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WHO: The Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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WHEN: May 25, at 1:00 pm
WHERE: William J. Green, Jr. Federal Building, Conference Room 6306–10, 600 Arch St. Philadelphia, PA
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Presidential Documents

Title 3—

The President

Presidential Determination No. 93–20 of May 3, 1993

Transfer of $5 Million in FY 1993 Foreign Military Financing Funds to the Peacekeeping Operations Account for Enforcement of Sanctions Against Serbia and Montenegro

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 610(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that it is necessary for the purposes of the Act that $5 million of funds made available for section 23 of the Arms Export Control Act for fiscal year 1993 for the cost of direct loans be transferred to, and consolidated with, funds made available for section 551 of the Act.

Pursuant to the authority vested in me by section 614(a)(1) of the Act, I hereby determine that it is important to the security interests of the United States to furnish $5 million for assistance for sanctions enforcement against Serbia and Montenegro without regard to any provision of law within the scope of section 614(a)(1), including section 660 of the Act. I hereby authorize the furnishing of such assistance.

You are hereby authorized and directed to report this determination immediately to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 3, 1993.

[FR Doc. 93–11769
Filed 5–13–93; 1:22 pm]
Billing code 4710–10–M

Rules and Regulations

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 970

RIN 3206–AD76

Final Rule Regarding Governmentwide Nonprocurement Debarment and Suspension

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This action adopts the Nonprocurement Debarment and Suspension Common Rule as required by Executive Order 12549. This rule originated from the final rule on Nonprocurement Debarment and Suspension adopted by 27 agencies on May 26, 1988. On January 30, 1989, 6 additional agencies also adopted the final rule and on November 27, 1992 another agency adopted the final rule. The rules are intended to prevent waste, fraud, and abuse in Federal nonprocurement transactions.

This final rule describes the procedures OPM will follow in debarring or suspending persons participating in federal financial and nonfinancial assistance and benefits under federal programs and activities (nonprocurement).

EFFECTIVE DATE: This regulation is effective May 17, 1993.

FOR FURTHER INFORMATION CONTACT: Joyce Blalock, Office of the Inspector General, Office of Personnel Management, 2300 Clarendon Boulevard, room 1314, Arlington, VA 22201, telephone (703) 908–8688.

SUPPLEMENTARY INFORMATION: As part of the initiatives to curb fraud, waste, and abuse, on February 18, 1986, President Reagan signed Executive Order 12549, "Debarment and Suspension." It was published on February 21, 1986 (51 FR 6370–6371). The Executive Order established governmentwide effect for an agency's nonprocurement debarment or suspension action.

Section 6 of the Executive Order directed the Office of Management and Budget (OMB) to issue guidelines governing implementation of the Order, and section 3 of the Executive Order directed the departments and agencies to promulgate final rules, consistent with these guidelines. On May 26, 1988, 27 agencies issued a final common rule (53 FR 19161–19211), consistent with OMB's guidelines. The common preamble for that publication provides full background for the promulgation of the Executive Order and the history of the common rulemaking.

The second common rulemaking included the Department of Agriculture and various small Federal agencies which did not participate in the May 26, 1988, publication. These agencies published the final common rule on January 30, 1989 (54 FR 4722–4735). The third common rulemaking was on November 27, 1992 when the Office of National Drug Control Policy published its final common rule (57 FR 56262–56273). These agencies concluded that the common rulemaking had already been subject to extensive public scrutiny.

Under the requirements of 5 U.S.C. 553(d) a good cause exists to support the immediate effective date of this regulation. Implementation of this rule will finally bring OPM in compliance with Executive Order 12549, strengthen OPM's efforts to protect the integrity of the Federal Employees Health Benefits Program, and assist to ensure the health and well-being of individuals covered by the program.

OPM adopts the common rule with the following one proposed additional provision (which will be codified under 5 CFR 970.200(b)):

> To protect an enrollee who has not been notified, reimbursement may be provided for services rendered by a provider who has been debarred or suspended by another Federal agency. At the time of reimbursement, an enrollee who utilized the health care services or supplies of such an excluded party will be notified of the exclusion and that subsequent claims will be denied.

On February 4, 1993, OPM published a notice of proposed rulemaking requesting public comment on the above proposed additional provision (58 FR 7052–7053). Only one commenter responded to the notice of proposed rulemaking. The commenter, however, did not address the content of the proposed rulemaking. Rather, the commenter offered a number of observations pertinent to OPM's implementation procedures. OPM will consider carefully these observations in developing its internal procedures to implement common rule provisions.

The commenter expressed specific concern with OPM's supplementary information which states that, "notice will be provided to the enrollee not to do business with this excluded service provider or supplier." OPM does not intend to interfere with an enrollee's decision to utilize providers of services or items, as the commenter feared. The notice will inform the enrollee that future claims will not be paid. The enrollee may continue to utilize a debarred provider but payment will not be made from the FEHBP except on a case-by-case exception basis.

