, the NPRM proposed requiring the analysis of the restriction to include seven specific elements: (1) The text of the proposed restriction; (2) a detailed description of the problem; (3) background information, including maps and projected activity data; (4) descriptions of alternative nonaircraft measures that have been considered and rejected; (5) the effect of the restriction on airport operations and capacity; (6) the expected impact on aircraft noise, with and without the restriction; and (7) comparative analyses of the benefits and costs of the proposed restriction and alternative measures.

Within these general requirements for analysis, the NPRM proposed guidance on the type of information that should be developed as the basis for the analysis, if the information is reasonably available and appropriate in the particular case. There were no mandatory requirements, only guidance within specific components of the required cost-benefit analysis to allow for greater flexibility.

The NPRM did propose to require that analysis be conducted in accordance with generally accepted professional practice for estimating costs and benefits and applicable Federal guidelines for analyses of noise.

The NPRM invited the public to comment on aspects of the analysis with the following questions:

Are the proposed analysis requirements appropriate? How would compliance with the conditions of approval be demonstrated in the absence of equivalent analysis? Should the elements of analysis for proposed restrictions on Stage 3 aircraft be detailed in the rule, or described in an FAA advisory circular? Should all applicants be required to consider a specific list of costs and benefits in the analysis of the proposed restrictions on Stage 3 aircraft operations, rather than have the flexibility as proposed? Should the required analysis of a restriction on Stage 3 aircraft operations vary with either type of airport or type of restriction? If so, what categories should be established to differentiate analysis requirements?

Comments: On the question of whether proposed analysis requirements are appropriate, there was a substantial number of comments. Generally, air carriers and aircraft manufacturers supported the analytical requirements, while airports and community groups opposed the proposal.

The ATA, the Air Freight Association, UPS, Federal Express, Northwest Airlines, Airborne Express and NBAA support the elements of analysis as essential ingredients to understanding the effect of a proposed restriction, and do not believe that any significant changes are in order. Opposing this viewpoint are many airports, noise organizations, and community groups, including Good Neighbor Council, Grant Godwin, Metropolitan Council of

Governments, Raleigh-Durham Airport Authority, Airports Commission of the City and County of San Francisco, CLASS, the Port Authority of New York and New Jersey and the EPA. These commenters argue that the proposed analyses would be so burdensome, costly, and time-consuming that airports would be unable to comply with analytical requirements, and therefore would be effectively precluded from imposing restrictions on Stage 3 aircraft operations.

The Metropolitan Washington Council of Governments complains that detailed information on industry- and airline-specific cost and operational data is proprietary information and may be unavailable to the airport. The Los Angeles City Department of Airports adds that, with respect to air carrier profits, FAA should solicit such information directly from airlines. Bridgeton Air Defense objects to the use of economic impact studies in analyzing restrictions, asserting that they are not a good tool for making financial decisions because components of analysis (such as multipliers) can be utilized to skew results to support predetermined outcomes. The Suburban O'Hare Commission wants FAA to encourage airports to more fairly evaluate the benefits of Stage 3 restrictions. The NAWG states that FAA has excluded from the cost-benefit analysis the benefits to noise victims of relief from health, educational, and occupational injury achieved through imposing a Stage 3 restriction.

There was widespread support among airports and community groups such as the AOCI, AAAE, City of San Joe, Westfield Citizens Against Aircraft Noise, Massachusetts Port Authority, and the Metropolitan Washington Council of Governments, to delete the requirement to produce a complete draft environmental document. They note that this requirement can be costly and lengthy, delaying implementation of restrictions. The Los Angeles City Department of Airports contends that approval and disapproval of proposed use restrictions do not constitute "a major federal action" under National Environmental Policy Act of 1969 (NEPA) and therefore an environmental impact statement is not required. In contrast, the National Resource Defense Council finds value in the requirement to include a complete draft environmental analysis.

The Raleigh-Durham Airport Authority claims that further guidance is needed as to whether an airport's proposed restrictions would survive scrutiny. It further asserts that the FAA should be involved early in the development process, provide technical and financial assistance for economic and environmental studies, and assist airport operators in meeting substantive FAA requirements. A joint submission for Adams County Coordinating Committee, et al., also supports FAA involvement in providing data, guidance on NEPA compliance, and advice on measures acceptable to the FAA.

Finally, the Massachusetts Port Authority objects to the proposed requirement in § 161.305(h) to use "currently accepted economic methodology and reflect current airline industry practice." It argues that this requirement is vague, stating further that airport sponsors cannot be expected to properly reflect current industry practice when individual airlines have widely different accounting treatment of assets, costs, operational procedures, etc.

Few comments were received on the question of how compliance with conditions of approval would be demonstrated in the absence of equivalent analysis. The AFA thinks it would be virtually impossible; however, it states that an applicant should be free to provide additional information if it chooses.

There was consensus among commenters that the elements of analysis should be detailed in the rule rather than described in an FAA Advisory Circular. The AOCI and AAAE add that examples of methods for compliance and types of studies that could be done may be included in an advisory circular.

Another question in the NPRM asked if all applicants should be required to consider a specific list of costs and benefits in the analysis of their proposed restrictions on Stage 3 aircraft operations, rather than have the flexibility as proposed.

The NATA recommends that FAA require the airport sponsor to include an evaluation of the proposed restriction's impact on the fixed-base operator's economic operating environment.

The U.S. Chamber of Commerce urges FAA to include the effects on businesses, competition, and interstate commerce.

The Air Freight Association claims that, as applicants must demonstrate compliance with the conditions of approval, maximum flexibility should be retained to allow tailoring analysis to the specific problems. However, the Air Freight Association suggests that it would be useful for applicants to be aware of the type of cost-benefit data the FAA considers to be appropriate. The AOCI and AAAE also support flexibility, but point out that the rule should specify any particular costs and benefits that the FAA wants provided. The Chicago Association of Commerce and Industry recommends that the rule require airport operators to include in their submission an analysis of the cumulative effect on commerce of the proposed restriction, as well as restrictions already in effect. This analysis of cumulative effect on commerce would include the total effect on airport capacity and on the volume of passengers and cargo for the year of implementation, as well as the number of affected operations by class of user (and for air carriers, the number of operations by carrier)—the elements already proposed by § 161.305(e). In addition, the commenter recommends that the analysis of cumulative effect include impacts on specific city-pair markets.

The EPA wants the FAA to specifically state in the rule that non-monetary benefits (such as reduction in population highly annoyed, reduction in population likely to be awakened, etc.) should be analyzed.

Thomas Murray insists that the analysis must be rigorous. He maintains that it must include modern techniques for both qualitative and quantitative procedures and must contain a specific list of items to be included in the analysis, including ecological, physical, and psychological factors.

Comments were also sought on whether the required analysis of a restriction on Stage 3 aircraft operations should vary with the type of airport or type of restriction and, if so, identification of the categories to be established to differentiate analysis requirements.

The ATA contends that, as in the basis of Stage 2 restrictions, standards for analysis should not vary on the basis of type of airport/type of restriction, although the content of the analysis will vary on the basis of significance and complexity.

The Air Freight Association and McDonnell Douglas also strongly support uniform rules. Air Freight Association adds that attempting to define different categories of airports and/or restrictions is an impossible task and will necessarily lead to further problems in the future. Federal Express concurs, stating that standardization is important for non-discriminatory application of the national noise policy regulations. The UPS believes that the FAA should allow some flexibility in how the analysis is conducted, but that the same analysis and evidence

requirements should apply to all types of restrictions.

Conversely, airports and local communities tend to support some differentiation in analysis. The AOCI and AAAE, echoed by the City of Long Beach, suggest that categories of airports might include high-density airports, other large hub airports, mixed general aviation and air carrier airports, and general aviation airports. They further add that analysis requirements may vary according to the extent that a restriction would preclude operations by a particular class of aircraft: restrictions limiting noise without prohibiting an aircraft's use may require a lower level of analysis than one that would totally exclude an aircraft.

Another commenter, Charles Feltus, Chamblee, Georgia, states that the required analysis should vary according to the size and uses of the airport. Rules appropriate for major airports served by the commercial fleet may be inappropriate for general aviation and reliever airports. The City of Torrance strongly recommends that distinct and different regulations should apply to general aviation versus commercial facilities. The City of West Palm Beach, Florida, suggests that an aircraft's specific noise characteristics may dictate differentiating requirements.

Response: As a result of the comments received, the rule reflects a major restructuring of this section to align the conditions for approval with the analysis requirements. This modification is intended to illustrate how the analysis will be used in the approval process to support each of the six conditions for approval. Proposed § 161.317, Conditions for approval, is deleted from the final rule. Relevant components of proposed § 161.317 have been incorporated into this revised § 161.305 as suggested elements of analysis.

There was consensus among commenters that elements of the analysis should be detailed in the rule rather than in an FAA advisory circular. To the extent that the elements can be stated in general enough form to assure application to a wide range of potential restriction types and airport circumstances, this has been accomplished in the final rule. Applicants may consult with FAA staff in advance of the development of a proposed restriction for further suggestions on analysis techniques and sources of information on analysis methods.

Revised § 161.305 requires that the applicant provide: (1) The complete text of the proposed restriction and submitted alternatives; (2) maps denoting the airport geographic boundaries; (3) an adequate environmental assessment or adequate information supporting a categorical exclusion; (4) a summary of the evidence supporting the six statutory conditions for approval; and (5) an analysis of the restriction demonstrating substantial evidence of fulfillment of the statutory conditions. All of this information was required in the proposed rule, although some has been consolidated into § 161.305 in the final rule from other sections.

Within the analysis of the restriction, substantial evidence must be provided for each condition. For each condition, the final rule stipulates minimum evidence to be submitted as well as evidence that may be submitted if it is appropriate and provides further support for the requisite condition. For example, for condition 1, stating that the restriction is reasonable, nonarbitrary, and nondiscriminatory, evidence should be provided that a current or projected noise or access problem exists, and that the proposed actions will relieve the problem. In addition, evidence required to support other conditions (i.e., that expected net benefits of the proposed restriction exceed the benefits of other alternatives) will support the reasonableness of the restriction. For each condition of approval, the FAA has identified and mandated the analytical requirements that are essential to approving the restriction and indicates the type of evidence and analysis that would assist the applicant in providing substantial evidence that the conditions of approval have been met.

Under condition 2, evidence must be submitted that the estimated potential net benefits are positive, but the applicant has latitude in considering, as it believes appropriate, the components of costs and benefits, and the level of analysis of alternatives. In response to comments regarding the benefits of restrictions, the rule clarifies the FAA's original intent that benefit analysis should be rigorous. The applicant can, in addition to describing other benefits, including improvements in quality of life, quantify the noise benefits, such as numbers of people removed from noise contours, improved workforce and/or educational productivity, or other benefits.

The final rule deletes the proposed requirement to "reflect current airline industry practice" in response to comments that compliance with this requirement would be difficult in the absence of consistent industry practice.

With respect to concerns expressed regarding the availability of required data, FAA emphasizes that it does not expect applicants to attempt to acquire proprietary information. Analysis can be developed using publicly available data, published in corporate annual reports or in Security and Exchange Commission (SEC) filings, or submitted to the Department of Transportation While the FAA will not develop analysis for an applicant, program staff will be available to direct applicants to sources of data. It should also be noted that participants in the 14 CFR part 150 program are eligible to receive funding for conducting studies, which may mitigate concerns as to the cost of developing an analysis.

Finally, FAA decided not to differentiate analytical requirements by airport or restriction type. There was widespread concern among commenters that such differentiation could lead to the very problem, the "patchwork quilt" among airports, that the national noise policy is attempting to eliminate.

Section 161.307 Comment by Interested Parties

The proposed rule text for this section was reorganized, but no substantive changes were made. Paragraph (b), requiring applicant notice to interested parties of any change to the proposal, was moved to § 161.309 for more appropriate placement. The former paragraph (c), requiring submission to the FAA of evidence of notice, was deleted as redundant (addressed elsewhere in the rule). A new paragraph (b) makes clear an applicant's required submission of a summary of comments to the FAA and full text of comments on request.

Section 161.309 Requirement for New Notice

The proposed rule would have required airport operators to initiate a new notice if it makes substantial changes to the proposed restriction or the analysis during the 180-day notice period. A substantial change included, but was not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft. If a substantial change is made during the FAA's 180-day review of the proposed restriction, the applicant must notify FAA in writing that it is withdrawing its proposal from the review process until it has completed additional analysis, notice, and comment.

Comments: As with the new notice requirement for proposed restrictions on Stage 2 aircraft operations, some commenters believe that beginning the 180-day period for approval again for a proposal revision is excessive and could seriously impede the local rulemaking

process, as well as make airport operators inflexible to change. Other commenters believe that any change to a proposed restriction should trigger a new comment period.

Response: As with subpart C, the rule is revised to limit the definition of substantial change. The final rule retains the requirement for the 180-day FAA review process to begin again for substantial changes. However, the illustration of "substantial change" is now limited to a change that would increase the burden on an aviation user class. The rule now eliminates changes in apportionment of the restriction's burden as a "substantial change" because there may be cases where, although a change in apportionment occurs, the adverse impact on 11 parties is decreased. The airport operator may consult the FAA for guidance if it is uncertain whether a change is substantial and merits restarting the review process. While the FAA does not want to discourage changes to restriction proposal during the 180-day period, it is essential that interested parties have ample time to review and comment on the changes. As with proposed restrictions on Stage 2 aircraft operations, a likely case will be a change resulting from the 45-day notice and comment period. In such a case, the airport could expeditiously revise its restriction and/or analysis, adding perhaps as little as 60 days to the 180-day period.

Section 161.311 Application Procedure for Approval of Proposed Restriction

As proposed, this section would require applicant submission of the requisite analysis, summary of evidence as to the conditions, evidence of a public comment period, and a statement that the applicant is empowered to implement the restriction or represents that empowered party. Although the rule has been revised to more clearly align analytical requirements with the six statutory conditions for approval, it is still advantageous for the applicant to summarize how the analysis supports the conditions. Aside from minor textual edits and reorganization, there are two substantive changes in the rule text. Former paragraph (c), requiring submission of evidence of public notice and comment, was deleted from this section as this requirement is replicated elsewhere in the rule text. A new paragraph (d) has been added requiring the applicant to state whether, in the event of disapproval of the restriction or any alternative, the applicant wishes the FAA to grant partial approval of a restriction if that part of the restriction meets the statutory conditions. Partial approval, as discussed above in the major issue section "Total Versus Partial Approval," could expedite the review and approval process.

Section 161.313 Review of Application

As proposed in the NPRM, this section would set forth FAA responsibilities for review of applications. Several minor textual changes were made in the rule that do not result in substantive changes of the rule. Substantive changes include one made in paragraph (a) to specify that FAA determinations of completeness will be made on all submitted proposed restrictions and alternatives. Paragraph (c) was amended to accommodate submission of alternative proposals. Discussion of submission of alternatives is provided above in the general issue section "Total Versus Partial Approval." Amending language added to paragraph (c)(4)(iv) assures that environmental documentation encompasses an environmental assessment or information supporting categorical exclusion. Finally, paragraph (c)(5) was revised in the rule to make explicit when FAA will deny an application for incompleteness and return it to the applicant, closing the matter without prejudice.

Section 161.315 Receipt of Complete Application

The section provided that FAA would publish a **Federal Register** notice of the proposed restriction, inviting comments for a 30–day comment period. It also established that the FAA would notify an applicant of FAA's intent to rule on a complete application. The text of this section remains unchanged in the final rule.

Section 161.317 Conditions for "Approval

As proposed, once the analysis was complete, the NPRM required the applicant to submit substantial evidence, drawn from the analysis, showing that the six statutory conditions for approval had been met. The NPRM set out criteria that FAA considers to be essential elements of acceptable evidence of fulfillment. By statute, the Secretary cannot approve a proposed restriction unless there is substantial evidence that the proposed restriction: (1) is reasonable, nonarbitrary and nondiscriminatory; (2) does not create an undue burden on interstate or foreign commerce; (3) is not inconsistent with maintaining the safe and efficient use of the navigable airspace; (4) does not conflict with any existing Federal statute or regulation; (5) has been subject to adequate opportunity for public comment; and (6) does not create an undue burden on the national aviation system. For each condition for approval, the applicant would select that evidence appropriate to analyzing the particular restriction.

The NPRM stated that the burden of analysis should rest with the applicant to prove substantial evidence of compliance with the six statutory conditions. FAA queried the public with respect to submissions of evidence with the following specific questions:

Should a mandatory list of evidence be provided in the rule to demonstrate fulfillment of each statutory condition for approval of the restriction If so, what should the evidence consist of? Should evidence requirements for approval of restrictions on Stage 3 aircraft vary with either type of airport or type of restriction? If so, what categories should be established to differentiate evidence requirements?

Comments: The Air Freight Association asserts that it is essential for applicants to provide adequate information on undue burden on interstate commerce and on the national transportation system. Airborne Express comments that all the evidence requirements set forth in proposed § 161.317 should be mandatory.

The ALPA suggests that the FAA review process include analysis of the safety implications of a proposed restriction, and proposed specific language to satisfy its safety analysis concerns. The ALPA wants the rule to require "an analysis of the effects of the proposed restriction on the safety of flight operations; on the use of airspace in the vicinity of the airport, including the interface with en route airspace; on other safety considerations; and on environmental factors other than noise." Further, ALPA suggests revising § 161.317(c) to require that "evidence shall include at a minimum, a showing that the effects of the proposed restriction will not be contrary to applicable existing safety regulatory schemes."

The NAWG and Westchester County, New York, want clarification of terms, specifically undue burden. Absent such definition, NAWG wants to shift the burden of proof to the FAA to establish that any proposed restriction constitutes an undue burden on the national aviation system. The City of Cleveland wants to shift the burden of proof regarding reasonableness of a proposed restriction to those parties opposing the proposal.

The NOISE argues that, as the FAA is in possession of facts essential to establishing substantial evidence of

conditions for approval, it should assume this burden of evaluating the conditions.

Finally, the NPRM questioned whether evidence requirements for approval of restrictions on Stage 3 aircraft should vary with either type of airport or type of restriction and, if so, identification of categories to differentiate evidence requirements.

The Air Freight Association again states that uniform rules are more appropriate. The UPS also asserts that evidence requirements should apply to all types of restrictions. According to UPS, standard evidence requirements are crucial. It also claims that any restriction on Stage 3 nighttime operations should be viewed as a per se burden on interstate commerce, and that—in UPS' view—evidence submitted will probably result in a finding of undue burden.

Response: As indicated above in the discussion of § 161.305, § 161.317 of the proposed rule has been deleted, but its evidence requirements and guidance for approval have been incorporated into the required analysis of § 161.305. Because the conditions for approval were mandated by statute, there is no change in the requirement that applicants must submit substantial evidence to support each condition for approval.

With respect to evidence submissions, FAA has determined that some components of evidence within each of the six conditions for approval are essential, and § 161.305 indicates which evidence is mandatory. Mandatory evidence requirements are consistent for all airports and types of restrictions.

Section 161.317 Approval or Disapproval of Proposed Restriction

Formerly designated § 161.319 in the NPRM, this is now § 161.317 because of the changes noted in the discussion above. As proposed, this section addressed FAA review of proposals and issuance of its approval or disapproval determination. It further identified those conditions on which a disapproval would be issued, FAA's authority to approve only Stage 3 restrictions, and FAA conditional approval of a proposed restriction.

This section has been revised and reformatted to accommodate submission of alternative proposals and to clarify that FAA will only act upon complete propoals, in the order of preference indicated, contained in an application. A complete proposal consists of a proposed restriction and all required analysis associated with the proposal. If an applicant chooses to submit alternative proposals, an application may contain more than one complete proposal. If upon evaluation the FAA does not approve any proposal, and if the applicant has requested partial approval as an option, the FAA may approve part of a proposal that meets the statutory conditions for approval.

§ 161.319 Withdrawal or Revision of Restriction

Formerly § 161.321, this section, as proposed, established requirements for withdrawal or amendment of a restriction, as well as specifying what amendments to restrictions are under this part. Apart from minor text clarifications, this section was revised in the final rule to clarify that a subsequent amendment to a Stage 3 restriction that was in effect after October 1, 1990, is covered in this subpart.

Section 161.321 Optional Use of 14 CFR Part 150 Procedures

Formerly proposed as § 161.323, this section would allow the airport operator to utilize the notice and comment procedures contained in 14 CFR part 150 as an alternative to the notice and comment requirements contained in this subpart, and to include the analysis required in this subpart in the airport operator's part 150 program submission.

Comments: The same comments were received on the proposed optional use of 14 CFR part 150 procedures for proposed restrictions on Stage 3 aircraft operations as were received for Stage 2 aircraft restrictions. These comments have been adequately summarized in the discussion under subpart C above.

Response: In the rule, this section is renumbered as § 161.321. As with proposed restrictions on Stage 2 aircraft operations, the part 150 process will remain an optional procedure in the rule for proposed restrictions on Stage 3 aircraft operations. As noted above, part 150 studies, whether for restriction proposals for Stage 2 or Stage 3 aircraft operations, are eligible for Federal financial assistance.

The FAA has made some revisions to the optional use of the part 150 process with respect to restriction proposals for Stage 3 aircraft in response to comments and in order to clarify the mechanics of using this optional procedure. Section 161.321(b)(1) requires that the airport operator ensure that all parties identified in § 161.303 for direct notification of a proposed restriction on Stage 3 aircraft operations are notified that the part 150 program will include such a restriction and are offered the opportunity to participate as consulted parties. This revision is in direct response to comments pointing out a potential deficiency in notice under the part 150 option. The FAA concurs that this could be a problem, and identical revisions in subparts C and D have been made for proposed restrictions on Stage 2 and Stage 3 aircraft operations, respectively. The complete discussion of this revision is presented above under subpart C. The airport operator's part 150 submission must include evidence of the required notifications.

Section 161.321(b)(3) requires the airport operator to clearly identify that the part 150 submission includes a proposed part 161 restriction on Stage 3 aircraft operations for FAA review and approval under part 161, and to include the information required in § 161.311 for a part 161 application.

As clarified in § 161.321(c), the FAA will review the proposed part 161 Stage 3 restriction included in the part 150 submission in accordance with the procedures and standards in part 161. The FAA will review the part 150 submission, in its entirety, in accordance with the procedures and standards of part 150.

In § 161.321(d), the rule explicitly states that an amendment of a Stage 3 restriction may also be processed under 14 CFR part 150 procedures to the same extent as an initial submission may be.

Section 161.323 Notification of a Decision Not to Implement a Restriction

Proposed as § 161.325, this section stipulated certain applicant action if an approved restriction is not implemented. The proposed text is not changed in the rule.

Section 161.325 Availability of Data and Comments on an Implemented Restriction

This new section was added to this subpart, as well as elsewhere in the rule text, in response to comments. Addressed in detail under a different subpart discussion, this section answers commenters' concern that data and comments on the initial restriction application be available for inspection or use by proponents of a restriction reevaluation at a later date. Consequently, this section requires that data and comments be retained by the airport for as long as the restriction is in effect, and that they be made available for inspection if the FAA has determined that a reevaluation of that restriction is justified.

Subpart E of the proposed rule implements the Act's directives regarding reevaluation of agreements or restrictions affecting Stage 3 aircraft operations. Changes of the proposed subpart text for the final rule are minimal, but not insignificant, and are

discussed in detail below. Revisions were based upon comments and FAA's own determinations of needed changes. Most significent are the lessened notice requirements (changed throughout the rule); the greater specificity regarding both the scope of application and the reference point for the noise-level change triggering reevaluation candidacy; and the more explicit statement of required data retention and accessibility.

Comments: Comments evidence considerable general support for the reevaluation process detailed in the NPRM, but there were some aspects of the procedure that prompted specific requests for changes or clarification. Comments addressing issues pervasive to subpart E will be dealt with first, with comments referencing issues contained in specific sections discussed in the appropriate section below.

The NAWG's comments express concern that adverse findings on reevaluations can interfere with contractual obligations, hampering airports' financing ability and capital market access.

Resoponse: While the FAA is sensitive to the capital market funding position of airports, as is apparent from the procedure for imposition of sanctions in subpart F, the FAA's action regarding reevaluations is pursuant to statutory directive. Moreover, while the FAA action may affect an existing contract, the FAA is not a party to the contract, and both contracting parties presumably are aware of the potential for reevaluation. As with the imposition of sanctions, it is assumed that capital market sources will factor the cost of this possibility into the cost of capital.

Comments: Responding to the NPRM question as to what access reevaluation petitioners should be allowed to data that had supported the initial restriction approval, the NBAA and UPS comment that access to data utilized by airport operators in the restriction application is necessary.

Response: The FAA is persuaded that accessibility must be assured for information regardings limitations on Stage 3 aircraft operations contained in agreements under subpart B and in restrictions under subpart D. Consequently, new §§ 161.109 and 161.325 were added to the final rule text in subparts B and D, respectively, to require retention of data and comments for the duration of the restriction and their availability for inspection during the pendency of reevaluation of restrictions on Stage 3 aircraft operations, once FAA determines that a reevaluation is justified.

Section 161.401 Scope

This subpart, in accordance with statutory directive, applies only to restrictions on Stage 3 aircraft operations that were agreed to under subpart B or implemented under subpart D. This section also notes the statutory exceptions to reevaluation. One text amendment to the rule clarifies this subpart's conformance with the Act's mandate that reevaluation apply to Stage 3 aircraft operation restrictions that first became effective after October 1, 1990.

Comments: The Metropolitan Washington Council of Governments and Newport Beach, California, request that the final rule clarify the nonapplicability of the reevaluation process to statutorily exempted restrictions listed in section 9304 of the Act.

Response: Upon review of this text, the FAA finds that § 161.401 makes applicability sufficently explicit as to the statutory exemptions, and that further explanation of applicability to grandfathered restrictions is unnecessary.

Comments: Comments from Airborne Express and San Jose, California, state that reevaluation should not be applied to agreements.

Response: The FAA notes that subsection 9304(f) of the Act provides for Secretarial reevaluation of any restrictions previously agreed to or approved under subsection (d) of the Act (addressing approval of restrictions on Stage 3 aircraft operations). The final rule reflects this statutory directive in not exempting agreements with Stage 3 aircraft restrictions from reevaluation under subpart E.

It should also be noted that, with regard to reevaluation, the Act refers solely to agreed-to or FAA-approved restrictions on Stage 3 aircraft. This statutory limitation is adhered to in the rule, as it does not permit reevaluation of restrictions on Stage 2 aircraft operations.

Section 161.403 Criteria for Reevaluation

As proposed, this section mirrored the statutory mandate that only an aircraft operator may request a reevaluation, and set forth the initial criteria that must be met for an FAA determination that a reevaluation is justified. The reevaluation applicant was required to submit evidence demonstrating a change in the noise environment or noncompatible land use that results in at least one of the statutory conditions for approval in § 161.305 being violated, as well as evidence of local attempts to resolve any dispute over the restriction. This section also established a two-year waiting period, after a restriction is implemented, prior to a reevaluation request. This section remains largely unchanged in the final rule, except for two clarifications that are noted in the discussions below.

Comments: One cargo carrier, Airborne Express, maintains that applying the two-year wait for reevaluation of an agreement is beyond the statute.

Response: The FAA did change the proposed text with the insertion of the word "normally" to emphasize the flexibility of the rule: that the two-year wait will typically—but not rigidly—ba applied to reevaluation of agreements.

Comments: The ALPA endorses the proposed quantitative criterion of a 1.5 dB change in the noise environment to trigger reevaluation, but the National Airport Watch Groups argues that the threshold for reevaluation should be 3 dB. The latter's comments note that this higher threshold would ensure that benefits would be achieved without hazard of rollback.

Response: This latter comment reveals a need to clarify of the 1.5 dB change requirement. The 1.5 dB change relates to the target goal, that is, it is not a change from the initial noise level, but a change from the target goal. To prevent similar misinterpretations, the proposed text of § 161.403(b)(1) is amended to clarify that calculation of noise-level change is to be based on the divergence of the actual noise impact of the restriction from the estimated noise impact predicted in the anaylsis required in § 161.303(e)(i)(A)(2).

Comments: The NAWG also wants the FAA to disallow consideration on a case-by-case basis of other criteria presented by aircraft operators for reevaluation, arguing that precise criteria must be identified in the regulatory language. The Airport Coordinating Team submitted comments requesting that the 1.5 dB change not be the sole determinant that reevaluation based on noise change is justified, and that single-event noise changes should be considered.

Response: Upon review of these suggestions, the FAA has determined that no change in the proposed rule language is necessary, as the present text provides sufficient latitude and flexibility for consideration of other evidence as appropriate.

Comments: Comments offered by ALPA request additional text to clarify that the two-year waiting period for reevaluation does not apply to safety

restrictions that are beyond the scope of proposed part 161.

Response: The FAA finds insertion of such language unnecessary, since regulatory requirements contained in one subpart of the Code of Federal Regulations have historically been not applicable to other regulatory subparts unless that application is explicitly noted.

Comments: Comments submitted by several towns in California, Arizona, North Carolina, Massachusetts, Michigan, and Colorado (in a joint submission), and by Massport request that petitions for reevaluations be permitted from local governments and citizens affected by airport operations.

Response: The final rule text adheres to the statutory limitation that reevalution be conducted only upon the request of an aircraft operator (subsection 9304(f)).

Comments: The burden imposed by the reevaluation process overall was discussed by several commenters. Five communities (in one comment submission) and the Metropolitan Washington Council of Governments argue it is unfair that aircraft operators may base a challenge to a restriction on only one of the six statutory criteria, while the restriction applicant must prove all six conditions. The UPS comments, however, note that this requirement is consistent with statutory language in section 9304 of the Act. The NBAA maintains that the burden of proving that reevaluation is justified may be too great for one general aviation operator to bear, and that the FAA should undertake the burden of proof once the aircraft operator demonstrates that reevaluation may be appropriate.

Response: This suggestion is contrary to the explicit placement of the burden provided in subsection 9304(f) of the Act. Due to the general concern expressed by numerous commenters regarding the burden of the notice requirements throughout the proposed rule text, the FAA has significantly minimized the burden of the notice requirements in § 161.407, discussed below.

Section 161.405 Request for Reevaluation

As proposed, this section stipulated information that must be submitted to the FAA by a reevaluation applicant to obtain FAA's initial determination of whether a full reevaluation of the restriction is justified. Proposed information requirements included a description of the restriction, evidence of both the change in the noise environment (required in § 161.403) and the likelihood that it results in violation of at least one of the statutory conditions for approval. Further, the applicant was required to provide evidence of local attempts to resolve the dispute. Section 161.405 also, described fact gathering that may be undertaken by the FAA and what procedures follow FAA determination that reevaluation is justified (completion of analysis and notice by the reevaluation applicant). No substantive changes were made to the proposed text of this section in the rule.

Comments: A joint submission of comments by five communities in various states suggest that the FAA not defer the bulk of analysis required for a reevaluation request until after its initial determination that reevaluation is appropriate.

Response: While this suggestion understandably reflects communities' desire to dissuade applications for reevaluations, FAA rejects this proposal as being unnecessarily costly and burdensome to those seeking reevaluations of restrictions.

Section 161.407 Notice of Reevaluation

As proposed, this section addressed the published and direct notice required by reevaluation applicants once reevaluation was determined to be justified by the FAA. It also set forth the requisite information for each notice. There was a significant number of comments addressing the burden of notice generally, for both initial restriction application and reevaluation. Consequently, after review of comments and FAA's own review of proposed rule requirements, the text of this section is revised in the rule to significantly lessen the notice burden to the extent possible consistent with the statutory and public interest mandate to assure sufficient notice to all interested and affected parties. This revised section also conforms to revised notice requirements in the rule text of subparts B, C, and D.

Consistent with revisions in other subparts, publication of notice in a national circulation newspaper and aviation trade publications has been eliminated. Published notice is now limited to an areawide newspaper or newspapers of general circulation that either singly or together has general circulation throughout the airport noise study area (or the airport vicinity for agreements at airports where a noise study area has not been delineated). A new requirement is added regarding posting of a notice in the airport in a prominent location accessible to airport users and the public. Because of the lessened published notice, direct notice is slightly expanded with respect to airport users, community groups, and business organizations in the affected area "and known to be interested in the greement or restriction.

Comments: Comments submitted by the Chicago Association of Commerce and Industry requested a longer minimum comment period, such as 90 days.

Response: After review of this suggestion, the FAA has decided to leave the proposed 45-day comment period unchanged. The 45-day minimum comment period in § 161.407 together with a subsequent 45-day comment period offered by the FAA provide ample opportunity for review and comment on the data available.

Section 161.409 Required Analysis by Reevaluation Petitioner

The analysis requirements in the proposed rule text for this section remain largely unchanged, with two exceptions. Section 161.409(b)(5) has been revised to require an adequate environmental assessment of the impact of discontinuing all or part of the disputed restriction, or information supporting a categorical exclusion under FAA orders implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321). A second change was in response to commenters' observations as noted below.

Comments: Comments submitted by the AOCI and the AAAE contain valid observations on inappropriate terminology in proposed § 161.409(c). Specifically, they criticize the descriptions of restrictions that had been properly imposed and were being considered for reevaluation as alleged "violations" of the statutory conditions.

Response: As the commenters properly point out, such restrictions are not in violation of the statutory requirements merely because they were not unilaterally rescinded once conditions changed and they may no longer meet the statutory criteria. Therefore, the FAA has appropriately revised the rule text of § 161.409(c) and elsewhere as needed.

Section 161.411 Comment by Interested Parties

This section, as proposed in the NPRM, established procedures for receipt of comments to the reevaluation applicant and for notice to interested parties of any substantial changes made to the analysis that was initially available for comment. A 45-day comment period was required from the date the changed analysis is available. What was proposed § 161.411(c), addressing submission of evidence of

notice and a summary of comments to the FAA, is now in § 161.413(a) for more appropriate placement.

Section 161.411(a) is revised in the rule to clarify that comments need only be made available for inspection by interested parties. This paragraph continues, as initially proposed, to require that comments be retained for only two years following FAA reevaluation.

Section 161.413 Revaluation Procedure

As proposed, this section required that the applicant submit to the FAA the requisite analysis, evidence of notice, and a summary of comments; established FAA **Federal Register** notice of reevaluation, which begins a second 45-day comment period; and noted FAA ability to conduct additional information acquisition procedures as needed.

This proposed text remains generally unchanged in the rule, except for two changes that deserve cursory attention. One minor text reorganization of the proposed rule, as noted in the above discussion of § 161.411(c), is insertion of proposed § 161.411(c) (submission of evidence of notice and a summary of comments) into § 161.413(a), which references this documentary submission requirement to a lesser extent. Thus, a redundancy in the proposed rule was eliminated in the final text. In addition, a sentence was added to the end of § 161.413(b) to clarify that FAA will not act upon incomplete reevaluation applications.

Comments: The Chicago Association of Commerce and Industry's comments suggest that the airport operator submit the full text of all comments to the FAA.

Response: The proposed text remains unchanged in this regard, as it adequately addresses the accessibility of this information. Section 161.413 provides FAA access, upon request, to comments submitted to the applicant and the authority to gather any additional informative material as deemed necessary. Comments are also submitted directly to the FAA upon the **Federal Register** notice initiating the FAA's 45-day comment period.

Section 161.415 Reevaluation Action

This proposed section specified action subsequent to completion of the reevaluation process. If FAA found that the restriction met the statutory criteria, the restriction remained in effect; if the restriction was found to be not in compliance, FAA approval would be rescinded. FAA would publish a **Federal Register** notice announcing its findings, and also directly inform the airport operator and applicant aircraft operator. An airport operator would have to rescind a previously approved Stage 3 restriction or cease to enforce a Stage 3 restriction previously implemented by agreement.

One significant revision was made in the rule text of § 161.415(b) to allow continued implementation of portions of a restriction that are still in compliance. The revised text allows FAA withdrawal of a previous approval to the extent necessary to bring the restriction in compliance. This provision allows retention of parts of a restriction and permits continuation of some of the restriction's noise abatement benefits to surrounding communities to the extent permissible.

Section 161.417 Notification of Status of Restrictions and Agreements Not Meeting Conditions-of-Approval Criteria

In the NPRM, this section required FAA withdrawal of any previous approval of a restriction no longer in compliance and mandated that the airport operator rescind a previously approved Stage 3 restriction or cease to enforce a Stage 3 restriction previously implemented by agreement. One major change to the proposed text is made to the final rule to parallel the change made in § 161.415 regarding FAA withdrawal of its approval of that part of a restriction no longer in compliance. That noncomplying portion of the restriction must be rescinded by the airport operator and may no longer be implemented.

Subpart F contains the procedures that will be used to notify an airport operator of an apparent violation of part 161, and the procedures used to terminate airport eligibility for airport grant funding and PFCs once noncompliance has been determined. The penalties for an airport operator's failure to comply with the Act are set forth in sections 9307 and 9304(e), which state:

> Section 9307—Under no conditions shall any airport receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 unless the Secretary assures that the airport is not imposing any noise or access restriction not in compliance with this subtitle.
>
> Section 9304(e)—Sponsors of facilities operating under airport aircraft noise or access restrictions on Stage 3 aircraft operations that first become effective after October 1, 1990, shall not be eligible to impose a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 and shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982 after the 90th day following the date on which the Secretary issues a final rule under section 9304(a) of this Act, unless such restrictions have been agreed to by the airport proprietor and aircraft operators or the Secretary has approved the restrictions under this subtitle or the restrictions have been rescinded.

The FAA posed a number of questions in the NPRM regarding the proposed procedures. These questions included inquiries on methods to minimize adverse effects on capital markets of termination of AIP funds and PFC revenues, the feasibility of documenting necessary findings on the record without trial-type procedures, the appropriateness of the proposed notice procedures and comment opportunities, and the timing of the suspension of approval to impose a PFC and the disposition of PFC revenue after a determination of noncompliance.

The process proposed in this subpart has been significantly changed in response to comments and the FAA's own internal review. The final rule now provides a period for the FAA to attempt informal resolution to resolve the noncompliance issue with the airport. The airport now has two procedures from which to choose if informal resolution is unsuccessful. There is one process for airports that agree to defer implementation of the suspect restriction pending formal FAA determination, and another for airports that do not agree to defer implementation. While these two procedures are generally similar as to the substantive steps, the former does provide procedural and time-relevant advantages to the airport operator. In making this decision, the airport operator exercises some control over the timing of the sanction-determination process, as well as over the number of opportunities for input to, and consultation with, the FAA during this determination process. If a question arises whether a restriction is in compliance with this part, the airport operator choosing to defer implementation or enforcement of that restriction can avoid any adverse effect during the FAA process.

Section 161.501 Scope

This section delineates the scope of this subpart.

Comments: A number of general comments on this section were received. Several organizations, including ATA, note that the FAA has a number of enforcement tools, such as civil penalty action, to address violations of the restriction issuance requirements. The ATA asserts that the final rule should explicitly state FAA's intent to use all

enforcement avenues that are available and within the FAA's statutory authority to ensure compliance with national aviation noise policy goals. Several air cargo carriers and their associations interpret section 9307 to impose sanctions for noncompliance with any section of the Act, and suggest that the FAA also apply the Act's qqq sanctions for noncompliance with the Federal aircraft transition schedule contained in part 91 of the Federal Aviation Regulations. The Air Freight Association further suggests using the Act's sanctions for "imposing any such restriction in violation of any other existing law with respect to airport noise or access restrictions by local authorities."

Response: This section continues to delineate the scope of subpart F, setting forth the administrative process that will be used to determine compliance with part 161 and the Act and to impose sanctions. As suggested by several commenters, a sentence has been added to clarify that these procedures only supplement, and do not circumscribe, any other remedies that are available to the FAA and within the agency's statutory authority to promote voluntary compliance and impose sanctions for violations of the Act and the Federal Aviation Regulations. This sentence is intended to ensure the availability of other avenues in addition to termination of funds under part 161 and to preserve the FAA's authority to initiate proceedings in circumstances that warrant immediate action to protect the national aviation system. The FAA may seek judicial relief, such as an injunction to stop a restriction being implemented, without first completing an informal resolution process in a situation where an airport operator is imposing a restriction that threatens the national aviation system and related Federal interests. Such judicial action would not terminate funding. In order for funding to be terminated under part 161, the process outlined in part 161 must be completed. Such judicial action in no way affects the part 161 process itself.

Violations by air carriers of the aircraft transition requirements and nonaddition restrictions contained in part 91 are covered by section 9308(e) of the Act. That sction clearly states that violations of those sections and the implementing regulations are subject to civil penalties and the procedures provided in title IX of the Federal Aviation Act of 1958 for violations of title VI. Violations related to restrictions of Stage 2 and Stage 3 aircraft operations are subject to the sanctions contained in sections 9307 and 9304(e) of the Act (quoted above). Both sections require termination of both eligibility for airport grant funds and authority to impose or collect PFC's for violations.

Also added to the final rule is a new paragraph (b) that addresses two issues. First, it incorporates what was formerly § 161.503(a) of the proposed rule that prohibits a noncomplying airport's receipt of AIP funds or imposition or collection of PFC's. Second, this paragraph now provides that an airport's rescission or written commitment to rescind or not enforce a noncomplying restriction will restore the airport's compliance with the Act and this part.

Section 161.503 Informal Resolution: Notice of Apparent Violation

This section was not proposed in the NPRM, but is newly added to the rule. As with the recent rulemaking (14 CFR part 158, 56 FR 24254, May 29, 1991) related to passenger facility charges, several commenters express concern about the proposed part 161 procedures to terminate PFC authority and the economic disruption that such action could create. The FAA added this section for reasons similar to those raised in the part 158 rulemaking. Providing an informal opportunity to resolve the question of compliance prior to termination of PFC authority and AIP funds, as well as other changes to this subpart of the final rule, is intended to increase investor confidence in PFC-backed bonds, enhance the marketability of such bonds and, ultimately, reduce the amount of PFC revenue needed for interest and financing costs resulting from lower bond ratings and higher project financing costs. These changes should assure all parties that every effort will be made to resolve the compliance question prior to termination.

If efforts to resolve differences informally are not successful, the FAA will notify the airport operator in writing that a noise or access restriction may violate the Act or implementing regulations.

Section 161.505 Notice of proposed termination of airport grant funds and passenger facility charges

As proposed in the NPRM in former § 161.503, if the FAA received evidence or a complaint that a noise or access restriction was imposed in violation of part 161, the FAA would provide notice of the apparent violation to the airport operator. A 30-day period was proposed for the airport operator to submit satisfactory evidence of compliance with part 161. If the airport operator failed to do so, the FAA would notify the operator of the agency's intent to terminate AIP grants and revenues and rescind approval to impose PFCs. The FAA proposed to publish a notice to that effect in the **FederalRegister** and invite public comment on the notice. Following a review of all comments, the FAA would issue final determination regarding compliance with part 161 and the Act. If the FAA determined that the airport operator imposed a noncomplying noise or access restriction, the FAA would immediately discontinue payment of AIP funds, including reimbursement for costs incurred before issuance of the notice, refuse to execute new airport grant agreements, and rescind prior approval to impose PFCs.