Additionally, the commenter expressed concern that enrollee claims may contain items or services rendered prior to receipt of notification but after the effective date of the debarment. OPM intends to provide adequate flexibility in its program implementation to address this concern.

List of Subjects in 5 CFR Part 970

Administrative practice and procedures, Grant programs, Loan programs.

For the reasons set out in the preamble, title 5, chapter I, of the Code of Federal Regulations is amended by adding a new part 970 to read as follows:

PART 970—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart A—General

Sec.
970.100 Purpose.
970.105 Definitions.
970.110 Coverage.
970.115 Policy.

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970.320 Period of debarment.
970.325 Scope of debarment.

Subpart D—Suspension

970.400 General.
970.405 Causes for suspension.
970.410 Procedures.
970.411 Notice of suspension.
970.412 Opportunity to contest suspension.
970.413 Suspending official's decision.
970.415 Period of suspension.
970.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

970.500 GSA responsibilities.
970.505 Office of Personnel Management responsibilities.
970.510 Participant's responsibilities.

Appendix A to Part 970—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B to Part 970—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.

Authority: Executive Order 12549 (51 FR 6370–71).

Subpart A—General

§ 970.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 970.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 970.105 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: Interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

Agency. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).

Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred".

Debarring official. An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is party. The term includes appeals from such proceedings.

Nonprocurement List. The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

OPM. The United States Office of Personnel Management.

Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity, however

organized, except: Foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are principal investigators.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

Respondent. A person against whom a debarment or suspension action has been initiated.

State. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

Suspending official. An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ 970.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating, or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transactions.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, Effect of Action, § 970.200, Debarment or suspension, sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 970.110(a). Sections 970.325, "Scope of Debarment," and 970.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR subpart 9.4.

§ 970.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these

regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 970.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted to § 970.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 970.110(a)(1)(ii)) for the period of their debarment or suspension. To protect an enrollee who has not been notified, reimbursement may be provided for services rendered by a provider who has been debarred or suspended by another Federal agency. At the time of reimbursement, an enrollee who utilized the health care services or supplies of such an excluded party will be notified of the exclusion and that subsequent claims will be denied.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not expected);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 970.205 Ineligible persons.

Persons who are ineligible, as defined in § 970.105 are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 970.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 970.315 are excluded in accordance with the terms of their settlements. The Office of Personnel Management shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 970.215 Exception provision.

The Office of Personnel Management may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 970.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently.

§ 970.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 970.215.

§ 970.225 Failure to adhere to restrictions.

Except as permitted under § 970.215 or § 970.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see appendix B to part 970), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 970.300 General.

The debarring official may debar a person for any of the causes in § 970.305 using procedures established in §§ 970.310 through 970.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 970.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 970.300 through 970.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before May 17, 1993, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 970.215 or § 970.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 970.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ 970.310 Procedures.

The Office of Personnel Management shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 970.311 through 970.314.

§ 970.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 970.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 970.305 for proposing debarment;

(d) Of the provisions of §§ 970.311 through 970.314 and any other Office of Personnel Management procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 970.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 970.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 970.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 970.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, the Office of Personnel Management may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E of this part).

§ 970.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of

the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment of an additional period is determined to be necessary, the procedures of §§ 970.311 through 970.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 970.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 970.311 through 970.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 970.400 General.

(a) The suspending official may suspend a person for any of the causes in § 970.405 using procedures established in §§ 970.410 through 970.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 970.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 970.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 970.400 through 970.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 970.305(a); or

(2) That a cause for debarment under § 970.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 970.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decision making process.* The Office of Personnel Management shall process suspension actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 970.411 through 970.413.

§ 970.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence:

(d) Of the cause(s) relied upon under § 970.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuring legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 970.411 through 970.413 and any other Office of Personnel Management procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 970.412 Opportunity to contest suspension.

(a) *Suspension in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the

suspending official finds that the respondents submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirements for a transcript.

§ 970.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 970.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions based on an indictment, conviction or civil judgment, in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 970.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case, it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 970.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 970.325), except that the procedures of §§ 970.410 through 970.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 970.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 970.505 Office of Personnel Management responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspensions, determinations of ineligibility, and voluntary exclusions it has taken.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 970.500(b) within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (202–501–0688)

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 970.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (202–501–0688). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to

include the certification in appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal Agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (202–501–0688).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to the Office of Personnel Management if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Appendix A to Part 970—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

(1) By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

(2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

(3) The certification in this clause is a material representation of fact upon which reliance was placed when the debarment or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

(4) The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(5) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

(6) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

(7) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (202–501–0688).

(9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this proposal.

Appendix B to Part 970—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

(1) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

(2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

(3) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

(5) The prospective lower tier participant agrees by submitting this proposal that,

should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

(6) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (202–501–0688).