Comments: AOCI and AAAE state that a public hearing should be required before a determination is made that an airport operator has imposed a restriction without complying with part 161. Both organizations believe that a reasonable time is needed before termination of PFC authority, particularly where PFC revenue is pledged to back bonds. The Port Authority of New York and New Jersey maintains that the FAA should take all reasonable action to assure bondholders and contractors of a reliable flow of PFC funds.

The Air Freight Association and Airborne Express argue that, because the sanctions are mandated by statute, the FAA has no discretion to attempt to minimize any adverse effects resulting from termination of AIP funds or PFC revenue. These organizations point out that sanctions should motivate compliance by airport operators, and the means for compliance are solely within an airport operator's authority and control. NBAA notes that the risk of losing funds will, as always, be a factor in the cost of capital, and the risk of deliberate violations by an airport operator is virtually nonexistent.

Response: As proposed, the subpart set forth a single administrative process to determine compliance with the Act. The FAA noted in the NPRM that the final rule could be revised after review of the comments and further deliberation by the agency. Implementing the suggestions of some commenters, the FAA has made several changes to the proposed procedures. The process and procedures contained in this subpart were drawn from both the procedures in part 158 and the procedures proposed for part 161. The most significant revision provides the airport operator with a choice of processes, based upon the airport operator's decision whether to defer

implementation of the restriction, after the FAA has advised the operator of a possible violation of part 161.

The rule presents the airport operator with the opportunity to choose the timing of the sanction determination process and the number of opportunities for consultation with the FAA during the process. The airport operator must inform the FAA within 20 days of the FAA notice whether it intends to defer implementation of the restriction until tha FAA completes its compliance determination. Deferral of implementation provides a longer sanction determination process with more opportunities to consult with the FAA prior to the FAA's determination of compliance, compared to the process triggered by an airport operator's decision not to defer implementation or enforcement during the FAA's determination process.

If the airport operator agrees in writing to defer enforcement or implementation of a noise or access restriction pending an FAA determination of compliance, the FAA will proceed with a process similar to that provided in part 158 for termination of AIP eligibility and PFC authority for violations of the PFC rule. However, in lieu of the public hearing provided in part 158, the FAA has provided a second opportunity for resolution or consultation, and the FAA also may solicit additional information from other parties. A public hearing is not provided because, unlike the complex financial issues surrounding use of PFC revenue in part 158, resolving the issue of compliance with part 161 and the clear requirements of the Act generally will be straightforward and simple determinations. The issues involved are: (1) Whether restrictions on Stage 2 aircraft are "grandfathered" or were issued pursuant to the notice and analysis required by section 9304(c) of the Act; and (2) whether restrictions on Stage 3 aircraft are contained in an agreement between the airport operator and all affected aircraft operators or have been approved by the Secretary under sections 9304(b) and (d) of the Act. Also, the statutory section providing for termination of AIP eligibility and PFC authority because of noncompliance does not require a public hearing, in contrast to the affirmative public hearing requirement in section 9110(e)(12)(B) of the Aviation Safety and Capacity Expansion Act of 1990 that is implemented in part 158.

Instead, part 161 provides several opportunities for airport operator participation and consultation in the determination process regarding possible termination of AIP funding and PFC authority. The first is after issuance of the notice of apparent violation and the second follows the **Federal Register** notice of proposed termination. If the airport operator agrees to defer implementation of the restriction, a third opportunity to consult with the FAA occurs after FAA receipt and review of comments prior to issuance of its determination.

If the airport operator agrees to defer implementation of the restriction, the final rule section requires FAA notice to the airport operator and **Federal Register** notice of the proposed termination, providing at least a 60-day comment period for interested parties. This notice states the scope of the proposed termination, the basis for the proposed action, and any corrective action the airport operator may take to avoid termination proceedings. At the close of the comment period, the FAA has at least 30 days in which to review comments and other information and consult with the airport operator in determining if the airport operator has provided satisfactory evidence of compliance or corrective action.

If the FAA finds compliance or sufficient corrective action, it will notify the airport operator and publish notice of compliance in the **Federal Register.** If the FAA finds the airport in violation of this part and without satisfactory corrective action, it will notify the airport operator in writing, prescribing corrective action where appropriate. The airport operator then has 10 days after receipt of this determination either to advise the FAA that it will complete stipulated corrective action within 30 days or provide the FAA with a list of air carriers that have remitted PFC's to the airport within the past 12 months.

After the 30–day period, if the FAA finds that sufficient corrective action has been taken, it will notify the airport operator and publish notice of compliance in the **Federal Register.** If satisfactory corrective action is not taken by the airport operator, the FAA will issue an order terminating airport grant funds and PFC authority and publish notice of termination in the **Federal Register.**

If the airport operator has not received approval to impose a PFC, the FAA will advise the airport operator that future applications will be denied. Notification to air carriers of the FAA's decision, and any termination or modification of PFC collection, will be accomplishd in accordance with the procedures recently adopted in part 158.

If an airport operator does not agree to defer implementation of a restriction, a shorter but similar process is provided. Assuring a prompt and timely determination of compliance is critical where the airport operator does not defer implementation. Many airport users could be adversely affected by implementation of a restriction while the FAA determines if such restriction was imposed consistent with the Act. Further, the airport operator is in the best position to know whether a restriction has been issued in compliance with the requirements of the Act and implementing regulations.

Because of the possible adverse impact on airport users when an airport operator does not defer enforcement or implementation, the FAA has not provided additional opportunity for consultation or informal resolution before issuing any further notices of compliance or orders of termination. Although the process is abbreviated, the FAA will still issue a notice of apparent violation, providing a 20-day period for response by the airport operator. If a notice of proposed termination is issued after review of the airport operator's response and any other information, the FAA will provide a 30-day period for interested parties to comment. The remainder of the process is similar to that discussed above.

The final rule clearly gives the airport operator influence over the timing of sanctions—termination of airport grants and PFC authority—if the FAA determines that a noise or access restriction may be in violation of part 161. Swift action would be taken by the FAA where a restriction may violate this part and airport users may be adversely affected. However, the airport operator may choose to defer the restriction while the matter is being resolved and thereby delay the imposition of sanctions.

Paperwork Reduction Act

The recordkeeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. The information collection requirements of this rule will become effective when they are approved by OMB.

Environmental Issues

Analysis Requirements for Restrictions on Stage 3 Aircraft Operations and Their Reevaluation

Subparts D and E require Federal decisions involving the approval or disapproval of a proposed restriction on Stage 3 aircraft operations or the reevaluation of a restriction on Stage 3

aircraft, respectively. These Federal decisions are subject to the requirements of NEPA.

In the NPRM preamble, the FAA indicated that it does not anticipate that proposals submitted under subparts D and E will have a significant environmental impact, although there may be some extraordinary circumstances in which a significant impact could occur. The FAA further indicated that it did not have sufficient data on which to base a categorical exclusion for these proposals. Therefore, the proposed rule included a requirement in both subparts D and E for the applicant to submit to the FAA a draft environmental document together with its other analyses. The FAA would then independently evaluate this draft environmental document and use the information in it, supplemented as necessary by the FAA, to prepare a finding of no significant impact or, possibly, an environmental impact statement.

The FAA specifically invited comments on the above requirements imposed on applicants, on environmental considerations other than noise that should be analyzed, on whether noise and any other impacts may reach significant levels, on whether any data supported categorical exclusions of proposals submitted under subparts D and E, and on suggestions for alternative procedures for complying with NEPA.

Comments: The overwhelming majority of comments submitted on environmental issues oppose the requirement that applicants submit a complete environmental document for all proposed restrictions on Stage 3 aircraft operations, calling it an unnecessary burden. Some commenters regard the requirement as an intentional hindrance or delay of restrictions on Stage 3 aircraft. Others complain about the time and expense involved. For example, two commenters complain that the FAA is exceeding the statutory 180-day timeframe due to the draft environmental document requirement. A number of these commenters indicate that restrictions would improve, not adversely affect, the environment. Some commenters call for categorical exclusions for restriction proposals; others indicate that, at most, a finding of no significant impact would be necessary rather than a full environmental impact statement. However, no analytical data were submitted by commenters supporting either categorical exclusion or finding of no significant impact conclusions across the board. Several commenters confused the "draft environmental document" in the NPRM with "environmental impact statement" which heightened their concerns over the burden imposed on applicants. A few commenters seem to think that a draft environental document will be required for proposed restrictions on Stage 2 aircraft.

Commenters' suggestions for alternative procedures include some type of certification that an applicant has complied with NEPA and local environmental laws; a minimal checklist submitted by an applicant; the postponement of NEPA until after the application has been accepted; the FAA assumption of all NEPA documentation responsibility; and the tiering of very brief environmental documents from a programmatic environmental impact statement prepared by the FAA on both this part 161 rule and the amendment to part 91 effecting the Federal phaseout schedule of Stage 2 aircraft.

Several commenters concentrate on the array of environmental considerations that should be evaluated. These include noise (analyzed in accordance with comments by the EPA), density and number of people affected, air quality, water quality, seismic shock, safety, the cost of public health, quality of life, and wilderness areas. None of the commenters elaborate specifically on the relationship of these impacts to proposed restrictions. Finally, a number of commenters note the adverse noise impact of specific airports in their vicinity, without reference to the environmental document requirements in the proposed rule.

Response: The FAA has determined that changes to the proposed rule are warranted based upon the comments on the environmental documentation, as well as its own internal review of this issue. The FAA has replaced the phrase "draft environmental document" in the proposed text with "environmental assessment" in the final rule to clarify that an applicant's environmental evaluation is not expected to be a draft environmental impact statement. The FAA will objectively evaluate an applicant's environmental assessment, supplementing it as necessary, and the FAA will prepare either a finding of no significant impact or draft and final environmental impact statements, depending on the magnitude of the impacts.

The second revision in the final rule is to allow the applicant to submit, in lieu of an environmental assessment, adequate information supporting a categorical exclusion in accordance with FAA orders regarding compliance with NEPA. As stated in the NPRM preamble, significant environmental impacts are not likely with proposals under this rule. However, the FAA still does not have sufficient data on which to base a generic categorical exclusion of these proposals, and commenters who share the FAA's view did not present supporting analytical data. It is probable that in most cases an applicant would be able to submit sufficient data with respect to the environmental impacts of a specific restriction at a specific airport to adequately support the FAA's determination of a categorical exclusion on a case-by-case basis. Under the final rule, therefore, applicants may submit whichever is appropriate under FAA orders complying with NEPA: an adequate environmental assessment or sufficient information to support a categorical exclusion. The final judgment of adequacy and of what type of documentation is required resides with the FAA. The FAA is available to advise prospective applicants with respect to environmental requirements.

The changes described above have been made in relevant sections of subparts D and E. Subpart C, dealing with restrictions on Stage 2 aircraft, has not been changed since there are no Federal environmental requirements associated with that subpart. Restrictions on Stage 2 aircraft are not subject to FAA approval and, therefore, are not Federal actions subject to NEPA.

The FAA has considered the commenters' suggestions with respect to alternative environmental documentation procedures, but is not convinced of the merit in adopting any of the suggestions. Some of the suggestions appear to be inadequate to comply with NEPA, while others would more likely add to the time required to complete an environmental review. With respect to the commenters' complaints about delaying acceptance of applications until environmental documents are adequate, there should be no delay in starting the 180-day review if the applicant initially submits environmental documentation (either an environmental assessment or information supporting a categorical exclusion) that is adequate. As stated previously, the FAA is available to advise prospective applicants regarding the adequacy of environmental documentation. Part of this complaint is responded to by the clarification that the adequate documentation is not expected to be a draft environmental impact statement and may, in fact, not even need to be an environmental assessment. In determining the adequacy of environmental analyses, the FAA will rely on existing FAA

orders implementing NEPA; the FAA does not otherwise describe specific impacts in this rule, other than noise, that are required to be addressed.

Environmental Assessment of the Rule

This rulemaking is in response to section 9304 of the Airport Noise and Capacity Act of 1990. The Act directs the FAA to establish by regulation a national program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft, including the provision for adequate public notice and comment opportunities on such restrictions. The Act sets forth requirements specific to Stage 2 and Stage 3 restrictions that must be met before these restrictions become effective; mandates FAA review and approval or disapproval of Stage 3 restrictions according to specific criteria; establishes criteria for reevaluation of Stage 3 restrictions; delineates a number of limitations on the applicability of the Act; and provides that sponsors of facilities implementing Stage 3 restrictions that fail to comply with the Act shall not be eligible to impose a Passenger Facility Charge or receive an Airport Improvement Program grant. While the FAA has discretion in its approval or disapproval of Stage 3 restrictions, its discretion is very limited with regard to the adoption of regulatory procedures set forth in this part.

This rule contains procedures for complying with the Act's specific requirements. The statutory framework severely limits the range of reasonable alternatives to those chiefly involving procedural implementation, and none of the alternative procedures within the FAA's discretion will itself have a significant effect on the quality of the human environment or foreclose needed environmental review when Stage 3 restrictions are being approved or disapproved.

In the preamble to the proposed rule, the FAA further delineated its reasons for determining that this rule has no significant impact, and invited comments relating to the environmental impacts that might result from adopting the rule. The proposed rule's preamble indicated that, prior to issuing a final rule, the FAA would complete a review of the environmental impacts associated with rule compliance in accordance with Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D).

A number of commenters, primarily those representing communities around airports or environmental organizations, maintain that the proposed rule would at best delay and at worst halt airport noise abatement efforts, with a resulting noise degradation impact. The great majority of these comments related to provisions in the Act itself. Only a few commenters specifically address environmental documentation required for issuance of the rule. The EPA comments that, unless the rule is revised to meet EPA noise concerns, it is likely to have a significant impact. A group of communities around airports and the NAWG recommend that a programmatic environmental impact statement be prepared by the FAA to cover this rule and the proposed amendment to part 91 regarding phaseout of Stage 2 aircraft.

Response: Most commenters on this issue base their concerns of significant environmental impact on provisions in the Act, which the FAA has no authority to abrogate in this rulemaking procedure. The FAA has made revisions in response to EPA's and others' concerns regarding noise analysis and the definition of the airport noise study area, as previously addressed in this preamble, and does not consider the rule to have a significant impact in this respect. The noise methodology, airport noise study area, and compatible land-use criteria in the final rule reference 14 CFR part 150, which has been in existence and use for a number of years.

The FAA has completed an environmental assessment of the final rule and has determined that the rule does not have a significant impact on the quality of the human environment, either by itself or when considered cumulatively with the amendment to 14 CFR part 91. Accordingly, the FAA has made a finding of no significant impact, which has been placed in the docket and is available for review. Because neither of these rulemaking actions, either separately or together, will have a significant impact on the quality of the human environment, a programmatic environmental impact statement is not appropriate.

Regulatory Evaluation Summary

This section summarizes the Regulatory Evaluation of the final rule that establishes a program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft.

Executive Order 12291, issued February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an effect on the economy of $100 million or more; a major increase in costs or prices for consumers or for individual industries, government entities or regions; a or significant adverse effect on competition, employment, or other significant determinants of economic growth.

Comments: A number of comments were received on topics related to issues contained in the NPRM's summary of the Initial Regulatory Evaluation.

With regard to the cost of providing notice to affected parties, AOCI and AAAE and the City of Long Beach indicate that, while it may be reasonable to require individual notice to airlines, the costs of notifying each general aviation operator would be excessive. They found the original definition of "aircraft operator" to be so broad that it might be interpreted to result in very costly notification procedures. One respondent expressed the view that notice by publication should be sufficient.

Comments on the cost of analysis requirements include a response from the Airports Commission of the City and County of San Francisco, expressing the view that the $200,000 estimate for analysis costs is too costly. It suggests, offering specific language, that the rule be revised to state that airport operators are not required to spend more than $100,000 for providing information and analysis.

The Maryland Aviation Administration states that the estimated $50,000–$300,000 cost may cover noise analysis, but not cost-benefit analysis and assessment of impacts on interstate commerce and the national aviation system, which might add $50,000–$200,000 to the cost. Westchester County, New York, is of the view that an additional $100,000–$150,000 will be required for NEPA requirements.

One respondent suggests that the FAA should pay for economic studies that may be required at small airports. Another opinion is that the cost of required studies has the effect of discouraging attempts to work out noise problems, especially at small airports.

The Airport Coordinating Team maintains that sound attenuation of buildings is not a complete solution to the problem, which can be resolved only by eliminating the noise or the community itself; and that demolishing a community and relocating the residents can impose "a terrible cost."

With regard to quantitative measures of benefits used in analyses pursuant to

the proposed rule, the Maryland Aviation Administration indicates its belief that "cost/benefit analysis does not easily lend itself to quantitative measures that will adequately describe the benefits of noise reduction for the public." This agency cites a lack of basis for calculating health benefits of noise control, stating that "more basic research is needed to quantify the benefits of what we are trying to correct." John W. Selmer comments that, because of the importance of background sound levels on the annoyance caused by noise, a relatively quiet area will be more dramatically impacted by overflights than other areas.

Response: The potential cost of notice has been reduced by narrowing the requirements for direct written notice to aircraft operators to include only "* * * aircraft operators providing scheduled passenger or cargo service to the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction." It is believed that this requirement will provide sufficient notice by directly notifying all affected carriers, while allowing for the notification of operators of aircraft based at an airport through means such as enclosing a notice with bills for tie-down rental. Itinerant aircraft operators that are not encompassed as operators routinely providing nonscheduled service may be provided notice through the use of publicly posted notice and the distribution of information at the time of fuel purchases.

The cost of public notice of a proposed restriction has been further reduced by approximately $10,000 by deleting the NPRM's requirement for publication in a newspaper with national circulation and in aviation trade publications. Now the rule only requires publication of notice in an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area.

With regard to the cost of analyses required by the rule, it is noted that costs will be borne by the airport operator initiating a restriction or by an aircraft operator requesting a reevaluation. Analysis costs can be avoided by imposing a restriction that arises from an agreement between an airport operator and all affected aircraft operators under subpart B of the rule In addition, the final rule provides the airport or aircraft operator an opportunity to minimize the cost of analysis by allowing significant flexibility in determining the precise content of analyses. Particularly at larger airports, much of the data required for analysis may already have been developed for part 150 submissions and for financial applications. Smaller airports, which are likely to involve more moderate noise exposure, are expected to typically require simpler, less costly analyses to support proposed restrictions under subparts C and D.

The FAA recognizes the potentially large economic and social costs that can arise from either relocating communities out of airport environments or imposing severe restrictions on aircraft operations. It is believed that there are many situations in which the application of moderate restrictions on aircraft operations and/or sound insulation can achieve the most cost effective resolution of problems associated with exposure to aircraft noise. It is the intent of the FAA, in providing regulations for the resolution of problems involving aircraft noise exposure, to allow for flexibility so that a wide variety of potential solutions can be considered.

The calls for fundamental research on the effects of noise on individuals and society are noted. However, recognition of these concerns is not considered to provide a basis for modifying the proposed rule. However, the FAA has taken care to assure that the language of the final rule does not preclude the use of new techniques for analyzing noise impacts that may be developed in the future.

Scope of the Regulatory Evaluation

The notice, review, and approval procedures set forth in the final rule are intended to carry out the mandates of section 9304 of the "Airport Noise and Capacity Act of 1990" (the Act). Because the Act requires the establishment of the program described in the final rule, it is debatable whether the economic effects of the final rule can or should be separated from those of the Act. Thus, this evaluation focuses primarily on the procedural aspects of the program without distinguishing those solely associated with the final rule from other potential economic impacts that may be attributable to the Act. In some portions of the final rule, especially the subpart that deals with agreements between airport and aircraft operators, the procedures are believed to provide savings to program participants by avoiding alternative, more complex procedures that might otherwise be necessary to conform to the requirements of the Act.

The notice, review, and approval procedures in this rule are not expected to have an overall effect on the economy in excess of $100 million. The only economic costs that would be imposed stem from the costs associated with providing public notice of a proposal and of conducting the analyses required by this rule. These costs will be incurred by the airport operator or by an aircraft operator. An airport operator would incur these costs only if it takes an initiative that would bring itself within the purview of the rule by deciding to impose a noise or access restriction; it can forego all costs associated with the rule by continuing business as usual and deciding not to restrict aircraft operations. The total cost depends on the number and type of restrictions that an airport operator would want to impose in any year. The total anticipated benefits also would depend on the number and type of access and noise restrictions that might be implemented by an airport operator in any year. Based on the following analysis of costs and benefits, the FAA has determined that the rule does not constitute a major rule.

The rule requires analysis, public notice, and a comment period for airport noise and access restrictions on Stage 2 and Stage 3 aircraft operations. A proposed restriction on Stage 3 aircraft operations would require FAA approval as a condition for continued eligibility of an airport operator to receive federal AIP grants and to collect passenger facility charges. An aircraft operator may request the reevaluation of a restriction on Stage 3 aircraft operations by demonstrating to the FAA that there has been a certain significant change in the airport noise environment. If a reevaluation is deemed justified by the FAA, the aircraft operator may, if it chooses, then publish a notice of the reevaluation and provide an analysis that reevaluates the restriction.

Local airport restrictions that are the subject of the rule could: (1) have significant effects on individual air carriers, other aircraft operators, and intercarrier competition; (2) cause losses in market value of aircraft that would be excluded as a result of an airport restriction; (3) raise air fares; and (4) affect real estate values in areas surrounding airports that impose restrictions on operations, for instance, by raising the value of noise-impacted residential properties as a result of reducing noise exposure.

The potential benefits of the procedures in this rule arise from mitigating some of the adverse effects of Stage 2 and Stage 3 aircraft restrictions

that would be excessive, suboptimal, or restrict competition, or an undue burden on interstate or foreign commerce or the national aviation system. A reasonable analysis of a proposed restriction would include the major benefits and costs that affect parties involved. In most cases, a major focus of this analysis would be the question of whether the potential benefits from reduced noise exposure near an airport could be significant enough to offset the costs that may be imposed on air commerce as a result of proposed restrictions. Benefits and costs of compliance with the rule are expected to vary significantly among airports that will be proposing restrictions that are subject to the notice, analysis, and review requirements. Thus, the effects of compliance with the statute as implemented by this rule are treated only in a qualitative manner in this analysis.

Costs Associated With Requirements for Public Notice and Analysis

Cost of Public Notice Requirement

Airports proposing noise or access restrictions, including those that are agreed to by airport and aircraft operators and bind parties that have not signed an agreement, must publish a notice in an areawide newspaper or newspapers, post the notice at the airport, receive comments during a 45-day comment period, and to retain supporting data and comments received. In addition, direct notice of proposed restrictions is to be provided to: (1) Aircraft operators providing scheduled passenger or cargo service, operators of aircraft based at the airport, potential new entrants that are known to be interested in serving the airport, and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction; (2) the FAA; (3) governmental units with land-use jurisdiction within the airport noise study area; (4) fixed-base operators and other airport tenants whose operations may be affected; and (5) community groups and business organizations in the affected area that are known to be interested in the proposed restriction. In addition, the FAA will publish an announcement of a proposed restriction or agreement in the **Federal Register**. The incremental cost to an airport or aircraft operator for the required notice is estimated to vary from $4,000 to $30,000 (in the case of a complex restriction) per airport for all required notice for each application. Some airports would incur little additional cost to implement the public notice requirement, because they would have to provide the public notice and solicited comments on noise restrictions even in the absence of the proposed rule. If notice were not normally given prior to actions equivalent to those covered in the proposed rule, there would be some incremental cost for public notice.

Publication of a single notice is estimated to cost about $1,000 in a major regional newspaper. If a notice were put in two such newspapers, publication costs per notice could range "up to about $2,000. The cost of publication of a notice of a restriction in the **Federal Register** by the FAA is assigned a nominal cost of $100. If the cost of direct notification to 100 aircraft operators (including air carriers) and jurisdictions is $20 per letter, with enclosure, direct notification costs would be $2,000. The cost of preparing a notice for publication, handling public responses, and retaining records depends on the proposal's complexity and impact. The preparation of a notice for a very simple restriction with very limited impact, and the retention of supporting data and comments received, may cost $1,000 or less (several hours of professional and clerical time). In these simple cases, the total incremental notification costs, including publication in a single newspaper (if sufficient) and required direct notifications, could average $4,000 per implementation or modification thereof. However, if the restriction is complex and an analysis reveals numerous effects, the preparation of the notice itself may require substantial professional staff attention to draft the notice per se (two months of professional and clerical time). These staff costs are assumed to be on the order of $20,000. Review of comments and revisions may result in further costs of $10,000. Preparation and review costs are assumed to average $26,000. Thus, the total cost to an airport or airport operator of notice, comment, and record retention for a proposed complex restriction (exclusive of analysis cost described below) is estimated to be up to $30,000. If 100 airports in the U.S. were to implement restrictions on Stage 2 and Stage 3 aircraft operations or modifications thereto, the total notification costs (exclusive of analysis cost described below) could range from approximately $400,000 for simple restrictions to $3.0 million for complex restrictions.

Cost of Analysis

Analysis of airport noise, including the mapping of projected noise levels and associated demographic projections, and analysis of the benefits and costs of restricting aircraft operations at airports, have been performed in the past. Similar analyses are prepared in whole or in part in compliance with 14 CFR part 150, for airport development and master planning, and in conjunction with the solicitation of airport finance. Thus, much information required to fulfill the analysis requirements of subparts C and D probably already exists as a result of current airport administrative and planning procedures. Further, if additional information is needed, the required skills have been developed and the analysis can be performed by the airport staff or through existing relationships with consultants. The skills required to perform the analyses can also be readily learned by individuals with training in engineering or physical sciences and economics or finance.

The incremental cost imposed by the rule for analyzing a set of proposed noise and access restrictions may vary from no cost to $200,000 per airport. Because airports are given broad discretion, costs can be kept low in many cases. Some airports already prepare substantial analyses associated with potential noise restrictions and alternatives.

Costs associated with environmental analyses and documents are assumed to arise because of NEPA and existing regulations, i.e., they are not the result of requirements imposed under this rule. If the costs of these analyses would occur in the absence of the proposed rule, they should be excluded from these estimates. If the environmental assessment costs are included in the estimate, an additional nominal value of $100,000 to $150,000 per analyzed restriction may be assumed. (By way of background, it is noted that current submissions in response to 14 CFR part 150, Airport Noise Compatibility Planning include similar analyses of restrictions. Part 150 analyses have been prepared using federal grants ranging from $50,000 to $300,000 per submission, with the majority of analyses ranging from $90,000 to $150,000. Part 150 study costs are considered analogous to the analysis costs that would be imposed by this rule.)

The rule now provides integrated instructions on the presentation of evidence regarding conditions for restriction approval and the preparation of analyses for subpart D. This clear statement, plus the integrated presentation of information, is expected to increase the likelihood that the analyses can be completed for the costs estimated above.

If 50 airports or airport operators were to prepare analyses, including

environmental assessments, solely in response to subpart D of the rule, dealing with restrictions on Stage 3 aircraft operations, the total incremental cost of analyses attributable to the rule could be as high as $15 million to $18 million over the life of the rule. (Note that an analysis is not required for agreements under subpart B.) In the event that 100 analyses were prepared in response to the rule, this cost could be as high as $30 million to $35 million. If environmental assessment costs are not included in the costs attributed to the rule, costs for 50 and 100 analyses would range up to $10 million and $20 million, respectively. Costs for Federal review of 50 to 100 analyses, including publication of appropriate notices in the **Federal Register**, are expected to be on the order of $1 million to $2 million. Costs are expected to vary with the level of operations at affected airports and the extensiveness and complexity of the proposed restriction.

Benefits of Applying the Regulations to Proposed Restrictions on Aircraft Operations Agreements (Subpart B)

Subpart B applies to airport noise or access restrictions on Stage 3 aircraft that are agreed to by the airport operator and those aircraft operators affected by the agreement. New entrant aircraft operators that have applied to serve the airport within 180 days of the effective date of the restriction and have submitted a plan of operations to the airport operator are to be included in these agreements. An analysis of such an agreement is optional.

An agreement can result in positive net benefits to affected interest groups considered as a whole, and very likely to each of the affected interest groups (although not necessarily to all members of such groups). This would be the case as long as all potential entrants that wish to service an airport are notified and the airport operator adequately represents both the interests of the local aviation/passenger community and persons who may be adversely affected by aircraft noise.

The use of agreements may help airport operators by reducing the costs that they would incur in order to implement proposed restrictions on aircraft operations. Public notice provides an opportunity for those with an interest in current or future operations at an airport to become parties to an agreement. The notice requirement is intended to open up agreements to parties beyond those currently serving an airport, but stops short of the needless costs that would be associated with identifying "all" aircraft operators, whether or not they have an interest in operation at the airport in the reasonably foreseeable future.

It is noted that cost savings would occur through the avoidance of what is likely to be a costlier process, including analysis requirements, that would be involved in attempting to restrict aircraft operations through subparts C and D, as outlined below. The provision for agreements formalizes a procedure under which communities and aircraft operators can efficiently reach agreement on measures to mitigate aircraft noise problems that the affected parties find mutually acceptable. The rule permits restrictions on aircraft to be handled through the less costly means of agreements under subpart B. Additionally, the use of such agreements can be expected to facilitate the handling of local environmental concerns by minimizing federal involvement in the process.

Further, it is possible that the public notice required by subpart B may itself produce additional benefits, in part by reducing the likelihood of a number of possible adverse effects. One potential concern is a situation in which an agreement on operations at an airport has the effect of excluding improved air carrier service when such service might provide an overall increase in net benefits to current and potential users of air transportation in the area served by the airport. Current providers of air service may have an economic incentive to seek, through agreements, to prevent the entry of additional competitive providers of air service. Public notice can help to mitigate potential adverse effects by improving the chances for potential entrants to service at an airport to protect themselves from undesirable constraints on their future activities. For instance, a noise budget can have the effect of making it more difficult for new entrants (new competition) to initiate service at a particular airport. By preserving and enhancing competition, the rule may benefit air travelers by lower air fares and/or increased service.

It is also possible that agreements may have the effect of regulating rates or service. Although this is prohibited by section 105 of the Federal Aviation Act of 1958, agreement may achieve these objectives indirectly. For instance, because aircraft have varying ranges, agreements on the type of aircraft that may be used at an airport can have the indirect effect of regulating the price and availability of air carrier service. Agreements that, for example, restrict the passenger-carrying capacity of aircraft using an airport could have the effect of excluding the aircraft of potential competitors that are larger, quieter, and have a longer range.

The public notice may not only inform interested parties, but may also stimulate those adversely affected to protect their interests by taking part in the negotiations that lead to the agreement or by seeking redress through other political or judicial processes. For instance, local companies adversely affected by potential restrictions or aircraft operators that wish more freedom, for instance, in airport operating hours, may object to terms of an agreement that they perceive as objectionable. Thus, the rule may ultimately improve the efficiency of air commerce, the local economy, and the quality of life.

Although the Federal government may take action to mitigate the effects of exclusionary agreements under other statutes, it has no power under the Act, or the rules derived from it, to grant relief to, e.g., the customers of air carriers who may experience high ticket prices that result from de facto cartelization of air carrier service at an airport. Remedies would be obtained under federal antitrust laws and the terms of airport development grent agreements.

Requirements for Stage 2 Restrictions (Subpart C).

Subpart C requires analysis and notice of new noise or access restrictions that are proposed for Stage 2 aircraft after October 1, 1990. These requirements also apply to amended restrictions that become effective after October 1, 1990, if they further limit Stage 2 aircraft operations or affect aircraft safety. As indicated in the discussion of the preceding subpart, the public notice provided to affected parties under subpart C is expected to facilitate the protection of these parties' interests by informing them of the impacts of proposed restrictions.

Benefits associated with the notice, analysis, and 180-day waiting period include assurance that: (1) There is wide advance notification of potentially affected parties; (2) the airport operator and others are aware of the full ramifications of proposed restrictions, including anticipated costs and benefits; (3) data errors in estimating costs and benefits have a chance to be rectified and appropriate changes made in the proposed restrictions; (4) objections of affected parties and the FAA may lead airport operators to modify provisions of a restriction; (5) the Federal Government and affected parties have a chance to make a case against objectionable restrictions in court before the

restriction is imposed; and (6) affected parties have a reasonable amount of time to accommodate their operations to a restriction before it goes into effect.

Subpart C includes requirements for an analysis of the anticipated costs and benefits of the proposed noise or access restriction, a description of alternative measures considered that do not involve aircraft restrictions, and comparative analyses of benefits and costs of these measures. The use of specified noise measurement systems and accepted economic methodology are required.

Stage 2 aircraft tend to be less expensive to acquire or lease. For this reason, those aircraft have been favored by new air carriers starting operations. Restrictions on the operation of Stage 2 aircraft, therefore, may have the effect of inhibiting market competition from new entrants.

Restrictions on aircraft operations at a single airport that is an airline's major hub may or may not have a significant impact on a particular aircraft operator depending on whether its equipment can be moved to alternate routes or sold without incurring a significant loss. Simultaneous restrictions at a significant number of airports may force premature retirement of affected aircraft, including their sale at reduced prices, thereby imposing losses on the owners of such aircraft. Thus, a single airport's restrictions should also be viewed in the context of conditions existing in the national airport system. However, the airport operator that proposes restrictions is given discretion with respect to the elements contained in the analysis so long as the analysis is consistent with the general requirements of the Act.

The imposition of major premature restrictions on Stage 2 aircraft operations at an airport that acts as a major hub for a carrier that is highly dependent on these aircraft may also impose significant adverse effects not only on air carriers but on their passengers. These effects would be in the form of reduced service because of less air carrier competition, and likely higher air fares. If air carriers cannot find alternative uses for aircraft that are barred by the restrictions, the air carrier would experience a loss of revenue and profit. The effects on passengers may include substantial burdens in the form of the cost of time consumed through delays or inconvenient air carrier schedules. It should be noted that, in analyses of air transport operations, the delay costs for air travelers may be as high as the air carriers' costs for operating the delayed aircraft. The merit of a particular proposed restriction on Stage 2 aircraft operations would depend on whether benefits (perhaps measured by a projected increase in residential property values) are greater than the sum of costs imposed on air commerce (including such elements as passenger delay costs together with aircraft operating and capital costs).

Notice, Review, and Arrroval Requirements for Stage 3 Restrictions (Subpart D).

This subpart applies to airport noise or access restrictions on Stage 3 aircraft operations and amendments that first become effective after October 1, 1990. With certain limited exceptions detailed in the statute, all proposed restrictions on Stage 3 aircraft, other than those agreed to by the airport operator and aircraft operators, will be subject to this subpart and must be reviewed and approved by the FAA before they become effective. The restrictions can be approved only if there is substantial evidence that they: (1) Are reasonable, nonarbitrary, and nondiscriminatory; (2) do not create an undue burden on interstate or foreign commerce; (3) maintain safe and efficient utilization of navigable airspace; (4) do not conflict with any existing Federal statute or regulation; (5) have been given an adequate opportunity for public comment; and (6) do not create an undue burden on the national aviation system. The Act mandates sanctions against airport operators that implement restrictions on Stage 3 aircraft operations that have not been agreed to or approved by the FAA in conformance with the proposed rule.

As was noted in the discussion of subpart C above, restrictions at either a single major hub airport or at a significant number of airports may reduce the efficient use of an air carrier's fleet, thereby imposing major losses on the owners of such aircraft. This subpart deals with proposed restrictions on Stage 3 aircraft, which represent state-of-the-art noise control and are significantly newer than the Stage 2 aircraft that they are intended to replace. Restrictions on aircraft that fall under this subpart can be expected to result in losses to aircraft operators that are potentially much larger than would result from comparable restrictions on Stage 2 aircraft alone. Restrictions that result in the suboptimum use of substantially new aircraft could constitute an undue burden on commerce and the national aviation system by preventing aircraft operators from recouping through revenues the substantial cost of their investment in aircraft (a new Stage 3 aircraft may cost between $50 million and $120 million). Stage 3 aircraft are likely to have higher market values and lower operating costs than otherwise comparable Stage 2 aircraft. Thus, the earnings foregone by a carrier that finds that it is unable to put a Stage 3 aircraft to its most profitable use are likely to be larger than the lost earnings that would result from a comparable restriction on a Stage 2 aircraft.

Restrictions on Stage 3 aircraft are also likely to impose significantly higher costs on air travelers than would comparable restrictions on Stage 2 aircraft. If Stage 2 aircraft are restricted at an airport, it is likely that they will, to some extent, be replaced with Stage 3 aircraft that provide comparable or better passenger service. Any restrictions on Stage 3 aircraft have the effect of limiting total aircraft operations at an airport because an airport operator is unlikely to attempt to restrict Stage 3 operations unless Stage 2 operations have already been, or are being simultaneously, restricted. With a resulting general reduction in air service at an airport, passenger delay costs will be imposed as result of less convenient schedules for passengers for whom the airport is an origin or destination and more waiting time if the airport is a hub at which passengers transfer between airplanes. As with Stage 2 aircraft, simultaneous restrictions on Stage 3 aircraft at a number of airports can have significantly greater adverse impacts on both aircraft operators and passengers than would restrictions at a single airport. The greater public and Federal examination of proposed restrictions on Stage 3 aircraft (as compared to Stage 2) is justified, in large part, by the greater potential for imposing costs on the national aviation system that do not have equal or greater benefits.

Reevaluation of Restrictions on Stage 3 Aircraft Operations (Subpart E)

Reevaluation may be requested by an aircraft operator that demonstrates to the satisfaction of the FAA that there has been a change in the noise environment that would be sufficient to justify the review. The burden of notice and analysis requirements, including environmental documentation, is placed on the aircraft operator that initiates the request for reevaluation. These costs are less than those for airport operators that propose restrictions under subpart D, above, because reevaluation applicants only need to provide proof regarding at least one of the six statutory conditions. Applicants under subpart D must provide proof regarding all six of the statutory conditions. The FAA will review the documentation submitted and comments received and issue

appropriate findings on the request. The benefits of proposing a change for one aircraft operator would be primarily the operating economies and resulting improved profits that may be projected to result from less stringent airport restrictions. The reevaluation costs for an aircraft operator may be reduced by sharing these costs among a group of aircraft operators that wish to take advantage of less restrictive operation at an airport. It may be presumed that an aircraft operator (or whoever requests a reevaluation) would not request a reevaluation of a restriction unless it perceived that the benefits it expects to accrue would be in excess of costs it will incur in successfully completing the reevaluation process. This rule does not require reevaluation, hence it does not directly impose any cost. Parties such as airport operators with an interest in commenting on the reevaluation may choose to incur costs in preparing comments, but do so at their own discretion.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has provisionally determined that it is unlikely that these regulations could have a significant economic impact on a substantial number of small entities. (FAA Order 2100.14A specifies the threshold regulatory cost at $5,400 in 1983 dollars (approximately $7,000 in 1991 dollars) for airports serving cities with a population of less than 49,000. According to this Order, a "substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to a * * * rule.") While the costs of required analysis may exceed $7,000, it is noted that the cost of the required analysis may in some cases be moderate because many proposed restrictions will not require the "amount of data handling and complexity of analysis appropriate for major restrictions at larger airports. In addition, it is believed unlikely that an airport operator would initiate an action that would make it subject to the rule unless it believed that the benefits would be well in excess of the costs of complying with the rule. The rule allows an airport operator that proposes restrictions on Stage 2 aircraft substantial latitude in determining the components of the associated analysis. Further, and more important, it is believed to be unlikely that a "substantial number of small entities"—one third of the operators of airports serving cities with a population of 49,000 or less—will propose restrictions, or changes to restrictions, during any single year. It is not expected that airports considered small entities will, as a group, impose restrictions subject to this proposed rule at as high a relative frequency as larger airports. Smaller metropolitan areas tend to generate less air traffic, have smaller airports, and be served by smaller aircraft than do the larger urban areas that are more likely to be served by Stage 2 and Stage 3 aircraft.

Trade Impact Assessment

The costs that may be incurred as a result of implementing the rule at the airports that account for most of the U.S. international air commerce are believed to be small relative to other charges imposed by the airports on air carriers operating in international commerce. As a result, the requirements of this rule are not expected to have a significant impact on U.S. international trade.

Federalism Implications

Although the agency has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment, it should be noted that, regardless of that determination, it is also the agency's determination that the problem described in this document requires action that can only be effectively implemented at the national level. In support of this finding, it is noted that, in the Airport Noise and Capacity Act of 1990, section 9302, Congress found that, among other things, "airport noise management is crucial to the continued increase in airport capacity; community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which could impede the national air transportation system;" and that "a noise policy must be implemented at the national level."

These regulations implement a new statute that authorizes state and local governments that operate airports to enter into agreements that may affect the operation of certain aircraft at their airports. While the initiation of restrictions qn the affected aircraft at these airports would be a local decision, the statute imposes federal requirements on the applicant (e.g., for notice and/or analysis of the proposed restrictions) and requires Federal oversight (e.g., where there may be substantial adverse affects on interstate commerce).

Although a national solution is required by the Act, provisions of the rule are intended to impose on state and local governments the minimum restrictions and requirements that are consistent with the statutory limitations and the Federal oversight role contemplated by the Airport Noise and Capacity Act of 1990 and other regulations that would pertain to airport operations.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive order 12291. In addition, this rule 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. The rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A Regulatory Evaluation of the rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 161

Administrative practice and procedure, Air carriers, Aircraft, Airports, Noise control, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration adds a new part 161 to title 14, chapter I, subchapter I of the Federal Aviation Regulations (14 CFR part 161) to read as follows:

PART 161—NOTICE AND APPROVAL OF AIRPORT NOISE AND ACCESS RESTRICTIONS

Subpart A—General Provisions

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161.1 Purpose.
161.3 Applicability.

Sec.
161.5 Definitions.
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161.11 Identification of land uses in airport noise study area.

Subpart B—Agreements

161.101 Scope.
161.103 Notice of the proposed restriction.
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161.107 Implementation of the restriction.
161.109 Notice of termination of restriction pursuant to an agreement.
161.111 Availability of data and comments on a restriction implemented pursuant to an agreement.
161.113 Effect of agreements; limitation on reevaluation.

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161.201 Scope.
161.203 Notice of proposed restrictions.
161.205 Required analysis of proposed restriction and alternatives.
161.207 Comment by interested parties.
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161.213 Notification of a decision not to implement a restriction.