(8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(9) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–11479 Filed 5–14–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV–92–096FIR]

South Texas Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an amended interim final rule (without change) authorizing expenditures and establishing an assessment rate under Marketing Order 959 for the 1992–93 fiscal period. Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: August 1, 1992, through July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501; telephone 210–682–2833, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1992–93 fiscal period which began August 1, 1992, and ends July 31, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 47 producers of South Texas onions under this marketing order, and approximately 34 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a

position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $100,000 for personnel, office, and travel expenses were recommended in a mail vote completed July 3, 1992. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $100,000 were published in the **Federal Register** as an interim final rule September 25, 1992 (57 FR 44312). That interim final rule added § 959.233, authorizing expenses for the Committee, and provided that interested persons could file comments through October 26, 1992. No comments were received.

The Committee subsequently met on October 20, 1992, and unanimously recommended slight changes in some of the administrative expense categories and recommended funding for numerous research and promotion projects for a total 1992–93 budget of $339,188. The new budget is $2,417.67 less than the budget for the previous year. Increases include: $13,919 in market development, $2,000 in the fumigation trials research, $2,000 for a new computer and computer program, and $2,400 for monitoring of thrips research. These budget increases will be offset by decreases of $1,000 for furniture and fixtures, $3,600 in the leaf wetness research program, and the elimination of the Texas 1015 DNA research for which $12,000 was budgeted last season.

The Committee also unanimously recommended an assessment rate of $0.07 per 50-pound container or equivalent of onions, the same as last season. This rate, when applied to anticipated shipments of approximately 5 million 50-pound containers or equivalents, will yield $350,000 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve as of September 30, 1992, $302,998, were within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on December 29, 1992 (57 FR 61774). That interim final rule amended § 959.233 to increase the level of authorized expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through January 28, 1993. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992-93 fiscal period began on August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule. No comments were received concerning the amended interim final rule that is being adopted in this action as a final rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note: This section will not appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, the amended interim final rule revising § 959.233 which was published at 57 FR 61774 on December 29, 1992, is adopted as a final rule without change.

Dated: May 11, 1993.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93-11568 Filed 5-14-93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 979

[Docket No. FV92-979-1FIR]

South Texas Melons; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an amended interim final rule (without change) authorizing expenditures of $274,543.42 and establishing an assessment rate of $0.05 per carton under Marketing Order 979 for the 1992–93 fiscal period. Authorization of this budget enables the South Texas Melon Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: October 1, 1992, through September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501; telephone 210–682–2833, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order

provisions now in effect, South Texas melons are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons handled during the 1992–93 fiscal period which began October 1, 1992, and ends September 30, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 producers of South Texas melons under this marketing order, and approximately 30 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $100,000 for personnel, office, and travel expenses were recommended in a mail vote completed September 10, 1992. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee's recommendation for administrative expenses of $100,000 was published in the **Federal Register** as an interim final rule October 26, 1992 (57 FR 48442). That interim final rule added § 979.215, authorizing expenses for the Committee, and provided that interested persons could file comments through November 25, 1992. No comments were received.

The Committee subsequently met on November 9, 1992, and unanimously recommended changes in some of the administrative expense categories and recommended funding for several research and promotion projects for a total 1992–93 budget of $274,543.42. The new budget is $10,766.09 less than the budget of $285,309.51 for the previous year. Increases in the 1992–93 budget include $2,000 for a new computer and computer program, $16,649 for production systems research, and $500 in office and personnel expenses. These budget increases will be offset by decreases of $1,000 for furniture and fixtures, $1,500 for contingencies, $19,387.09 in the market development program, and the elimination of variety evaluation for which $8,028 was budgeted last season.

The Committee also unanimously recommended an assessment rate of $0.05 per carton of melons, the same as last season. This rate, when applied to anticipated shipments of approximately 5,765,132 cartons, will yield $288,256.60 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1992, $322,407, were within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on January 15, 1993 (58 FR 4572). That interim final rule amended § 979.215 to increase the level of authorized expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through February 16, 1993. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992-93 fiscal period began on October 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable melons handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule. No comments were received concerning the amended interim final rule that is being adopted as a final rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, the amended interim final rule revising § 979.215 which was published at 58 FR 4572 on January 15, 1993, is adopted as a final rule without change.

Dated: May 11, 1993.

Darrell J. Breed,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–11569 Filed 5–14–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 982

[Docket No. FV92–982–1]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1992–93 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes, without modification, an interim final rule which established interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1992–93 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This action was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: June 16, 1993.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW. Third Ave., room 369, Portland, OR 97204; telephone (503) 326–2724 or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, interim and final free and restricted percentages may be established for domestic inshell filberts/hazelnuts. This action finalizes an interim final rule which established interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1992–93 marketing year (July 1, 1992, through June 30, 1993). This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of filberts/hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this action are based on requirements specified in the order. The interim final rule established the amount of inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of interim and final free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can utilize throughout the season, and the percentages release the volume of filberts/hazelnuts necessary to meet the inshell trade demand. The preliminary percentages provide for the release of 80 percent of the inshell trade demand. The interim final percentages release 100 percent of the inshell trade demand. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts/hazelnuts for desirable carryout.