Subpart D—Notice, Review, and Approval Requirements for Stage 3 Restrictions

161.301 Scope.
161.303 Notice of proposed restrictions.
161.305 Required analysis and conditions for approval of proposed restrictions.
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161.311 Application procedure for approval of proposed restriction.
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161.315 Receipt of complete application.
161.317 Approval or disapproval of proposed restriction.
161.319 Withdrawal or revision of restriction.
161.321 Optional use of 14 CFR part 150 procedures.
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161.325 Availability of data and comments on an implemented restriction.

Subpart E—Reevaluation of Stage 3 Restrictions

161.401 Scope.
161.403 Criteria for reevaluation.
161.405 Request for reevaluation.
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161.413 eevaluation procedure.
161.415 Reevaluation action.
161.417 Notification of status of restrictions and agreements not meeting conditions-of-approval criteria.

Subpart F—Failure to Comply With This Part

161.501 Scope.
161.503 Informal resolution; notice of apparent violation.
161.505 Notice of proposed termination of airport grant funds and passenger facility charges.

Authority: 49 U.S.C. App. 1301, 1305, 1348, 1349(a), 1354, 1421, 1423, and 1486, 49 U.S.C. App. 1655(c), 49 U.S.C. App. 2101, 2102, 2103(a), and 2104 (a) and (b), 49 U.S.C. 2210(a)(5), and 49 U.S.C. App. 2153, 2154, 2155, and 2156.

Subpart A—General Provisions

§ 161.1 Purpose.

This part implements the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2153, 2154, 2155, and 2156). It prescribes:

(a) Notice requirements and procedures for airport operators implementing Stage 3 aircraft noise and access restrictions pursuant to agreements between airport operators and aircraft operators;

(b) Analysis and notice requirements for airport operators proposing Stage 2 aircraft noise and access restrictions;

(c) Notice, review, and approval requirements for airport operators proposing Stage 3 aircraft noise and access restrictions; and

(d) Procedures for Federal Aviation Administration reevaluation of agreements containing restrictions on Stage 3 aircraft operations and of aircraft noise and access restrictions affecting Stage 3 aircraft operations imposed by airport operators.

§ 161.3 Applicability.

(a) This part applies to airports imposing restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to airports imposing restrictions on Stage 3 aircraft operations that became effective after October 1, 1990.

(b) This part also applies to airports enacting amendments to airport noise and access restrictions in effect on October 1, 1990, but amended after that date, where the amendment reduces or limits aircraft operations or affects aircraft safety.

(c) The notice, review, and approval requirements set forth in this part apply to all airports imposing noise or access restrictions as defined in § 161.5 of this part.

§ 161.5 Definitions.

For the purposes of this part, the following definitions apply:

Agreement means a document in writing signed by the airport operator; those aircraft operators currently operating at the airport that would be affected by the noise or access restriction; and all affected new entrants planning to provide new air service within 180 days of the effective date of the restriction that have submitted to the airport operator a plan of operations and notice of agreement to the restriction.

Aircraft operator, for purposes of this part, means any owner of an aircraft that operates the aircraft, i.e., uses, causes to use, or authorizes the use of the aircraft; or in the case of a leased aircraft, any lessee that operates the aircraft pursuant to a lease. As used in this part, aircraft operator also means any representative of the aircraft owner, or in the case of a leased aircraft, any representative of the lessee empowered to enter into agreements with the airport operator regarding use of the airport by an aircraft.

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport noise study area means that area surrounding the airport within the noise contour selected by the applicant for study and must include the noise contours required to be developed for noise exposure maps specified in 14 CFR part 150.

Airport operator means the airport proprietor.

Aviation user class means the following categories of aircraft operators: air carriers operating under parts 121 or 129 of this chapter; commuters and other carriers operating under parts 127 and 135 of this chapter; general aviation, military, or government operations.

Day-night average sound level (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m. and midnight, local time, as defined in 14 CFR part 150. (The scientific notation for DNL is L_{dn}).

Noise or access restrictions means restrictions (including but not limited to provisions of ordinances and leases) affecting access or noise that affect the operations of Stage 2 or Stage 3 aircraft, such as limits on the noise generated on either a single-event or cumulative basis; a limit, direct or indirect, on the total number of Stage 2 or Stage 3 aircraft operations; a noise budget or noise allocation program that includes Stage 2 or Stage 3 aircraft; a restriction imposing limits on hours of operations; a program of airport-use charges that has the direct or indirect effect of controlling

airport noise; and any other limit on Stage 2 or Stage 3 aircraft that has the effect of controlling airport noise. This definition does not include peak-period pricing programs where the objective is to align the number of aircraft operations with airport capacity.

Stage 2 aircraft means an aircraft that has been shown to comply with the Stage 2 requirements under 14 CFR part 36.

Stage 3 aircraft means an aircraft that has been shown to comply with the Stage 3 requirements under 14 CFR part 36.

§ 161.7 Limitations.

(a) Aircraft operational procedures that must be submitted for adoption by the FAA, such as preferential runway use, noise abatement approach and departure procedures and profiles, and flight tracks, are not subject to this part. Other noise abatement procedures, such as taxiing and engine runups, are not subject to this part unless the procedures imposed limit the total number of Stage 2 or Stage 3 aircraft operations, or limit the hours of Stage 2 or Stage 3 aircraft operations, at the airport.

(b) The notice, review, and approval requirements set forth in this part do not apply to airports with restrictions as specified in 49 U.S.C. App. 2153(a)(2)(C):

(1) A local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on November 5, 1990.

(2) A local action to enforce a negotiated or executed airport aircraft noise or access restriction the airport operator and the aircraft operators agreed to before November 5, 1990.

(3) An intergovernmental agreement including airport aircraft noise or access restriction in effect on November 5, 1990.

(4) A subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on November 5, 1990, where the amendment does not reduce or limit aircraft operations or affect aircraft safety.

(5) A restriction that was adopted by an airport operator on or before October 1, 1990, and that was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction, or a part thereof, is subsequently allowed by a court to take effect.

(6) In any case in which a restriction described in paragraph (b)(5) of this section is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction, if such new restriction would not prohibit aircraft operations in effect on November 5, 1990.

(7) A local action that represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction, where the initial portion of such program was adopted during calendar year 1988 and was in effect on November 5, 1990.

(c) The notice, review, and approval requirements of subpart D of this part with regard to Stage 3 aircraft restrictions do not apply if the FAA has, prior to November 5, 1990, formed a working group (outside of the process established by 14 CFR part 150) with a local airport operator to examine the noise impact of air traffic control procedure changes. In any case in which an agreement relating to noise reductions at such airport is then entered into between the airport proprietor and an air carrier or air carrier constituting a majority of the air carrier users of such airport, the requirements of subparts B and D of this part with respect to restrictions on Stage 3 aircraft operations do apply to local actions to enforce such agreements.

(d) Except to the extent required by the application of the provisions of the Act, nothing in this part eliminates, invalidates, or supersedes the following:

(1) Existing law with respect to airport noise or access restrictions by local authorities;

(2) Any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and

(3) The authority of the Secretary of Transportation to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

§ 161.9 Designation of noise description methods.

For purposes of this part, the following requirements apply:

(a) The sound level at an airport and surrounding areas, and the exposure of individuals to noise resulting from operations at an airport, must be established in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150; and

(b) Use of computer models to create noise contours must be in accordance with the criteria prescribed under appendix A of 14 CFR part 150.

§ 161.11 Identification of land uses in airport noise study area.

For the purposes of this part, uses of land that are normally compatible or noncompatible with various noise-exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under appendix A of 14 CFR part 150. Determination of land use must be based on professional planning, zoning, and building and site design information and expertise.

Subpart B—Agreements

§ 161.101 Scope.

(a) This subpart applies to an airport operator's noise or access restriction on the operation of Stage 3 aircraft that is implemented pursuant to an agreement between an airport operator and all aircraft operators affected by the proposed restriction that are serving or will be serving such airport within 180 days of the date of the proposed restriction.

(b) For purposes of this subpart, an agreement shall be in writing and signed by:

(1) The airport operator;

(2) Those aircraft operators currently operating at the airport who would be affected by the noise or access restriction; and

(3) All new entrants that have submitted the information required under § 161.105(a) of this part.

(c) This subpart does not apply to restrictions exempted in § 161.7 of this part.

(d) This subpart does not limit the right of an airport operator to enter into an agreement with one or more aircraft operators that restricts the operation of Stage 2 or Stage 3 aircraft as long as the restriction is not enforced against aircraft operators that are not party to the agreement. Such an agreement is not covered by this subpart except that an aircraft operator may apply for sanctions pursuant to subpart F of this part for restrictions the airport operator seeks to impose other than those in the agreement.

§ 161.103 Notice of the proposed restriction.

(a) An airport operator may not implement a Stage 3 restriction pursuant to an agreement with all affected aircraft operators unless there has been public notice and an opportunity for comment as prescribed in this subpart.

(b) In order to establish a restriction in accordance with this subpart, the airport operator shall, at least 45 days before implementing the restriction, publish a notice of the proposed restriction in an areawide newspaper or newspapers that either singly or together has general circulation

throughout the airport vicinity or airport noise study area, if one has been delineated: post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; affected operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing non-scheduled service;

(2) The Federal Aviation Administration;

(3) Each Federal, state, and local agency with land use control jurisdiction within the vicinity of the airport, or the airport noise study area, if one has been delineated;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each direct notice provided in accordance with paragraph (b) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including sanctions for noncompliance and a statement that it will be implemented pursuant to a signed agreement;

(3) A brief discussion of the specific need for and goal of the proposed restriction;

(4) Identification of the operators and the types of aircraft expected to be affected;

(5) The proposed effective date of the restriction and any proposed enforcement mechanism;

(6) An invitation to comment on the proposed restriction, with a minimum 45-day comment period;

(7) Information on how to request copies of the restriction portion of the agreement, including any sanctions for noncompliance;

(8) A notice to potential new entrant aircraft operators that are known to be interested in serving the airport of the requirements set forth in § 161.105 of this part; and

(9) Information on how to submit a new entrant application, comments, and the address for submitting applications and comments to the airport operator, including identification of a contact person at the airport.

(d) The Federal Aviation Administration will publish an announcement of the proposed restriction in the Federal Register.

§ 161.105 Requirements for new entrants.

(a) Within 45 days of the publication of the notice of a proposed restriction by the airport operator under § 161.103(b) of this part, any person intending to provide new air service to the airport within 180 days of the proposed date of implementation of the restriction (as evidenced by submission of a plan of operations to the airport operator) must notify the airport operator if it would be affected by the restriction contained in the proposed agreement, and either that it—

(1) Agrees to the restriction; or

(2) Objects to the restriction.

(b) Failure of any person described in § 161.105(a) of this part to notify the airport operator that it objects to the proposed restriction will constitute waiver of the right to claim that it did not consent to the agreement and render that person ineligible to use lack of signature as ground to apply for sanctions under subpart F of this part for two years following the effective date of the restriction. The signature of such a person need not be obtained by the airport operator in order to comply with § 161.107(a) of this part.

(c) All other new entrants are also ineligible to use lack of signature as ground to apply for sanctions under subpart F of this part for two years.

§ 161.107 Implementation of the restriction.

(a) To be eligible to implement a Stage 3 noise or access restriction under this subpart, an airport operator shall have the restriction contained in an agreement as defined in § 161.101(b) of this part.

(b) An airport operator may not implement a restriction pursuant to an agreement until the notice and comment requirements of § 161.103 of this part have been met.

(c) Each airport operator must notify the Federal Aviation Administration of the implementation of a restriction pursuant to an agreement and must include in the notice evidence of compliance with § 161.103 and a copy of the signed agreement.

§ 161.109 Notice of termination of restriction pursuant to an agreement.

An airport operator must notify the FAA within 10 days of the date of termination of a restriction pursuant to an agreement under this subpart.

§ 161.111 Availability of data and comments on a restriction implemented pursuant to an agreement.

The airport operator shall retain all relevant supporting data and all comments relating to a restriction implemented pursuant to an agreement for as long as the restriction is in effect. The airport operator shall make these materials available for inspection upon request by the FAA. The information shall be made available for inspection by any person during the pendency of any petition for reevaluation found justified by the FAA.

§ 161.113 Effect of agreements; limitation on reevaluation.

(a) Except as otherwise provided in this subpart, a restriction implemented by an airport operator pursuant to this subpart shall have the same force and effect as if it had been a restriction implemented in accordance with subpart D of this part.

(b) A restriction implemented by an airport operator pursuant to this subpart may be subject to reevaluation by the FAA under subpart E of this part.

Subpart C—Notice Requirements for Stage 2 Restrictions

§ 161.201 Scope.

(a) This subpart applies to:

(1) An airport imposing a noise or access restriction on the operation of Stage 2 aircraft, but not Stage 3 aircraft, proposed after October 1, 1990.

(2) An airport imposing an amendment to a Stage 2 restriction, if the amendment is proposed after October 1, 1990, and reduces or limits Stage 2 aircraft operations (compared to the restriction that it amends) or affects aircraft safety.

(b) This subpart does not apply to an airport imposing a Stage 2 restriction specifically exempted in § 161.7 or a Stage 2 restriction contained in an agreement as long as the restriction is not enforced against aircraft operators that are not parties to the agreement.

§ 161.203 Notice of proposed restriction.

(a) An airport operator may not implement a Stage 2 restriction within the scope of § 161.201 unless the airport operator provides an analysis of the proposed restriction, prepared in accordance with § 161.205, and a public notice and opportunity for comment as prescribed in this subpart. The notice and analysis required by this subpart shall be completed at least 180 days prior to the effective date of the restriction.

(b) Except as provided in § 161.211, an airport operator must publish a notice of the proposed restriction in an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area; post a notice in the airport in a prominent location accessible to airport

users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction;

(2) The Federal Aviation Administration;

(3) Each Federal, state, and local agency with land-use control jurisdiction within the airport noise study area;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each notice provided in accordance with paragraph (b) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including a statement that it will be a mandatory Stage 2 restriction, and where the complete text of the restriction, and any sanctions for noncompliance, are available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the operators and the types of aircraft expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule, lease), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction, as required by § 161.205 of this subpart, or an announcement of where the analysis is available for public inspection;

(7) An invitation to comment on the proposed restriction and analysis, with a minimum 45-day comment period;

(8) Information on how to request copies of the complete text of the proposed restriction, including any sanctions for noncompliance, and the analysis (if not included with the notice); and

(9) The address for submitting comments to the airport operator, including identification of a contact person at the airport.

(d) At the time of notice, the airport operator shall provide the FAA with a full text of the proposed restriction, including any sanctions for noncompliance.

(e) The Federal Aviation Administration will publish an announcement of the proposed Stage 2 restriction in the **Federal Register**.

§ 161.205 Required analysis of proposed restriction and alternatives.

(a) Each airport operator proposing a noise or access restriction on Stage 2 aircraft operations shall prepare the following and make it available for public comment:

(1) An analysis of the anticipated or actual costs and benefits of the proposed noise or access restriction;

(2) A description of alternative restrictions; and

(3) A description of the alternative measures considered that do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to costs and benefits of the proposed noise or access restriction.

(b) In preparing the analyses required by this section, the airport operator shall use the noise measurement systems and identify the airport noise study area as specified in §§ 161.9 and 161.11, respectively; shall use currently accepted economic methodology; and shall provide separate detail on the costs and benefits of the proposed restriction with respect to the operations of Stage 2 aircraft weighing less than 75,000 pounds if the restriction applies to this class. The airport operator shall specify the methods used to analyze the costs and benefits of the proposed restriction and the alternatives.

(c) The kinds of information set forth in § 161.305 are useful elements of an adequate analysis of a noise or access restriction on Stage 2 aircraft operations.

§ 161.207 Comment by interested parties.

Each airport operator shall establish a public docket or similar method for receiving and considering comments, and shall make comments available for inspection by interested parties upon request. Comments must be retained as long as the restriction is in effect.

§ 161.209 Requirements for proposal changes.

(a) Each airport operator shall promptly advise interested parties of any changes to a proposed restriction, including changes that affect noncompatible land uses, and make available any changes to the proposed restriction and its analysis. Interested parties include those that received direct notice under § 161.203(b), or those that were required to be consulted in accordance with the procedures in § 161.211 of this part, and those that have commented on the proposed restriction.

(b) If there are substantial changes to the proposed restriction or the analysis during the 180-day notice period, the airport operator shall initiate new notice following the procedures in § 161.203 or, alternatively, the procedures in § 161.211. A substantial change includes, but is not limited to, a proposal that would increase the burden on any aviation user class.

(c) In addition to the information in § 161.203(c), new notice must indicate that the airport operator is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction. The effective date of the restriction must be at least 180 days after the date the new notice and revised analysis are made available for public comment.

§ 161.211 Optional use of 14 CFR part 150 procedures.

(a) An airport operator may use the procedures in part 150 of this chapter, instead of the procedures described in §§ 161.203(b) and 161.209(b), as a means of providing an adequate public notice and comment opportunity on a proposed Stage 2 restriction.

(b) If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the operator shall:

(1) Ensure that all parties identified for direct notice under § 161.203(b) are notified that the airport's 14 CFR part 150 program will include a proposed Stage 2 restriction under part 161, and that these parties are offered the opportunity to participate as consulted parties during the development of the 14 CFR part 150 program;

(2) Provide the FAA with a full text of the proposed restriction, including any sanctions for noncompliance, at the time of the notice;

(3) Include the information in § 161.203 (c)(2) through (c)(5) and 161.205 in the analysis of the proposed restriction for the part 14 CFR part 150 program;

(4) Wait 180 days following the availability of the above analysis for review by the consulted parties and compliance with the above notice requirements before implementing the Stage 2 restriction; and

(5) Include in its 14 CFR part 150 submission to the FAA evidence of compliance with paragraphs (b)(1) and (b)(4) of this section, and the analysis in paragraph (b)(3) of this section, together with a clear identification that the 14 CFR part 150 program includes a

proposed Stage 2 restriction under part 161.

(c) The FAA determination on the 14 CFR part 150 submission does not constitute approval or disapproval of the proposed Stage 2 restriction under part 161.

(d) An amendment of a restriction may also be processed under 14 CFR part 150 procedures in accordance with this section.

§ 161.213 Notification of a decision not to implement a restriction.

If a proposed restriction has been through the procedures prescribed in this subpart and the restriction is not subsequently implemented, the airport operator shall so advise the interested parties. Interested parties are described in § 161.209(a).

Subpart D—Notice, Review, and Approval Requirements for Stage 3 Restrictions

§ 161.301 Scope.

(a) This subpart applies to:

(1) An airport imposing a noise or access restriction on the operation of Stage 3 aircraft that first became effective after October 1, 1990.

(2) An airport imposing an amendment to a Stage 3 restriction, if the amendment becomes effective after October 1, 1990, and reduces or limits Stage 3 aircraft operations (compared to the restriction that it amends) or affects aircraft safety.

(b) This subpart does not apply to an airport imposing a Stage 3 restriction specifically exempted in § 161.7, or an agreement complying with subpart B of this part.

(c) A Stage 3 restriction within the scope of this subpart may not become effective unless it has been submitted to and approved by the FAA. The FAA will review only those Stage 3 restrictions that are proposed by, or on behalf of, an entity empowered to implement the restriction.

§ 161.303 Notice of proposed restrictions.

(a) Each airport operator or aircraft operator (hereinafter referred to as applicant) proposing a Stage 3 restriction shall provide public notice and an opportunity for public comment, as prescribed in this subpart, before submitting the restriction to the FAA for review and approval.

(b) Except as provided in § 161.321, an applicant shall publish a notice of the proposed restriction in an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area; post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction;

(2) The Federal Aviation Administration;

(3) Each Federal, state, and local agency with land-use control jurisdiction within the airport noise study area;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each notice provided in accordance with paragraph (b) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction (and any alternatives, in order of preference), including a statement that it will be a mandatory Stage 3 restriction; and where the complete text of the restriction, and any sanctions for noncompliance, are available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the operators and types of aircraft expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule, lease, or other document), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction, in accordance with § 161.305 of this part, or an announcement regarding where the analysis is available for public inspection;

(7) An invitation to comment on the proposed restriction and the analysis, with a minimum 45-day comment period;

(8) Information on how to request a copy of the complete text of the restriction, including any sanctions for noncompliance, and the analysis (if not included with the notice); and

(9) The address for submitting comments to the airport operator or aircraft operator proposing the restriction, including identification of a contact person.

(d) Applicants may propose alternative restrictions, including partial implementation of any proposal, and indicate an order of preference. If alternative restriction proposals are submitted, the requirements listed in paragraphs (c)(2) through (c)(6) of this section should address the alternative proposals where appropriate.

§ 161.305 Required analysis and conditions for approval of proposed restrictions.

Each applicant proposing a noise or access restriction on Stage 3 operations shall prepare and make available for public comment an analysis that supports, by substantial evidence, that the six statutory conditions for approval have been met for each restriction and any alternatives submitted. The statutory conditions are set forth in 49 U.S.C. App. 2153(d)(2) and paragraph (e) of this section. Any proposed restriction (including alternatives) on Stage 3 aircraft operations that also affects the operation of Stage 2 aircraft must include analysis of the proposals in a manner that permits the proposal to be understood in its entirety. (Nothing in this section is intended to add a requirement for the issuance of restrictions on Stage 2 aircraft to those of subpart C of this part.) The applicant shall provide:

(a) The complete text of the proposed restriction and any submitted alternatives, including the proposed wording in a city ordinance, airport rule, lease, or other document, and any sanctions for noncompliance;

(b) Maps denoting the airport geographic boundary, and the geographic boundaries and names of each jurisdiction that controls land use within the airport noise study area;

(c) An adequate environmental assessment of the proposed restriction or adequate information supporting a categorical exclusion in accordance with FAA orders and procedures regarding compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321);

(d) A summary of the evidence in the submission supporting the six statutory conditions for approval; and

(e) An analysis of the restriction, demonstrating by substantial evidence that the statutory conditions are met. The analysis must:

(1) Be sufficiently detailed to allow the FAA to evaluate the merits of the proposed restriction; and

(2) Contain the following essential elements needed to provide substantial evidence supporting each condition for approval:

(i) *Condition 1: The restriction is reasonable, nonarbitrary, and*

nondiscriminatory. (A) Essential information needed to demonstrate this condition includes the following:

(*1*) Evidence that a current or projected noise or access problem exists, and that the proposed action(s) could relieve the problem, including:

(*i*) A detailed description of the problem precipitating the proposed restriction with relevant background information on factors contributing to the proposal and any court-ordered action or estimated liability concerns; a description of any noise agreements or noise or access restrictions currently in effect at the airport; and measures taken to achieve land-use compatibility, such as controls or restrictions on land use in the vicinity of the airport and measures carried out in response to 14 CFR part 150; and actions taken to comply with grant assurances requiring that:

(*A*) Airport development projects be reasonably consistent with plans of public agencies that are authorized to plan for the development of the area around the airport; and

(*B*) The sponsor give fair consideration to the interests of communities in or near where the project may be located; take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land near the airport to activities and purposes compatible with normal airport operations; and not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility (with respect to the airport) of any noise compatibility program measures upon which federal funds have been expended.

(*ii*) An analysis of the estimated noise impact of aircraft operations with and without the proposed restriction for the year the restriction is expected to be implemented, for a forecast timeframe after implementation, and for any other years critical to understanding the noise impact of the proposed restriction. The analysis of noise impact with and without the proposed restriction including:

(*A*) Maps of the airport noise study area overlaid with noise contours as specified in §§ 161.9 and 161.11 of this part;

(*B*) The number of people and the noncompatible land uses within the airport noise study area with and without the proposed restriction for each year the noise restriction is analyzed;

(*C*) Technical data supporting the noise impact analysis, including the classes of aircraft, fleet mix, runway use percentage, and day/night breakout of operations; and

(*D*) Data on current and projected airport activity that would exist in the absence of the proposed restriction.

(*2*) Evidence that other available remedies are infeasible or would be less cost-effective, including descriptions of any alternative aircraft restrictions that have been considered and rejected, and the reasons for the rejection; and of any land use or other nonaircraft controls or restrictions that have been considered and rejected, including those proposed under 14 CFR part 150 and not implemented, and the reasons for the rejection or failure to implement.

(*3*) Evidence that the noise or access standards are the same for all aviation user classes or that the differences are justified, such as:

(*i*) A description of the relationship of the effect of the proposed restriction on airport users (by aviation user class); and

(*ii*) The noise attributable to these users in the absence of the proposed restriction.

(B) At the applicant's discretion, information may also be submitted as follows:

(*1*) Evidence not submitted under paragraph (e)(2)(ii)(A) of this section (Condition 2) that there is a reasonable chance that expected benefits will equal or exceed expected cost; for example, comparative economic analyses of the costs and benefits of the proposed restriction and aircraft and nonaircraft alternative measures. For detailed elements of analysis, see paragraph (e)(2)(ii)(A) of this section.

(*2*) Evidence not submitted under paragraph (e)(2)(ii)(A) of this section that the level of any noise-based fees that may be imposed reflects the cost of mitigating noise impacts produced by the aircraft, or that the fees are reasonably related to the intended level of noise impact mitigation.

(ii) *Condition 2: The restriction does not create an undue burden on interstate or foreign commerce.* (A) Essential information needed to demonstrate this statutory condition includes:

(*1*) Evidence, based on a cost-benefit analysis, that the estimated potential benefits of the restriction have a reasonable chance to exceed the estimated potential cost of the adverse effects on interstate and foreign commerce. In preparing the economic analysis required by this section, the applicant shall use currently accepted economic methodology, specify the methods used and assumptions underlying the analysis, and consider:

(*i*) The effect of the proposed restriction on operations of aircraft by aviation user class (and for air carriers, the number of operations of aircraft by carrier), and on the volume of passengers and cargo for the year the restriction is expected to be implemented and for the forecast timeframe.

(*ii*) The estimated costs of the proposed restriction and alternative nonaircraft restrictions including the following, as appropriate:

(*A*) Any additional cost of continuing aircraft operations under the restriction, including reasonably available information concerning any net capital costs of acquiring or retrofitting aircraft (net of salvage value and operating efficiencies) by aviation user class; and any incremental recurring costs;

(*B*) Costs associated with altered or discontinued aircraft operations, such as reasonably available information concerning loss to carriers of operating profits; decreases in passenger and shipper consumer surplus by aviation user class; loss in profits associated with other airport services or other entities: and/or any significant economic effect on parties other than aviation users.

(*C*) Costs associated with implementing nonaircraft restrictions or nonaircraft components of restrictions, such as reasonably available information concerning estimates of capital costs for real property, including redevelopment, soundproofing, noise easements, and purchase of property interests; and estimates of associated incremental recurring costs; or an explanation of the legal or other impediments to implementing such restrictions.

(*D*) Estimated benefits of the proposed restriction and alternative restrictions that consider, as appropriate, anticipated increase in real estate values and future construction cost (such as sound insulation) savings; anticipated increase in airport revenues; quantification of the noise benefits, such as number of people removed from noise contours and improved work force and/or educational productivity, if any; valuation of positive safety effects, if any; and/or other qualitative benefits, including improvements in quality of life.

(B) At the applicant's discretion, information may also be submitted as follows:

(*1*) Evidence that the affected carriers have a reasonable chance to continue service at the airport or at other points in the national airport system.

(*2*) Evidence that other air carriers are able to provide adequate service to the airport and other points in the system without diminishing competition.

(3) Evidence that comparable services or facilities are available at another airport controlled by the airport operator in the market area, including services available at other airports.

(4) Evidence that alternative transportation service can be attained through other means of transportation.

(5) Information on the absence of adverse evidence or adverse comments with respect to undue burden in the notice process required in § 161.303, or alternatively in § 161.321, of this part as evidence that there is no undue burden.

(iii) *Condition 3: The proposed restriction maintains safe and efficient use of the navigable airspace.* Essential information needed to demonstrate this statutory condition includes evidence that the proposed restriction maintains safe and efficient use of the navigable airspace based upon:

(A) Identification of airspace and obstacles to navigation in the vicinity of the airport; and

(B) An analysis of the effects of the proposed restriction with respect to use of airspace in the vicinity of the airport, substantiating that the restriction maintains or enhances safe and efficient use of the navigable airspace. The analysis shall include a description of the methods and data used.

(iv) *Condition 4: The proposed restriction does not conflict with any existing Federal statute or regulation.* Essential information needed to demonstrate this condition includes evidence demonstrating that no conflict is presented between the proposed restriction and any existing Federal statute or regulation, including those governing:

(A) Exclusive rights;

(B) Control of aircraft operations; and

(C) Existing Federal grant agreements.

(v) *Condition 5: The applicant has provided adequate opportunity for public comment on the proposed restriction.* Essential information needed to demonstrate this condition includes evidence that there has been adequate opportunity for public comment on the restriction as specified in § 161.303 or § 161.321 of this part.

(vi) *Condition 6: The proposed restriction does not create an undue burden on the national aviation system.* Essential information needed to demonstrate this condition includes evidence that the proposed restriction does not create an undue burden on the national aviation system such as:

(A) An analysis demonstrating that the proposed restriction does not have a substantial adverse effect on existing or planned airport system capacity, on observed or forecast airport system congestion and aircraft delay, and on airspace system capacity or workload;

(B) An analysis demonstrating that nonaircraft alternative measures to achieve the same goals as the proposed subject restrictions are inappropriate;

(C) The absence of comments with respect to imposition of an undue burden on the national aviation system in response to the notice required in § 161.303 or § 161.321.

§ 161.307 Comment by interested parties.

(a) Each applicant proposing a restriction shall establish a public docket or similar method for receiving and considering comments, and shall make comments available for inspection by interested parties upon request. Comments must be retained as long as the restriction is in effect.

(b) Each applicant shall submit to the FAA a summary of any comments received. Upon request by the FAA, the applicant shall submit copies of the comments.

§ 161.309 Requirements for proposal changes.

(a) Each applicant shall promptly advise interested parties of any changes to a proposed restriction or alternative restriction that are not encompassed in the proposals submitted, including changes that affect noncompatible land uses or that take place before the effective date of the restriction, and make available these changes to the proposed restriction and its analysis. For the purpose of this paragraph, interested parties include those who received direct notice under § 161.303(b) of this part, or those who were required to be consulted in accordance with the procedures in § 161.321 of this part, and those who commented on the proposed restriction.

(b) If there are substantial changes to a proposed restriction or the analysis made available prior to the effective date of the restriction, the applicant proposing the restriction shall initiate new notice in accordance with the procedures in § 161.303 or, alternatively, the procedures in § 161.321. These requirements apply to substantial changes that are not encompassed in submitted alternative restriction proposals and their analyses. A substantial change to a restriction includes, but is not limited to, any proposal that would increase the burden on any aviation user class.

(c) In addition to the information in § 161.303(c), a new notice must indicate that the applicant is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction.

(d) If substantial changes requiring a new notice are made during the FAA's 180-day review of the proposed restriction, the applicant submitting the proposed restriction shall notify the FAA in writing that it is withdrawing its proposal from the review process until it has completed additional analysis, public review, and documentation of the public review. Resubmission to the FAA will restart the 180-day review.

§ 161.311 Application procedure for approval of proposed restriction.

Each applicant proposing a Stage 3 restriction shall submit to the FAA the following information for each restriction and alternative restriction submitted, with a request that the FAA review and approve the proposed Stage 3 noise or access restriction:

(a) A summary of evidence of the fulfillment of conditions for approval, as specified in § 161.305;

(b) An analysis as specified in § 161.305, as appropriate to the proposed restriction;

(c) A statement that the entity submitting the proposal is the party empowered to implement the restriction, or is submitting the proposal on behalf of such party; and

(d) A statement as to whether the airport requests, in the event of disapproval of the proposed restriction or any alternatives, that the FAA approve any portion of the restriction or any alternative that meets the statutory requirements for approval. An applicant requesting partial approval of any proposal should indicate its priorities as to portions of the proposal to be approved.

§ 161.313 Review of application.

(a) *Determination of completeness.* The FAA, within 30 days of receipt of an application, will determine whether the application is complete in accordance with § 161.311. Determinations of completeness will be made on all proposed restrictions and alternatives. This completeness determination is not an approval or disapproval of the proposed restriction.

(b) *Process for complete application.* When the FAA determines that a complete application has been submitted, the following procedures apply:

(1) The FAA notifies the applicant that it intends to act on the proposed restriction and publishes notice of the proposed restriction in the Federal Register in accordance with § 161.315. The 180-day period for approving or disapproving the proposed restriction

will start on the date of original FAA receipt of the application.

(2) Following review of the application, public comments, and any other information obtained under § 161.317(b), the FAA will issue a decision approving or disapproving the proposed restriction. This decision is a final decision of the Administrator for purpose of judicial review.

(c) *Process for incomplete application.* If the FAA determines that an application is not complete with respect to any submitted restriction or alternative restriction, the following procedures apply:

(1) The FAA shall notify the applicant in writing, returning the application and setting forth the type of information and analysis needed to complete the application in accordance with § 161.311.

(2) Within 30 days after the receipt of this notice, the applicant shall advise the FAA in writing whether or not it intends to resubmit and supplement its application.

(3) If the applicant does not respond in 30 days, or advises the FAA that it does not intend to resubmit and/or supplement the application, the application will be denied. This closes the matter without prejudice to later application and does not constitute disapproval of the proposed restriction.

(4) If the applicant chooses to resubmit and supplement the application, the following procedures apply:

(i) Upon receipt of the resubmitted application, the FAA determines whether the application, as supplemented, is complete as set forth in paragraph (a) of this section.

(ii) If the application is complete, the procedures set forth in § 161.315 shall be followed. The 180-day review period starts on the date of receipt of the last supplement to the application.

(iii) If the application is still not complete with respect to the proposed restriction or at least one submitted alternative, the FAA so advises the applicant as set forth in paragraph (c)(1) of this section and provides the applicant with an additional opportunity to supplement the application as set forth in paragraph (c)(2) of this section.

(iv) If the environmental documentation (either an environmental assessment or information supporting a categorical exclusion) is incomplete, the FAA will so notify the applicant in writing, returning the application and setting forth the types of information and analysis needed to complete the documentation. The FAA will continue to return an application until adequate environmental documentation is provided. When the application is determined to be complete, including the environmental documentation, the 180-day period for approval or disapproval will begin upon receipt of the last supplement to the application.

(v) Following review of the application and its supplements, public comments, and any other information obtained under § 161.317(b), the FAA will issue a decision approving or disapproving the application. This decision is a final decision of the Administrator for the purpose of judicial review.

(5) The FAA will deny the application and return it to the applicant if:

(i) None of the proposals submitted are found to be complete;

(ii) The application has been returned twice to the applicant for reasons other than completion of the environmental documentation; and

(iii) The applicant declines to complete the application. This closes the matter without prejudice to later application, and does not constitute disapproval of the proposed restriction.

§ 161.315 Receipt of complete application.

(a) When a complete application has been received, the FAA will notify the applicant by letter that the FAA intends to act on the application.

(b) The FAA will publish notice of the proposed restriction in the **Federal Register**, inviting interested parties to file comments on the application within 30 days after publication of the **Federal Register** notice.

§ 161.317 Approval or disapproval of proposed restriction.

(a) Upon determination that an application is complete with respect to at least one of the proposals submitted by the applicant, the FAA will act upon the complete proposals in the application. The FAA will not act on any proposal for which the applicant has declined to submit additional necessary information.

(b) The FAA will review the applicant's proposals in the preference order specified by the applicant. The FAA may request additional information from aircraft operators, or any other party, and may convene an informal meeting to gather facts relevant to its determination.

(c) The FAA will evaluate the proposal and issue an order approving or disapproving the proposed restriction and any submitted alternatives, in whole or in part, in the order of preference indicated by the applicant. Once the FAA approves a proposed restriction, the FAA will not consider any proposals of lower applicant-stated preference. Approval or disapproval will be given by the FAA within 180 days after receipt of the application or last supplement thereto under § 161.313. The FAA will publish its decision in the **Federal Register** and notify the applicant in writing.

(d) The applicant's failure to provide substantial evidence supporting the statutory conditions for approval of a particular proposal is grounds for disapproval of that proposed restriction.

(e) The FAA will approve or disapprove only the Stage 3 aspects of a restriction if the restriction applies to both Stage 2 and Stage 3 aircraft operations.

(f) An order approving a restriction may be subject to requirements that the applicant:

(1) Comply with factual representations and commitments in support of the restriction; and

(2) Ensure that any environmental mitigation actions or commitments by any party that are set forth in the environmental documentation provided in support of the restriction are implemented.

§ 161.319 Withdrawal or revision of restriction.

(a) The applicant may withdraw or revise a proposed restriction at any time prior to FAA approval or disapproval, and must do so if substantial changes are made as described in § 161.309. The applicant shall notify the FAA in writing of a decision to withdraw the proposed restriction for any reason. The FAA will publish a notice in the **Federal Register** that it has terminated its review without prejudice to resubmission. A resubmission will be considered a new application.

(b) A subsequent amendment to a Stage 3 restriction that was in effect after October 1, 1990, or an amendment to a Stage 3 restriction previously approved by the FAA, is subject to the procedures in this subpart if the amendment will further reduce or limit aircraft operations or affect aircraft safety. The applicant may, at its option, revise or amend a restriction previously disapproved by the FAA and resubmit it for approval. Amendments are subject to the same requirements and procedures as initial submissions.

§ 161.321 Optional use of 14 CFR part 150 procedures.

(a) An airport operator may use the procedures in part 150 of this chapter, instead of the procedures described in §§ 161.303(b) and 161.309(b) of this part, as a means of providing an adequate public notice and opportunity to

comment on proposed Stage 3 restrictions, including submitted alternatives.

(b) If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the operator shall:

(1) Ensure that all parties identified for direct notice under § 161.303(b) are notified that the airport's 14 CFR part 150 program submission will include a proposed Stage 3 restriction under part 161, and that these parties are offered the opportunity to participate as consulted parties during the development of the 14 CFR part 150 program;

(2) Include the information required in § 161.303(c) (2) through (5) and § 161.305 in the analysis of the proposed restriction in the 14 CFR part 150 program submission; and

(3) Include in its 14 CFR part 150 submission to the FAA evidence of compliance with the notice requirements in paragraph (b)(1) of this section and include the information required for a part 161 application in § 161.311, together with a clear identification that the 14 CFR part 150 submission includes a proposed Stage 3 restriction for FAA review and approval under §§ 161.313, 161.315, and 161.317.

(c) The FAA will evaluate the proposed part 161 restriction on Stage 3 aircraft operations included in the 14 CFR part 150 submission in accordance with the procedures and standards of this part, and will review the total 14 CFR part 150 submission in accordance with the procedures and standards of 14 CFR part 150.

(d) An amendment of a restriction, as specified in § 161.319(b) of this part, may also be processed under 14 CFR part 150 procedures.

§ 161.323 Notification of a decision not to implement a restriction.

If a Stage 3 restriction has been approved by the FAA and the restriction is not subsequently implemented, the applicant shall so advise the interested parties specified in § 161.309(a) of this part.

§ 161.325 Availability of data and comments on an implemented restriction.

The applicant shall retain all relevant supporting data and all comments relating to an approved restriction for as long as the restriction is in effect and shall make these materials available for inspection upon request by the FAA. This information shall be made available for inspection by any person during the pendency of any petition for reevaluation found justified by the FAA.

Subpart E—Reevaluation of Stage 3 Restrictions

§ 161.401 Scope.

This subpart applies to an airport imposing a noise or access restriction on the operation of Stage 3 aircraft that first became effective after October 1, 1990, and had either been agreed to in compliance with the procedures in Subpart B of this part or approved by the FAA in accordance with the procedures in subpart D of this part. This subpart does not apply to Stage 2 restrictions imposed by airports. This subpart does not apply to Stage 3 restrictions specifically exempted in § 161.7.

§ 161.403 Criteria for reevaluation.

(a) A request for reevaluation must be submitted by an aircraft operator.

(b) An aircraft operator must demonstrate to the satisfaction of the FAA that there has been a change in the noise environment of the affected airport and that a review and reevaluation pursuant to the criteria in § 161.305 is therefore justified.

(1) A change in the noise environment sufficient to justify reevaluation is either a DNL change of 1.5 dB or greater (from the restriction's anticipated target noise level result) over noncompatible land uses, or a change of 17 percent or greater in the noncompatible land uses, within an airport noise study area. For approved restrictions, calculation of change shall be based on the divergence of actual noise impact of the restriction from the estimated noise impact of the restriction predicted in the analysis required in § 161.305(e)(2)(i)(A)(*1*)(*ii*). The change in the noise environment or in the noncompatible land uses may be either an increase or decrease in noise or in noncompatible land uses. An aircraft operator may submit to the FAA reasons why a change that does not fall within either of these parameters justifies reevaluation, and the FAA will consider such arguments on a case-by-case basis.

(2) A change in the noise environment justifies reevaluation if the change is likely to result in the restriction not meeting one or more of the conditions for approval set forth in § 161.305 of this part for approval. The aircraft operator must demonstrate that such a result is likely to occur.

(c) A reevaluation may not occur less than 2 years after the date of the FAA approval. The FAA will normally apply the same 2-year requirement to agreements under subpart B of this part that affect Stage 3 aircraft operations. An aircraft operator may submit to the FAA reasons why an agreement under subpart B of this part should be reevaluated in less than 2 years, and the FAA will consider such arguments on a case-by-case basis.

(d) An aircraft operator must demonstrate that it has made a good faith attempt to resolve locally any dispute over a restriction with the affected parties, including the airport operator, before requestng reevaluation by the FAA. Such demonstration and certification shall document all attempts of local dispute resolution.

§ 161.405 Request for reevaluation.

(a) A request for reevaluation submitted to the FAA by an aircraft operator must include the following information:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction and any sanctions for noncompliance, whether the restriction was approved by the FAA or agreed to by the airport operator and aircraft operators, the date of the approval or agreement, and a copy of the restriction as incorporated in a local ordinance, airport rule, lease, or other document;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between this change and the likelihood that the restriction does not meet one or more of the conditions in § 161.305;

(5) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection; and

(6) A description and evidence of the aircraft operator's attempt to resolve the dispute locally with the affected parties, including the airport operator.

(b) The FAA will evaluate the aircraft operator's submission and determine whether or not a reevaluation is justified. The FAA may request additional information from the airport operator or any other party and may convene an informal meeting to gather facts relevant to its determination.

(c) The FAA will notify the aircraft operator in writing, with a copy to the affected airport operator, of its determination.

(1) If the FAA determines that a reevaluation is not justified, it will indicate the reasons for this decision.