The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, rounded to the nearest whole number. The Board may

increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or otherwise disposed of (restricted) early in the 1992–93 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 26, 1992, meeting, the Board announced preliminary free and restricted percentages of 9 percent and 91 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against underestimates of crop size. The preliminary restricted percentage is 100 percent minus the free percentage.

On or before November 15, the Board must meet again to recommend interim percentages and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 12, 1992, reviewed and approved an amended marketing policy and recommended the establishment of interim free and restricted percentages of 11 percent and 89 percent, and final free and restricted percentages of 13 percent and 87 percent. The Board also recommended that the final percentages be effective on May 1, 1993, which is 60 days prior to the end of season. The marketing percentages are based on the industry's final production estimates and release of 3,354 tons to the domestic inshell market from the 1992 crop. The Oregon Agricultural Statistics Service provided an early estimate of 26,000 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 26,796 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 26,796 tons.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1992–93 marketing year:

		Tons
Inshell supply:		
(1) Total production (Filbert/Hazelnut Marketing Board handler survey estimate)	.....	26,796
(2) Less substandard, farm use (disappearance)	.....	1,758
(3) Merchantable production (the Board's adjusted crop estimate)	.....	25,038
(4) Plus undeclared carryin as of July 1, 1992, subject to regulation	.....	984
(5) Supply subject to regulation (Item 3 plus Item 4)	.....	26,022
Inshell trade demand:		
(6) Average trade acquisitions of inshell filberts for three prior years	.....	4,022
(7) Increase to encourage increased sales (5 percent)	.....	201
(8) Less declared carryin as of July 1, 1992, not subject to regulation	.....	1,472
(9) Adjusted Inshell Trade Demand	.....	2,751
(10) 15 percent of the average trade acquisitions of inshell filberts for three prior years (Item 6)	.....	603
(11) Adjusted inshell trade demand plus 15 percent (item 9 plus Item 10)	.....	3,354
Percentages	Free	Restricted
		Tons
(12) Interim percentages (item 9 divided by item 5) x 100	11	89
(13) Final percentages (item 11 divided by item 5) x 100	13	87

In addition to complying with the provisions of the marketing order, the Board also considers the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that this primary market have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. An additional increase of 5 percent (201 tons) has been included in the calculations used in determining the inshell trade demand. The established final percentages, which release 100 percent of the inshell trade demand, will make available 3,354 tons from the 1992 crop plus 1,472 tons of declared carryin which is 120 percent of prior years' sales, thus exceeding the goal of the Guidelines.

The interim final rule concerning this action was published in the **Federal Register** on December 30, 1992 (57 FR 62170). Comments on the interim final rule were invited from interested persons until January 29, 1993. No comments were received.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the establishment of interim and final free and restricted percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Subpart—Grade and Size Regulation

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. For the reasons set forth in the preamble, the provisions of the interim final rule amending 7 CFR Part 982 which were published at 57 FR 62172 on December 30, 1992, are adopted as a final rule without change.

Dated: May 11, 1993.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–11567 Filed 5–14–93; 8:45am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 353

RIN 3064–AA60

Reports of Apparent Crime Affecting Insured Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), in conjunction with an interagency task force, has designed a uniform multi-agency criminal referral form. The form will facilitate financial institutions' compliance with criminal activity reporting requirements and will enhance law enforcement agencies' ability to investigate the matters reported in criminal referrals. The information from the form also will be entered into a new interagency data base which will enhance the regulatory and law enforcement agencies' ability to track criminal and administrative cases. The uniform criminal referral form, which will require substantially the same information as is now collected, is intended to replace the various criminal referral forms currently used by federal bank, thrift and credit union regulatory agencies and by financial institutions. The purpose of this rule is to implement the new procedures for completion and submission of the uniform criminal referral form. Appendix A of the prior rule has been eliminated to avoid the necessity of updating the regulation with each change in the form. Additionally, under the new rule, descriptions of situations requiring reporting are contained in the body of the regulation rather than on the form. This action is intended to improve reporting of crimes relating to financial institutions and to provide uniform data which can be entered into the new interagency computer data base.

EFFECTIVE DATE: The final rule is effective June 16, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene Seitz, Review Examiner, Special Activities Section, Division of Supervision, (202) 898–6793.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) under control number 3064–0077, said clearance in effect through June 30, 1994.

The estimated annual reporting burden for the collection of information in the regulations is summarized as follows:

Number of Respondents: 6,500.
Number of Responses Per Respondent: 1.
Total Annual Responses: 6,500.
Hours Per Response: 0.6.
Total Annual Burden Hours: 3,900.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), room F–400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064–0077), Washington, DC 20503.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.), the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities already are required to comply with the reporting requirements established in the existing regulation, and this final rule only clarifies those requirements.