(2) If the FAA determines that a reevaluation is justified, the aircraft operator will be notified to complete its analysis and to begin the public notice procedure, as set forth in this subpart.

§ 161.407 Notice of reevaluation

(a) After receiving an FAA determination that a reevaluation is justified, an aircraft operator desiring continuation of the reevaluation process shall publish a notice of request for reevaluation in an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area (or the airport vicinity for agreements where an airport noise study area has not been delineated); post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) The airport operator, other aircraft operators providing scheduled passenger or cargo service at the airport, operators of aircraft based at the airport, potential new entrants that are known to be interested in serving the airport, and aircraft operators known to be routinely providing nonscheduled service;

(2) The Federal Aviation Administration;

(3) Each Federal, State, and local agency with land-use control jurisdiction within the airport noise study area (or the airport vicinity for agreements where an airport noise study area has not been delineated);

(4) Fixed-base operators and other airport tenants whose operations may be affected by the agreement or the restriction;

(5) Community groups and business organizations that are known to be interested in the restriction; and

(6) Any other party that commented on the original restriction.

(b) Each notice provided in accordance with paragraph (a) of this section shall include:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction, including whether the restriction was approved by the FAA or agreed to by the airport operator and aircraft operators, and the date of the approval or agreement;

(3) The name of the aircraft operator requesting a reevaluation, and a statement that a reevaluation has been requested and that the FAA has determined that a reevaluation is justified;

(4) A brief discussion of the reasons why a reevaluation is justified;

(5) An analysis prepared in accordance with § 161.409 of this part supporting the aircraft operator's reevaluation request, or an announcement of where the analysis is available for public inspection;

(6) An invitation to comment on the analysis supporting the proposed reevaluation, with a minimum 45-day comment period;

(7) Information on how to request a copy of the analysis (if not in the notice); and

(8) The address for submitting comments to the aircraft operator, including identification of a contact person.

§ 161.409 Required analysis by reevaluation petitioner.

(a) An aircraft operator that has petitioned the FAA to reevaluate a restriction shall assume the burden of analysis for the reevaluation.

(b) The aircraft operator's analysis shall be made available for public review under the procedures in § 161.407 and shall include the following:

(1) A copy of the restriction or the language of the agreement as incorporated in a local ordinance, airport rule, lease, or other document;

(2) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection to the restriction;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between this change and the likelihood that the restriction does not meet one or more of the conditions in § 161.305; and

(5) Sufficient data and analysis selected from § 161.305, as applicable to the restriction at issue, to support the contention made in paragraph (b)(4) of this section. This is to include either an adequate environmental assessment of the impacts of discontinuing all or part of a restriction in accordance with the aircraft operator's petition, or adequate information supporting a categorical exclusion under FAA orders implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(c) The amount of analysis may vary with the complexity of the restriction, the number and nature of the conditions in § 161.305 that are alleged to be unsupported, and the amount of previous analysis developed in support of the restriction. The aircraft operator may incorporate analysis previously developed in support of the restriction, including previous environmental documentation to the extent applicable. The applicant is responsible for providing substantial evidence, as described in § 161.305, that one or more of the conditions are not supported.

§ 161.411 Comment by interested parties.

(a) Each aircraft operator requesting a reevaluation shall establish a docket or similar method for receiving and considering comments and shall make comments available for inspection to interested parties specified in paragraph (b) of this section upon request. Comments must be retained for two years.

(b) Each aircraft operator shall promptly notify interested parties if it makes a substantial change in its analysis that affects either the costs or benefits analyzed, or the criteria in § 161.305, differently from the analysis made available for comment in accordance with § 161.407. Interested parties include those who received direct notice under paragraph (a) of § 161.407 and those who have commented on the reevaluation. If an aircraft operator revises its analysis, it shall make the revised analysis available to an interested party upon request and shall extend the comment period at least 45 days from the date the revised analysis is made available.

§ 161.413 Reevaluation procedure.

(a) Each aircraft operator requesting a reevaluation shall submit to the FAA:

(1) The analysis described in § 161.409;

(2) Evidence that the public review process was carried out in accordance with §§ 161.407 and 161.411, including the aircraft operator's summary of the comments received; and

(3) A request that the FAA complete a reevaluation of the restriction and issue findings.

(b) Following confirmation by the FAA that the aircraft operator's documentation is complete according to the requirements of this subpart, the FAA will publish a notice of reevaluation in the **Federal Register** and provide for a 45-day comment period during which interested parties may submit comments to the FAA. The FAA will specifically solicit comments from the affected airport operator and affected local governments. A submission that is not complete will be returned to the aircraft operator with a letter indicating the deficiency, and no notice will be published. No further action will be taken by the FAA until a complete submission is received.

(c) The FAA will review all submitted documentation and comments pursuant to the conditions of § 161.305. To the extent necessary, the FAA may request additional information from the aircraft operator, airport operator, and others known to have information material to the reevaluation, and may convene an

informal meeting to gather facts relevant to a reevaluation finding.

§ 161.415 Reevaluation action.

(a) Upon completing the reevaluation, the FAA will issue appropriate orders regarding whether or not there is substantial evidence that the restriction meets the criteria in § 161.305 of this part.

(b) If the FAA's reevaluation confirms that the restriction meets the criteria, the restriction may remain as previously agreed to or approved. If the FAA's reevaluation concludes that the restriction does not meet the criteria, the FAA will withdraw a previous approval of the restriction issued under subpart D of this part to the extent necessary to bring the restriction into compliance with this part or, with respect to a restriction agreed to under subpart B of this part, the FAA will specify which criteria are not met.

(c) The FAA will publish a notice of its reevaluation findings in the **Federal Register** and notify in writing the aircraft operator that petitioned the FAA for reevaluation and the affected airport operator.

§ 161.417 Notification of status of restrictions and agreements not meeting conditions-of-approval criteria.

If the FAA has withdrawn all or part of a previous approval made under subpart D of this part, the relevant portion of the Stage 3 restriction must be rescinded. The operator of the affected airport shall notify the FAA of the operator's action with regard to a restriction affecting Stage 3 aircraft operations that has been found not to meet the criteria of § 161.305. Restrictions in agreements determined by the FAA not to meet conditions for approval may not be enforced with respect to Stage 3 aircraft operations.

Subpart F—Failure to Comply With This Part

§ 161.501 Scope.

(a) This subpart describes the procedures to terminate eligibility for airport grant funds and authority to impose or collect passenger facility charges for an airport operator's failure to comply with the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2151 *et seq.*) or this part. These procedures may be used with or in addition to any judicial proceedings initiated by the FAA to protect the national aviation system and related Federal interests.

(b) Under no conditions shall any airport operator receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 if the FAA determines that the airport is imposing any noise or access restriction not in compliance with the Airport Noise and Capacity Act of 1990 or this part. Recission of, or a commitment in writing signed by an authorized official of the airport operator to rescind or permanently not enforce, a noncomplying restriction will be treated by the FAA as action restoring compliance with the Airport Noise and Capacity Act of 1990 or this part with respect to that restriction.

§ 161.503 Informal resolution; notice of apparent violation.

Prior to the initiation of formal action to terminate eligibility for airport grant funds or authority to impose or collect passenger facility charges under this subpart, the FAA shall undertake informal resolution with the airport operator to assure compliance with the Airport Noise and Capacity Act of 1990 or this part upon receipt of a complaint or other evidence that an airport operator has taken action to impose a noise or access restriction that appears to be in violation. This shall not preclude a FAA application for expedited judicial action for other than termination of airport grants and passenger facility charges to protect the national aviation system and violated federal interests. If informal resolution is not successful, the FAA will notify the airport operator in writing of the apparent violation. The airport operator shall respond to the notice in writing not later than 20 days after receipt of the notice, and also state whether the airport operator will agree to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

§ 161.505 Notice of proposed termination of airport grant funds and passenger facility charges.

(a) The FAA begins proceedings under this section to terminate an airport operator's eligibility for airport grant funds and authority to impose or collect passenger facility charges only if the FAA determines that informal resolution is not successful.

(b) The following procedures shall apply if an airport operator agrees in writing, within 20 days of receipt of the FAA's notice of apparent violation under § 161.503, to defer implementation or enforcement of a noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the **Federal Register.**This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 60 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. The FAA will consult with the airport operator to attempt resolution and may request additional information from other parties to determine compliance. The review and consultation process shall take not less than 30 days. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the **Federal Register.**

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the FAA will notify the airport operator in writing of such determination. Where appropriate, the FAA may prescribe corrective action, including corrective action the airport operator may still need to take. Within 10 days of receipt of the FAA's determination, the airport operator shall—

(i) Advise the FAA in writing that it will complete any corrective action prescribed by the FAA within 30 days; or

(ii) Provide the FAA with a list of the domestic air carriers and foreign air carriers operating at the airport and all other issuing carriers, as defined in § 158.3 of this chapter, that have remitted passenger facility charge revenue to the airport in the preceding 12 months.

(4) If the FAA finds that the airport operator has taken satisfactory corrective action, the FAA will notify the airport operator in writing and publish notice of compliance in the **Federal Register.** If the FAA has determined that the airport operator has imposed a noise or access restriction in

violation of the Airport Noise and Capacity Act of 1990 or this part and satisfactory corrective action has not been taken, the FAA will issue an order that—

(i) Terminates eligibility for new airport grant agreements and discontinues payments of airport grant funds, including payments of costs incurred prior to the notice; and

(ii) Terminates authority to impose or collect a passenger facility charge or, if the airport operator has not received approval to impose a passenger facility charge, advises the airport operator that future applications for such approval will be denied in accordance with § 158.29(a)(1)(v) of this chapter.

(5) The FAA will publish notice of the order in the **Federal Register** and notify air carriers of the FAA's order and actions to be taken to terminate or modify collection of passenger facility charges in accordance with § 158.85(f) of this chapter.

(c) The following procedures shall apply if an airport operator does not agree in writing, within 20 days of receipt of the FAA's notice of apparent violation under § 161.503, to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the **Federal Register**. This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 30 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the **Federal Register**.

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the procedures in paragraphs (b)(3) through (b)(5) of this section will be followed.

Issued in Washington, DC on September 19, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-22951 Filed 9-24-91; 8:45 am]

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federal register

Wednesday
September 25, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

Intent To Prepare an Environmental Assessment for the Construction of an 18-Hole Golf Course; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Intent To Prepare an Environmental Assessment (EA) for the Construction of an 18-Hole Golf Course on the Tulalip Indian Reservation, Snohomish County, WA

September 16, 1991.

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Notice of intent to prepare an EA and notice of Public Scoping Meeting.

SUMMARY: This summary advises the public that the Tulalip Tribes intend to prepare an EA for the tribes' proposal to construct an 18-hole golf course on tribal lands. Revenue generated from the golf course will be used to provide needed services and to facilitate further economic development and employment opportunities. If the project is approved, it is anticipated that construction will begin in the spring of 1992. The golf course will be completed during summer 1993. A public scoping meeting will be held to receive input for the preparation of the EA. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1506.6) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EA. Comments and participation in the EA scoping process are requested. The BIA will serve as the Federal lead agency for NEPA compliance on this project.

DATES: Written comments should be received by October 7, 1991. A public meeting will be held on October 1, 1991, at 6:30 p.m. in the Tulalip Tribes Administrative Office (Tribal Headquarters Building), 6700 Totem Beach Road, Marysville, Washington 98270.

ADDRESSES: Comments should be directed to Mr. T. Peter Mills, Planning Director, Tulalip Tribes of Washington, 6700 Totem Beach Road, Marysville, Washington 98270; telephone (206) 653–4585 or FAX (206) 653–0255.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Eggers, Bureau of Indian Affairs, Branch of Fisheries and Environment, 911 NE. 11th Avenue, Portland, Oregon 97232–4169; telephone (503) 231–6749.

SUPPLEMENTARY INFORMATION: The proposed 18-hole golf course will be constructed on a 200-acre site located along Tulalip Road on the Tulalip Reservation approximately ½ mile northeast of the Tulalip Tribes Administrative Office and 5 miles west of the Interstate 5/4th Street interchange at Marysville, Washington. Access to the proposed golf course will be from Tulalip Road.

The course will be designed and constructed to retain the natural features of the site. On-site sensitive areas will be incorporated into the playing areas. Natural vegetation will be retained to the maximum extent feasible to minimize irrigation requirements.

The purpose and need for this action is to provide an economic development opportunity for the Tulalip Tribes. Revenue generated from the golf course will be used to provide additional services for the Tulalip Tribes and to facilitate additional economic development opportunities. The tribes anticipate that 30,000 rounds of golf will be played during the first year of operation. During subsequent years, it is anticipated that 50,000 rounds will be played.

The two principal alternatives are to either construct the 18-hole golf course as proposed, or not construct the golf course. Other alternatives will be developed from comments received on this notice and after the scoping meeting.

The significant issues to be addressed during the scoping meetings and planning process will be the impacts of golf course construction and operation on the following: Land use, sensitive areas, traffic, soils, surface water, and groundwater. A Turf Management Plan will be prepared to describe operating procedures designed to minimize impacts to surface water and groundwater.

We estimate the EA will be made available for public review in October 1991. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 208 DM 6.

This notice is published pursuant to § 1501.7 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371 et. seq.), Department of the Interior Manual (516 DM 1–6) and is the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM–8.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–22998 Filed 9–24–91; 8:45 am]

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federal register

Wednesday
September 25, 1991

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701 and 785

Permanent Regulatory Program; Definitions; Requirements for Permits and Permit Processing; Requirements for Permit for Special Categories of Mining; Coal Preparation Plants; Performance Standards; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701 and 785

RIN 1029-AB45

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Requirements for Permits and Permit Processing; Requirements for Permit for Special Categories of Mining; Coal Preparation Plants; Performance Standards

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is proposing to amend its permanent program regulations by revising the definition of "previously mined area" and by clarifying the requirements governing off-site coal preparation plants. OSM is taking this action as a result of two U.S. District Court decisions affecting OSM's permanent program regulations. Specifically, OSM is proposing to revise the definition of "previously mined area" at 30 CFR 701.5 to include only those lands affected by surface coal mining operations prior to August 3, 1977, the date of enactment of the Surface Mining Control and Reclamation Act (SMCRA), that have not been reclaimed to the performance standards of 30 CFR chapter VII. OSM is also proposing to examine the extent to which geographic proximity to a mine is an appropriate factor in evaluating whether an off-site coal preparation plant operates in connection with a mine and is thus subject to regulation under SMCRA.

DATES: *Written comments*: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on October 25, 1991.

Public Hearings: Upon request, OSM will hold public hearings on the proposed rule within the comment period. OSM will accept requests for hearings until 5 p.m. Eastern time on October 7, 1991.

Individuals wishing to attend but not testify at any hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments*: Hand-delivery to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131 L, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: The addresses and times for any hearings that may be scheduled will be announced prior to the hearings.

Requests for public hearings: Requests may be made orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT**" by the time specified under "**DATES.**"

FOR FURTHER INFORMATION CONTACT: Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 208-2700 (Commercial) or 268-2700 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule and Clarification of Preamble
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rules should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATE**") may not be considered or included in the Administrative Record for the final rules.

Public Hearings

OSM will hold public hearings on the proposed rules upon request only. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate responses, OSM also requests that persons who plan to testify submit to OSM, at the address previously specified for the submission of written comments (see "**ADDRESSES**"), an advance copy of their testimony.

II. Background

A. General

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA or the Act), sets forth general regulatory requirements governing surface coal mining operations and the surface effects of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and set performance standards to be achieved by surface coal mine operations. See 30 CFR chapter VII.

B. Definition of Previously Mined Area

On September 16, 1983, OSM promulgated performance standards at 30 CFR 816.106 and 817.106 (Backfilling and grading: Previously mined areas) for remining operations on previously mined areas, for surface and underground coal mining, respectively (48 FR 41720). These performance standards provided for partial highwall elimination in situations where the previous operator had not reclaimed the remined area to the standards of the Act. Under sections 816.106 and 817.106, such pre-existing highwalls must be eliminated to the maximum extent technically practical using all reasonably available spoil.

The September 1983 rulemaking defined "previously mined area" at 30 CFR 701.5 as "land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of this chapter." This definition, which was challenged as being too broad and contrary to SMCRA, was remanded to the Secretary in In Re: Permanent Surface Mining Regulation Litigation (II), No. 79-1144 Slip Op. at 122, (D.D.C. July 15, 1985).

On May 8, 1987, OSM promulgated a new definition which limited the scope of "previously mined area" to those lands on which there were no surface coal mining operations subject to the standards of the Act (52 FR 17526).

The National Wildlife Federation, Kentucky Resources Council, and other environmental organizations (collectively "NWF") challenged the 1987 definition on the grounds that it improperly expanded the scope of the definition to include lands mined subsequent to SMCRA's enactment (*NWF* v. *Lujan*, Civil Action Nos. 87-1051, 87-1814, and 88-2788 (D.D.C. 1990)). The court remanded the definition of "previously mined area" to the Secretary for revision, finding that a definition using a date other than the date of SMCRA's enactment (August 3, 1977) does not conform to the Act. The

court also ruled that the definition must be rewritten to eliminate the possibility that it could be interpreted to allow a previously mined area that had been fully and satisfactorily reclaimed, to be remined and then reclaimed to the lesser standards applicable to remining operations.

C. Off-site Coal Preparation Plants

1. Geographic Proximity

On March 13, 1979, OSM published regulations implementing the permanent regulatory program required by Title V of SMCRA (44 FR 14902 *et seq.*). Permitting requirements and permanent program performance standards for coal processing plants and support facilities not within the permit area for a mine, were contained at 30 CFR 785.21 and 30 CFR part 827, respectively.

On November 22, 1988, OSM promulgated a final rule amending the language in 30 CFR 785.21 and 827.1 concerning the permit requirements and the scope of the performance standards for off-site coal preparation plants, to clarify that those sections apply only to such facilities that operate "in connection with" a coal mine (53 FR 47384). The preamble to the final rule explained that "the element of geographic proximity, along with the element of functional relationship described in this preamble, are proper factors to consider in evaluating whether an off-site coal preparation plant is subject to regulation under SMCRA."

NWF challenged the use of proximity as a factor in determining which off-site coal preparation plants would be subject to SMCRA regulation. The District Court did not object to the language of the regulation, noting that it is, after all, the language of the statute. However, the court held in the plaintiff's favor that using proximity as a limiting factor in applying the rule language would be contrary to Congressional intent. *NWF* v. *Lujan*, Civ. No. 88–3345 Slip Op. (D.D.C August 30, 1990), hereafter, "*NWF, Round III.*" The court remanded the regulation to the Secretary for clarification consistent with the court's ruling that proximity may not be the decisive factor in deciding to regulate an off-site processing plant.

2. March 22, 1991, Appeals Court Decision

On May 5, 1983, OSM promulgated a final rule revising the standards applicable to coal processing (48 FR 20392). OSM adopted new definitions of "coal preparation or coal processing" and "coal preparation plant" which retained the 1979 rule requirement that such processing or preparation include the separation of coal from its impurities.

These definitions were challenged in Round I of In Re: Permanent Surface Mining Regulation Litigation II, Civil Action No. 79–1144 (D.D.C. 1984) hereafter, "PSMRL". In a July 6, 1984, opinion in that case, the District Court for the District of Columbia determined that the definitions improperly narrowed the regulatory scope of the Act. The court criticized the definition of "coal processing" because it excluded activities such as crushing and sizing of coal, unless such activities included separation of impurities, and remanded the definitions of "coal preparation or coal processing" and "coal preparation plant" to the Secretary.

On July 10, 1985, in response to the District Court's July 6, 1984 remand, OSM published concurrently in the **Federal Register**, a proposed rule and an identical interim final rule (50 FR 28180 and 28186) setting forth new definitions of "coal preparation" and "coal preparation plant" at 30 CFR 701.5. The definitions included processing activities and facilities which do not involve the separation of coal from its impurities. A new section—30 CFR 827.13 (Coal preparation plants: Interim performance standards)—was added to OSM's rules, specifying the applicable performance standards for persons operating coal preparation plants that had not been subject to the requirements of 30 CFR chapter VII prior to July 6, 1984.

The purpose of the July 10, 1985, interim final rule was to ensure that off-site coal preparation plants subject to the requirements of the Act pursuant to the July 1984 District Court decision, would be promptly regulated. The rule became effective on September 9, 1985, sixty days from its publication date. The intent of the corresponding proposed rule was to allow for public comment on the rules before they were adopted in permanent form.

On May 11, 1987, OSM adopted a final rule superseding the July 1985 interim final rule. The 1987 final rule retained the definitions of "coal preparation" and "coal preparation plant." OSM also adopted a slightly modified version of 30 CFR 827.13, clarifying its applicability to all coal preparation plants operating after July 6, 1984, including those that may have ceased operations prior to the effective date of the interim final rule.

NWF challenged the May 1987 rule at 30 CFR 827.13 as improperly limiting the applicability of the 1987 definitions of "coal preparation" and "coal preparation plant" from the date of the 1984 court decision remanding the previous definitions, rather than from the effective date of the Act. *NWF* v. *Lujan*, Id at 33. On February 12, 1990, the District Court ruled in favor of the plaintiffs, finding that the rule improperly abridged the scope of the Act and limited the Secretary's jurisdiction as set by Congress. The court held that the 1987 definitions must apply to off-site processing facilities from the effective date of the Act and remanded the rule to the Secretary for revision in accordance with its decision.