Background Information

Pursuant to the enabling statutes, the FDIC is responsible for ensuring that insured nonmember banks apprise federal law enforcement authorities of any violation or suspected violation of a criminal statute. Fraud, abusive insider transactions, check kiting schemes, money laundering and other crimes can pose serious threats to a financial institution's continued viability and, if unchecked, may undermine the confidence in the financial services industry. The law enforcement community needs to receive timely information regarding criminal and suspected criminal activity that is sufficiently detailed to determine whether investigations and prosecutions are warranted. 12 CFR part 353 became effective June 4, 1986 and has remained unchanged since adoption. On October 27, 1992, FDIC's Board of Directors approved a proposed revision of part 353, and on January 8, 1993, the FDIC requested comment on the proposal. (58 FR 3237–3238, January 8, 1993.)

Nature of Comments

The FDIC received a total of seventeen comments on the proposed changes to part 353. Thirteen of these comments were received from banks; three were received from trade associations; and one was received from a state banking regulator. Fifteen of the comments expressed general support for the proposed changes, while only two of the comments were not supportive. Ten of the comments suggested raising to various levels the dollar threshold for required reporting. Five of the comments suggested elimination or amendment of the requirement to report promptly to the bank's board of directors when a report of apparent crime has been filed, while two suggested a dollar threshold for reporting to the bank's board of directors. Two of the comments suggested computer software be made available to simplify report preparation. Two of the comments suggested banks be allowed to retain copies of supporting documents rather than originals, as specified in the proposed rule. Two of the comments suggested setting a time limit for retention of reports and supporting documents. Two of the comments suggested the retention of two reporting forms, including a short form for reporting small losses. Two of the comments suggested a dollar threshold for reporting suspicious transactions on a report of apparent crime or elimination of the requirement. One comment objected to the requirement to promptly notify by telephone or other expeditious means, the appropriate law enforcement agency and appropriate FDIC regional office in situations involving violations requiring immediate attention or where a reportable violation is ongoing. This commenter suggested the provision be changed to encourage rather than require telephone reporting.

Miscellaneous suggestions included: (1) The ability to share information in the forms with banks that might subsequently employ or do business with the suspect(s); (2) a single 60 day filing deadline for reports when no suspect is identified; (3) a provision for filing amended reports; (4) a suggestion that the Financial Crimes Enforcement Network (FinCEN) be the only agency to receive the forms and that FinCEN be responsible for distribution of copies to all appropriate agencies; and (5) a suggestion that future form revisions be subject to public review and comment. Several commenters also offered suggestions relating to the criminal referral form, in addition to commenting on the proposed amendments.

Analysis

Ten of the comments suggested raising to various levels the dollar thresholds for reporting. Although each of the comments contained valid concerns, the proposed thresholds for reporting are believed appropriate since data from all reports received, regardless of the amount involved, will be entered into FinCENS's database. This will enable FinCEN and the regulatory agencies to detect patterns of crime by the same suspect(s) involving small losses at individual financial institutions but amounting to substantial losses when combined. There are documented cases where individual reports that would not have been acted upon independently have been combined to form cases involving major fraud schemes. This is particularly true in cases involving use of false financial statements to obtain credit, check fraud, credit car fraud and money laundering.

Seven of the comments expressed concern about the requirement to report promptly to the bank's board of directors when a report is filed pursuant to this regulation. Five of these comments suggested elimination or amendment of this proposed requirement, and two suggested a dollar threshold be used for those reports requiring submission to the board of directors. The intent of this rule is to keep the board of directors informed when apparent crimes have been committed against the institution. Reporting "promptly" to the board of directors may be interpreted to mean at a scheduled meeting unless the estimated loss is of such magnitude that it would have a significant impact on the safety and soundness of the institution. Additionally, reports involving insignificant losses may be summarized and reported periodically at a regularly scheduled meeting of the board.

Two of the comments suggested computer software be made available to simplify report preparation and two of the comments suggested the retention of a short form to use for reporting small losses. It is the intent of the federal financial institution regulatory agencies to make available to banks, in the near future, a diskette containing the form. It is believed the diskette will greatly simplify the reporting process, promote uniformity, and eliminate the need for a separate short form.

Two of the comments suggested banks be allowed to retain copies of the supporting documents since law enforcement agencies frequently subpoena original documents for use in investigation and prosecution and two of the comments suggested the regulation set a time limit for retention of reports and supporting documents. The proposed change to the regulation indicates banks should retain a copy of each report filed and the originals of supporting documents. The intent of the proposed change is to make it clear that financial institutions should not submit original documents to FinCEN, the regulatory agencies or the law enforcement authorities with each report filed. Where original documents have been obtained by law enforcement agencies, it is acceptable to retain copies in bank files. The regulation sets no specific time limit for retention of the reports and supporting documents; however, the instructions for completion of the form indicate that a copy of each form and all original documentation should be retained for ten years from the date of the form. Although it is suggested the reports and documents be retained for ten years to match the current statute of limitations for most banking crimes, banks should maintain contact with the appropriate U.S. Attorney concerning any reports filed to determine the status of investigations. When it has been determined a case has been closed, banks may request written permission from the U.S. Attorney to destroy the relevant records, provided the destruction of the records does not violate other federal or state statutes governing required record retention by financial institutions.