On March 22, 1991, the U.S. Court of Appeals for the District of Columbia reversed the District Court, finding that "the Act permits, but does not require the Secretary to regulate off-site facilities that crush, screen, and size coal" and that the District Court was, thus, erroneous in holding that the Secretary violated the Act by declining to regulate all off-site processing plants that operated subsequent to the enactment of the Act. The Appeals Court found "that the Secretary reasonably exercised his discretion in regulating off-site physical processing facilities from the date of the PSMRL decision, instead of the effective date of the Act." (*NWF* v. *Lujan*, No. 90–5114 (D.C. Cir. 1991)).

III. Discussion of Proposed Rule and Clarification of Preamble

A. Proposed Amendment to Definition of "Previously Mined Area"

Pursuant to the court's ruling in *NWF* v. *Lujan*, OSM proposes a new definition of "previously mined area" at 30 CFR 701.5 to include land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the performance standards of 30 CFR chapter VII. The proposed definition would exclude any lands where mining or related operations occurred subsequent to SMCRA's enactment regardless of the effective date of the Act's substantive requirements to those lands. The definition would further exclude all lands mined prior to August 3, 1977, that were reclaimed in accordance with regulatory standards that meet or exceed the requirements of 30 CFR chapter VII.

The proposal, if adopted, would narrow the applicability of the partial highwall elimination exemption provided for at 30 CFR 816.106 and 817.106, to lands that qualify as previously mined areas under the dual requirements of the new definition.

B. Proposed Amendment to Information Collection Requirements and Clarification of Preamble to Regulations Governing Off-Site Coal Preparation Plants

Parts 785 and 827—Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine.

Section 785.10. The proposed rule would revise existing § 785.10 (Information collection). That section contains a list of the existing information collection requirements in part 785 and also the Office of Management and Budget (OMB) clearance number indicating OMB approval of the requirements. The proposed revision would update the data contained in § 785.10 by listing the estimated reporting burden per respondent for complying with the information collection requirements contained in part 785 and would list the addresses for OSM and OMB where comments on the information collection requirements contained in part 785 may be sent.

Examination of Proximity Considerations. The District Court in *NWF, Round III* held in regard to 30 CFR 785.21 and 827.1, that the Secretary improperly inserted proximity into the question of his jurisdiction over off-site coal preparation plants. Although the regulatory use of the term "in connection with" was not held invalid, the court remanded those rules to the Secretary "to clarify that proximity may not be the decisive factor in deciding to regulate an off-site processing plant." *Id.* at 38. The court suggested that the Secretary "may wish to find another limiting factor to define "in connection with" a mine that is not based on proximity, or he may wish to * * * state that an off-site processing plant operated in connection with a mine but off the mine site will be regulated without regard to its proximity to the mine."

Subsequent to the District Court's ruling, the Appeals Court held in *NWF* v. *Lujan* that SMCRA authorizes but does not obligate the Secretary to regulate off-site processing plants, provided the Secretary uses reasonable discretion in determining whether such facilities are subject to regulation under SMCRA.

Consistent with the District Court's ruling, OSM hereby proposes to clarify that geographic proximity should not be the decisive factor in determining whether or not an off-site coal preparation plant operates in connection with a mine. This clarification would require no changes to regulatory text, but instead would supersede a portion of the preamble discussion at 53 FR 47387 (November 22, 1988), which provided guidance on interpretation of the regulatory phrase.

In the absence of considerations of geographic proximity, determinations of whether off-site coal preparation plants operate "in connection with" a mine would rely on other considerations offered in earlier preamble discussions. See *e.g.* 44 FR 15095 (March 13, 1979); 48 FR 20393 (May 5, 1983); 52 FR 17726 (May 11, 1987); and that portion of 53 FR 47386 (November 22, 1988), except for the discussion of geographic proximity.

In light of the broad deference accorded the Secretary by the Appeals Court in matters concerning off-site coal processing plant regulation, OSM is soliciting public comment on the effect that decision has upon the basis of the District Court remand and the appropriateness of removing geographic proximity as a factor in determining whether or not an off-site coal preparation plant operates in connection with a mine.

Effect of the Rule in Federal Program States and on Indian Lands

The proposed revisions, if adopted, will apply through cross-referencing in the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed rule, if adopted, will also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

Effect of the Rule on State Programs

If this proposed rule is adopted, OSM will then evaluate State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If OSM determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules and no less stringent than the Act, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

IV. Procedural Matters

Federal Paperwork Reduction Act

The proposed rule does not contain any new information collection requirements which require OMB approval under 44 U.S.C. 3501 *et seq.* The existing information collection requirements contained in part 785 were previously approved by OMB and assigned clearance number 1029–0040. OSM is proposing to amend the information collection statement located in § 785.10 by listing the estimated reporting burden per respondent for complying with the information collection requirements and also by listing the addresses for OSB and OMB where comments on the information collection requirements contained in part 795 may be sent. The listed burden hours are for existing requirements and should not be mistaken for new requirements.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under the criteria of Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The economic effects of the proposed rule are not estimated to be significant because of the limited number of previously mined sites that will be affected and because the cost of obtaining permits for off-site coal preparation plants will be minor compared to the overall cost of operating such plants. The rule does not distinguish between small and large entities.

National Environmental Policy Act

OSM has prepared a draft environmental assessment, and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The draft environmental assessment is on file in the OSM Administrative Record at the address previously specified (see "ADDRESSES"). A final environmental assessment will be completed and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The author of this proposed rule is Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW.,

Washington, DC 20240; Telephone: (202) 208–2700 (Commercial) or 268–2700 (FTS).

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 701 and 785 as set forth below:

Dated: June 24, 1991.

David O'Neal.

Assistant Secretary, Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 is amended to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. Section 701.5 is amended by revising the definition of "previously mined area" to read as follows:

§ 701.5 Definitions.

* * * * *

Previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

3. The authority citation for part 785 is amended to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

4. Section 785.10 is revised to read as follows:

§ 785.10 Information collection.

The collections of information contained in 30 CFR 785.13 (e), (f), (g), and (h), 785.14, 785.15, 785.16, 785.17(b), 785.18(c), 785.19, 785.20, 785.21 and 785.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0040. The information is being collected to meet the requirements of sections 711 and 515 of Public Law 95–87, which require applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activities. The obligation to respond is required to obtain a benefit in accordance with Public Law 95-87. Public reporting burden for this information is estimated to average 17 hours per response, including the time for reviewing instructions, searching existing data sources gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project 1029–0040, Washington, DC 20503.

[FR Doc. 91–23043 Filed 9–24–91; 8:45 am]

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federal register

Wednesday
September 25, 1991

Part VI

Department of Labor

Mine Safety and Health Administration

30 CFR Part 46, et al.

Hazard Communication; Notice of Public Hearings; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 46, 56, 57, and 77

RIN 1219-AA47

Hazard Communication

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposed hazard communication standard (HCS) published in the **Federal Register** (55 FR 46400) on November 2, 1990. These hearings will be held in Washington, DC, Atlanta, Georgia and Denver, Colorado.

DATES: These public hearings will be held on: Wednesday, October 16, 1991, in Washington, DC, Tuesday, October 22, 1991, in Atlanta, Georgia; and Thursday, October 24, 1991, in Denver, Colorado.

All hearings will begin at 9 a.m. Requests to make oral presentations should be submitted not later than 5 days prior to the hearing date. Immediately before the hearing, any unalloted time will be made available to persons making later requests.

ADDRESSES: Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203. The record for the rulemaking will close on January 31, 1992.

The hearings will be held at the following locations:

Washington, DC—U.S. Department of Labor, Conference Room S4215, A, B & C, Third and Constitution Avenue, NW., Washington, DC 80202.

Atlanta, Georgia—U.S. Department of Labor, room 113, 1371 Peachtree St., NE., Atlanta, Georgia 30367.

Denver, Colorado—Hyatt Regency, 1705 Welton Street, Anaconda 202 Conference Room, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Patricia Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION: On November 2, 1990, MSHA published a proposed rule to develop a hazard communications standard for coal and for metal and nonmetal mines. The written comment period for the proposed rule was initially scheduled to close on February 1, 1991, but was extended to April 5, 1991 (55 FR 53314) in response to requests from the mining industry.

The purpose of these public hearings is to provide an opportunity for the mining industry and other interested parties to comment on all issues pertaining to the proposed rule.

The hearings will be conducted in an informal manner by a panel of MSHA officials. Each hearing will begin with an opening statement by MSHA, followed by an opportunity for members of the public to make oral presentations. At the discretion of the presiding MSHA official, speakers may be limited to a maximum of 20 minutes for their presentations. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding inappropriate or unduly repetitious material and questions. In the interest of conducting a productive hearing, MSHA will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be available to the public.

The record will remain open through January 31, 1992. Until January 31, 1992, MSHA will continue to accept additional written comments and information from any interested party, including those not presenting oral statements.

If comments are prepared on a computer, commenters are encouraged to submit both a printed copy and a disk containing their comments.

Issues

MSHA received comments on many of the provisions in the proposed rule. The following issues are those that received the most comment and the greatest amount of public interest. Although MSHA welcomes public testimony on all aspects of the proposed rule, the Agency particularly requests that commenters address the following issues.

A. General Approach

MSHA based its proposed HCS on the Occupational Safety and Health Administration's (OSHA) HCS (30 CFR 1910.1200). Like OSHA's rule, MSHA's proposal addresses requirements for determining a chemical's hazard, developing a written hazard communication program, labeling containers, maintaining and developing material safety data sheets (MSDSs), training, and protecting trade secrets. MSHA's proposal differs from OSHA's rule primarily in its hazard determination procedures, various exemptions to the rule, and requirements for distributing labels and MSDSs to downstream users receiving a hazardous chemical from a mine operator.

Although most commenters generally support the concept of hazard communication, a significant number believe that MSHA's existing part 48 training standards and labeling standards in §§ 56/57.20012 adequately address hazard communication, and that a specific HCS is unnecessary, costly, and unduly burdensome. Many of these commenters also suggested that if MSHA promulgates a separate HCS, the rule should focus only on labeling and MSDS requirements for hazardous chemicals brought onto or shipped from mines, since existing MSHA labeling and training standards apply to the hazardous chemical when used on the mine property.

Many commenters who supported a uniform Federal HCS also opposed certain provisions in MSHA's proposal that are similar or identical to those in OSHA's HCS, such as using the findings of the International Agency for Research on Cancer (IARC) and National Toxicology Program (NTP) as a basis for determining whether a chemical is a carcinogen or potential carcinogen. MSHA requests further comment on the potential impact of an MSHA HCS that differs from the OSHA HCS.

Commenters also suggested that MSHA develop a separate interim HCS for the coal mining industry. These commenters stated that promulgating an interim HCS would give MSHA time to evaluate and incorporate any improvements OSHA may make in its HCS as a result of its August 8, 1988, notice of proposed rulemaking to modify the HCS (53 FR 29822). In support of a separate HCS for coal, they stated:

(1) The product itself is not hazardous;

(2) The coal mining industry does not produce hazardous chemicals;

(3) MSHA's part 48 training requirements apply comprehensively to coal mining;

(4) Coal mining and processing exposes miners to relatively few of the hazardous chemicals listed in Table 1 of MSHA's proposal;

(5) The hazards of respirable coal mine dust are well understood and governed by stringent standards not paralleled in the metal and nonmetal mining industry; and

(6) There are voluminous standards applicable to coal that are not applicable to other mining.

MSHA proposed that mine operators comply with its HCS within one year of the date of publication of the final rule. A number of commenters believed that a two year implementation period for the rule is necessary, while other commenters suggested six months. MSHA requests additional comments on this issue.

B. Scope and Application

Exemptions

MSHA's proposal includes several exemptions that are either identical or similar to those found in OSHA's HCS. Commenters generally agreed with these exemptions. Several commenters, however, suggested that the proposed exemption for "article" be expanded to include any article that "under normal conditions of use, does not release a quantity of a hazardous chemical that poses a risk of material impairment of health or functional capacity to miners." The proposal would exempt only articles that release no more than very small quantities, that is, minute or trace amounts, of a hazardous chemical.

Some commenters opposed MSHA's proposal to exempt nuisance particulates. One commenter stated that nuisance particulates should be covered if levels exceed 15 mg/m^3. Others suggested that the term nuisance particulate is not sufficiently defined. MSHA's proposal to exempt nuisance particulates, ionizing and nonionizing radiation, and biological hazards is based on OSHA's, August 8, 1988, notice of proposed rulemaking. These exemptions are not found in OSHA's current HCS.

The majority of commenters agreed with MSHA's proposal that labels should not be required on containers of the raw material mined or milled. One commenter, however, believed that a raw material presenting a hazard should be labeled. Another commenter disagreed with MSHA's proposed labeling exemption on pesticides, food additives, and consumer products stating that many mining uses of these products may result in exposures that were not contemplated by the manufacturer packaging the product for consumer use. Several commenters that supported MSHA's consumer product labeling exemption believed that consumer products already possess adequate labels with hazard identification and safe use instructions.

Several commenters suggested that MSHA specifically exempt from its labeling requirements medical and veterinary devices, ingredients in foods and drinks, food and color additives, drugs, and cosmetics, consistent with the OSHA HCS.

The proposed rule would not require the labeling of portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer. Several commenters suggested that MSHA modify this provision to allow use during the work shift by either the employee or the employee's designee, while some other commenters suggested that all portable containers be labeled.

Under MSHA's proposal, hazardous laboratory chemicals would be subject to all HCS requirements. OSHA's HCS only partially applies to laboratories, requiring that labels on incoming containers of hazardous chemicals not be removed or defaced, that MSDSs received with the chemicals be maintained and made available, and that employees be trained on the chemical's hazards. The majority of the commenters on this issue supported MSHA's position.

MSHA also solicited comment on whether to exempt certain common minerals, such as coal, sand and gravel, crushed stone, clay, and minerals containing less than 5% silica and no other hazardous chemical, from its HCS. This issue drew a considerable number of comments with the majority of commenters supporting such an exemption on the groups that existing MSHA air quality and training standards adequately cover these minerals, and that miners are well aware of their hazards. However, several of these commenters suggested various modifications to the exemption, such as specifying that it apply to "respirable" silica, and that it exempt minerals with less than 10% silica rather than 5%.

Some other commenters stated that a mixed dust pneumoconiosis, pathologically characteristic of nodular silicosis, occurs in workers exposed to minerals with less than five percent to almost no free quartz. They also stated, that, if MSHA exempts such minerals, downstream users would not receive information on the mineral's hazards, thereby creating an inconsistency with OSHA's rule.

Several commenters requested that MSHA develop a *de minimis* exemption beyond that contained in its article definition. Such an exemption would delete from coverage anything having no probability for adversely affecting a miner's health. OSHA's HCS does not contain a *de minimis* exemption beyond that contained in its proposed definition of article.

Commenters also suggested a variety of additional exemptions to MSHA's HCS, including exemptions for: Fossil fuels and materials such as greases, lubricants, detergents, and steam cleaners; iron ore pellets; dimension stone; the brick industry; and small mines with less than 10 employees.

C. Hazard Determination

Consistent with OSHA, MSHA proposed that mine operators who produce chemicals use current MSHA standards, the latest edition of the American Conference of Governmental Hygienists (ACGIH) Threshold Limit Values, the NTP Annual Report on Carcinogens, and IARC Monographs and Supplements for determining whether a chemical is a health hazard.

A number of commenters strongly objected to MSHA's incorporating ACGIH, NTP, and IARC in its proposed rule. They specifically opposed the use of IARC and NTP for determining whether a chemical is a carcinogen or potential carcinogen for hazard communication purposes on the grounds that these bodies do not intend that their listings be used as regulatory or legal standards and that mine operators do not have an adequate opportunity to comment in their deliberations. Many commenters stated that the risk assessments conducted by IARC and NTP do not meet the requirements of the Federal Mine Safety and Health Act of 1977 for establishing Federal standards. Moreover, a number of commenters also expressed specific concern over IARC's determination that crystalline silica is a "probable" (IARC classification 2A) human carcinogen, stating that available evidence does not support such a conclusion.

Other commenters stated that MSHA should include not only the four sources listed in its proposal but also the National Institute for Occupational Safety and Health's criteria documents, recommended exposure limits, and Registry of Toxic Effects of Chemical Substances. Several commenters suggested that MSHA adopt the OSHA hazard determination procedures in which one single study is sufficient to trigger a finding that a chemical is a health hazard. MSHA requests specific comment on the these issues and suggestions.

D. Labels and Other Forms of Warning

MSHA's proposal would require that the operator provide labeling information with the initial shipment of a hazardous chemical to a downstream

employer. OSHA's HCS requires that each container of a hazardous chemical leaving the workplace be labeled. Several commenters indicated that they were already providing labels with their products. Other commenters argued that MSHA does not have the authority to require that operators distribute this information to employers off mine property.

MSHA's proposal, consistent with OSHA's standard, would require that operators be responsible for the accuracy of labels and MSDSs that they develop, but not for ones that they do not prepare. Several commenters suggested that MSHA require the mine operator to verify the accuracy of labels and MSDSs they receive.

Commenters objected to requiring a cancer warning on a label based solely on an IARC, NTP, or ACGIH listing of the chemical as a "possible," "anticipated to be," or "suspect" human carcinogen, stating that such cancer labels are not well grounded in balanced scientific interpretation and go beyond OSHA's cancer policy which stops at the "probable" category. Several of these same commenters did not object to a cancer warning for chemicals listed as "known" carcinogens, or to including the "probable" and "possible" findings to the chemical's MSDS.

E. Material Safety Data Sheets (MSDSs)

While MSHA's proposal would require that mine operators provide an MSDS, upon request, when a hazardous chemical is shipped to a downstream employer, OSHA's standard requires distribution with the initial shipment. Several commenters questioned whether MSHA can require distribution of MSDSs to employers off of mine property. Other commenters supported automatic distribution of MSDSs with the initial shipment in order to be consistent with OSHA's HCS.

Several commenters cited lack of uniformity as a major problem with MSDSs. They suggested that MSHA's HCS ensure that all preparers of MSDSs provide product information to the same standard.

A number of commenters objected to MSHA's proposal that employees be notified at least 3 months prior to the disposal of any MSDS as being unduly burdensome. Under its medical records access standard (29 CFR 1910.20), OSHA requires employers either to maintain a hazardous chemical's MSDS for at least 30 years, or when the chemical is no longer in the workplace, to maintain for 30 years some record of the chemical's identity, where it was used, and when it was used. One commenter suggested that MSHA adopt OSHA's requirement because many chemicals can cause chronic health effects, and the MSDS would be a valuable referral document.

MSHA requests comments on these issues as well as specific suggestions for developing more accurate, uniform, useful, and understandable MSDSs.

F. Training

MSHA's proposal and OSHA's HCS contain specific requirements to provide hazard communication training prior to an employee's initial assignment to an area where hazardous chemicals are used and whenever a new chemically related hazard is introduced into the work area. MSHA stated in its proposal that retraining under its HCS training requirements would not be required for areas where applicable training under part 48 has been conducted. Several commenters supported MSHA's proposal and stated that it would give operators flexibility in conducting hazard communication training. Other commenters felt that all hazard communication training requirements should be included in part 48.

G. Trade Secrets

Both MSHA's proposal and OSHA's standard contain nearly identical requirements regarding the disclosure of the specific identity of a hazardous chemical which may be considered a trade secret. Several commenters suggested that neither the provisions on trade secrets nor a separate appendix including the Restatement of Torts is needed in MSHA's standard because there are relatively few, if any, trade secret chemicals in the mining industry.

MSHA appreciates the many thorough and comprehensive comments it has received thus far on its proposed rule and looks forward to receiving additional comments during the public hearings.

Dated: September 20, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-23122 Filed 9-24-91; 8:45 am]

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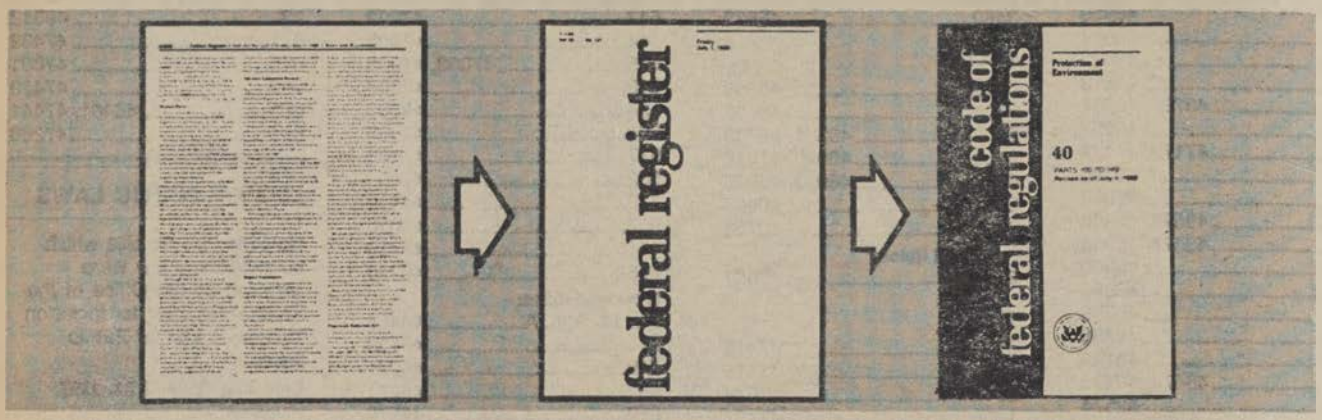

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