Two of the comments suggested a dollar threshold for reporting suspicious transactions on a report of apparent crime or elimination of the requirement as a needless duplication of effort. Reports of apparent crime containing information relative to suspicious transactions are transmitted directly to the Internal Revenue Service/Criminal Investigation Division for timely review whereas suspicious transactions reported to the Internal Revenue Service on IRS Form 4789 (Currency Transaction Report) are entered in a computer database and periodically analyzed for patterns of possible money laundering. It would be difficult to place a dollar threshold on reporting of suspicious transactions since money laundering takes many forms and may involve large numbers of small transactions. Financial institutions should report those transactions appearing unusual for the customer, those appearing to be part of a pattern of unusual activity, those instances where a customer acts suspiciously, those instances where a customer appears to be intentionally attempting to avoid the required reporting by structuring transactions or by changing a deposit or withdrawal to attempt to avoid reporting, or those instances where a customer requests information on how to avoid reporting.

One comment suggested elimination of the requirement to promptly notify by telephone or other expeditious means, the appropriate law enforcement agency and appropriate FDIC regional office in situations involving violations requiring immediate attention or where a reportable violation is ongoing. It was suggested this practice be encouraged, but not required. The requirement to notify the appropriate law enforcement agency and appropriate FDIC regional office by telephone or other expeditious means in the specified situations is considered essential when the safety and soundness of an institution may be threatened by potential fraud losses or ongoing criminal activity. In our experience, federal law enforcement authorities have been very responsive to these situations. Additionally, prompt notification to the FDIC regional office in such situations is essential for contingency planning in the event of possible adverse public reaction from negative publicity, or where there may be other threats to the continued viability of the institution.

One comment suggested information in the reports be made available to banks that may subsequently consider employment of the suspect(s) or those that may consider doing business with the suspect(s). We share the concern of bankers faced with the possibility of employing anyone suspected of illegal activity or possibly being defrauded by anyone suspected of conducting illegal activity at other banks; however, privacy restrictions prevent FDIC from sharing information in reports of apparent crime with anyone other than appropriate federal law enforcement authorities.

One comment suggested the adoption of a single 60 day filing deadline for reports when no suspect is identified. Timely reporting is essential to the identification, investigation and prosecution of those committing crimes against financial institutions. The 30/60 timeframe for reporting crimes where a suspect is not immediately identified is intended to allow additional time for identification of suspects only when necessary. This exception to the 30 day reporting requirement also is intended to lessen the need for amended reports or updates in situations where 30 days is not sufficient time to identify a suspect, as is the case in many credit card fraud cases. If necessary, amended reports may be submitted by indicating at the beginning of the form that corrected or supplemental information is being provided.

One comment suggested that FinCEN be the only agency designated to receive reports of apparent crime from financial institutions and that FinCEN be designated to make the proper distribution to appropriate law enforcement and regulatory authorities. At this time, no consideration has been given to designation of FinCEN as the only agency to receive reports with the responsibility of subsequent distribution of the reports to the proper authorities. FinCEN will merely act as a central location for the collection and automation of the reports and related documentation for the regulatory agencies. The anticipated volume of reports to be received by FinCEN from all federally insured depository institutions and the depository institution regulatory agencies would likely preclude any timely and effective redistribution of the reports. FinCEN will make no decisions concerning the investigation or prosecution of the crimes reported. Since that decision is left to law enforcement authorities in the jurisdiction where the alleged crime was committed, it is believed financial institutions should continue to send copies of the reports directly to those authorities.

Following is a section-by-section analysis showing the modifications to the existing regulation:

Section 353.0—Purpose and Scope

Only minor changes have been made in this section.

Section 353.1—Reports and Records

This section has been modified to more clearly identify the circumstances requiring reports and by adding the requirement that the bank's board of directors be notified of any report filed pursuant to this section.

List of Subjects in 12 CFR Part 353

Banks, banking, Crime, Reporting and recordkeeping requirements.

For reasons set out in the preamble, title 12, part 353, of the Code of Federal Regulations is revised to read as follows:

PART 353—REPORTS OF APPARENT CRIMES AFFECTING INSURED NONMEMBER BANKS

Sec.
353.0 Purpose and scope.
353.1 Reports and records.

Authority: 12 U.S.C. 1818, 1819.

§ 353.0 Purpose and scope.

The purpose of this part is to reduce losses to insured nonmember banks resulting from criminal violations of the United States Code by requiring prompt and systematic reports by such banks of such crimes or attempted crimes. This part applies to known, attempted or suspected crimes involving or affecting the assets or affairs of insured nonmember banks. For purposes of this part, the phrase "known, attempted or suspected crimes" implies that there is a reasonable basis for believing that a crime has occurred, is occurring, or may occur. This part ensures that law enforcement authorities are notified by means of criminal referral reports when unexplained losses or known, attempted or suspected criminal acts are discovered. Based on these reports, the federal government will take appropriate measures and will maintain an interagency data base that is derived from these reports.

§ 353.1 Reports and records.

(a) Supplies of the Interagency Criminal Referral Form (the Form) may be obtained from the FDIC regional office (Division of Supervision, which will provide, if needed, the addresses of the investigatory and prosecuting authorities with which reports required by this part are to be filed. An insured nonmember bank shall file a criminal referral report using the Form, in accordance with the instructions for the Form, in every situation where:

(1) The insured nonmember bank suspects one of its employees, officers, directors, agents, or other institution-affiliated parties (as defined in section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u))) of having committed or aided in the commission of a crime involving the insured nonmember bank;

(2) There is an actual or potential loss to the insured nonmember bank (before reimbursement or recovery) involving $1,000 or more where the insured nonmember bank has a substantial basis for identifying a possible suspect or group of suspects and the suspect(s) is not an employee, officer, director, agent, or institution-affiliated party of the insured nonmember bank;

(3) There is an actual or potential loss to the insured nonmember bank (before reimbursement or recovery) involving $5,000 or more and where the insured nonmember bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) The insured nonmember bank suspects the existence of a monetary transaction involving the use of the insured nonmember bank as a conduit for criminal activity (such as money laundering or structuring transactions to evade the Bank Secrecy Act reporting requirements).

(b)(1) An insured nonmember bank shall file the report required by paragraph (a) of this section no later than 30 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity. If no suspect has been identified within 30 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity, reporting may be delayed an additional 30 calendar days or until a suspect has been identified; but in no case shall reporting of unidentified suspects be delayed more than 60 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity.

(2) When an insured nonmember bank detects a pattern of crimes committed by an identifiable individual, as set forth in paragraph (a)(2) of this section, the insured nonmember bank shall file a report no later than 30 calendar days after the aggregate amount of the crimes exceeds $1,000.

(3) In situations involving violations requiring immediate attention or where a reportable violation is ongoing, the insured nonmember bank shall immediately notify by telephone, or other expeditious means, the appropriate law enforcement agency and the appropriate FDIC regional office (Division of Supervision) in addition to filing a timely report.

(c) Insured nonmember banks are encouraged to file copies of the Form with state and local authorities where appropriate.

(d) An insured nonmember bank need not file the Form:

(1) For those robberies, burglaries and larcenies that are reported to law enforcement authorities and for which the insured nonmember bank maintains records under 12 CFR 326.3(a)(2)(i); and

(2) For lost, missing, counterfeit or stolen securities if a report is filed pursuant to the reporting requirements of 17 CFR 240.17f-1.

(e) An insured nonmember bank shall maintain copies of any Form that it filed and the originals of all related documents.

(f) The management of an insured nonmember bank shall promptly notify its board of directors of any report filed pursuant to this section. (The term "board of directors" includes the managing official of an insured state-licensed branch of a foreign bank for purposes of this part.) The board of directors shall make a note of such reports in the minutes of the board of directors' meetings.

By Order of the Board of Directors.

Dated at Washington, DC, this 4th day of May 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-11616 Filed 5-14-93; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 92-7) submitted consists of proposed changes to the Indiana Surface Mining Rules concerning subsidence liability. This amendment is intended to revise the permitting requirements and the performance standards for subsidence control applicable to underground coal mining operations.

EFFECTIVE DATE: May 17, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated December 2, 1992 (Administrative Record No. IND-1175), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code (IAC) 12-3-87.1, 12-5-130.1 and 12-5-131.1. The amendment consists of language necessary to implement subsidence liability conditions. Specifically, the rules revise the permitting requirements and the performance standards for subsidence control applicable to underground coal mining operations.

OSM announced receipt of the proposed amendment in the January 14, 1993, **Federal Register** (58 FR 4372), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on February 16, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated March 26, 1992 (Administrative Record Number IND-1057), the IDNR submitted to OSM a State program amendment package (Program Amendment Number 92-1) consisting of revisions to 60 sections of the Indiana rules. In the 92-1 amendment package Indiana submitted changes to 310 IAC 12-5-133 concerning buffer zones, underground mining subsidence control. Some of the proposed changes in amendment 92-7 at 310 IAC 12-5-130.1 duplicate the proposed changes submitted with amendment 92-1 at 310 IAC 12-5-133. Therefore, OSM transferred the proposed changes to 310 IAC 12-5-133 from amendment 92-1 to amendment 92-7.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

A. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
310 IAC 12-3-87.1(a), (b), (c)(1), (c)(3) thru (c)(6).	Subsidence Control Plan.	30 CFR 784.20 (a) thru (f).
310 IAC 12-5-130.1(a), (b), (c)(1), (d), (e), (f), (h).	Subsidence Control General Requirements.	30 CFR 817.121 (a), (b), (c)(1), (d), (e) and (g).

Because the above proposed provisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

B. Revisions to Indiana's Rules That Are Not Substantively Identical to the Corresponding Federal Regulations

Revisions not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. 310 IAC 12-3-87.1 Subsidence Control Plan

a. 310 IAC 12-3-87.1(c)(2). This proposed provision provides that the subsidence control plan must contain a map of underground workings which describe the location and extent of areas in which planned subsidence mining methods will be used. The submittal must also include all areas where the measures described in 310 IAC 12-3-87.1(c)(4) and (5) will be taken to prevent or minimize subsidence and subsidence-related damage and, where appropriate under State law, to correct subsidence related material damage.

The proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 784.20(b) except where Indiana defers to State law to correct subsidence related material damage. On October 24, 1992, SMCRA was amended by the Energy Policy Act of 1992 by the addition of new section 720 concerning

subsidence. New section 720 provides that underground coal mining operations shall promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or noncommercial building due to underground coal mining operations. The new SMCRA provision does not provide for deference to State law regarding the repair or compensation for material damage resulting from subsidence due to underground coal mining operations. The Director finds the proposed language is less effective than the counterpart Federal regulations at 30 CFR 784.20(b), to the extent that the proposed language affords a lesser degree of protection to occupied residential dwellings, related structures, and noncommercial buildings than SMCRA as revised. Additionally, when the Federal regulations are amended to conform with SMCRA at section 720, OSM will notify Indiana of any changes to the Indiana program which may be necessary to be no less effective than the revised Federal regulations.

b. 310 IAC 12–3–87.1(c)(7). The proposed language provides that the required subsidence control plan shall include a description of measures to be taken under 310 IAC 12–5–130.1(c) to mitigate or remedy any subsidence related material damage to, or diminution in value or reasonably foreseeable use of the land, structures, or facilities. The Director finds this proposed language to be substantively identical to the counterpart Federal regulations at 30 CFR 784.20(g) except that the Federal rule has a State law limitation which has been superseded in part by section 720 of SMCRA (see discussion at Finding 2(b) below). Nonetheless, the proposed language is in accordance with section 720 of SMCRA. The proposed language at 310 IAC 12–3–87.1(c)(7) also provides that in conjunction with the requirement at subsection (c)(7), the operator shall provide a description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface. This additional language has no direct Federal counterpart. However, the Director finds the proposed language to be consistent with and no less effective than the Federal regulations at 30 CFR 784.20(h) which provides that the regulatory authority may require other information as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of section 30 CFR 817.121 concerning subsidence control.

c. 310 IAC 12–3–87.1(c)(8). The proposed language at subsection (c)(8) is substantively identical to the counterpart Federal regulations at 30 CFR 784.20(h). However, the Director notes a typographical error in the reference cited in the proposed language: "310 IAC 12–5–131.1" should read "310 IAC 12–5–130.1." Indiana will correct this error when the final rule is promulgated. The Director finds, and with the understanding that the citation in the rule will be corrected to read 310 IAC 12–5–130.1, that the proposed rule is substantively identical to and no less effective than the Federal regulations at 30 CFR 784.20(h).

2. 310 IAC 12–5–130.1 Subsidence Control; General Requirements

a. Indiana provides at subsection 130.1(c)(2) that the permittee shall, to the extent required under Indiana law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner in the full amount of the diminution in value resulting from the subsidence. The proposed provision is substantively identical to the Federal regulations at 30 CFR 817.121(c)(2). However, as discussed above at Finding 1(a), the Energy Policy Act of 1992 amended SMCRA by adding a new section 720 which provides that underground coal mining operations shall promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or noncommercial buildings due to underground coal mining operations. The new SMCRA provision supersedes in part 30 CFR 817.121(c)(2) to the extent that it does not provide for deference to State law regarding such repair or compensation. Since OSM has not yet amended 30 CFR 817.121(c)(2), OSM cannot compare the Indiana regulation with the Federal. Thus, OSM has reviewed the proposed regulation with section 720 of SMCRA. The Director finds that to the extent Indiana's rule at section 2–5–130.1(c)(2) references requirements under State law and which may afford a lesser degree of protection to occupied residential dwellings, related structures and noncommercial buildings than section 702 of SMCRA, it is less stringent than SMCRA. The Director is, therefore, not approving Indiana's proposed rule at section 12–5–130.1(c)(2) to the extent that it affords a lesser degree of protection to occupied residential dwellings, related structures, and noncommercial buildings than 720 of SMCRA.

b. Indiana provides at subsection 130.1(g) that the director of IDNR shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, pipelines, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities. The proposed language is substantively identical to the counterpart Federal language at 30 CFR 817.121(f) except that the Federal language does not specify "pipelines" as does the Indiana language. The addition of the word "pipelines" is, however, consistent with the intent of SMCRA and the Federal regulations to protect the stability of the land if imminent danger is found to inhabitants of urbanized areas, cities, towns, or communities. The Director finds, therefore, that the proposed language is in accordance with and no less stringent that the requirements of SMCRA at section 516(c) and no less effective than the Federal regulations at 30 CFR 817.121(f).

3. 310 IAC 12–5–131.1 Underground Mining; Subsidence Control; Public Notice

Indiana proposes to add public notice requirements which are substantively identical to the counterpart Federal requirements at 30 CFR 817.122 with the following exceptions. The proposed language provides that notification of underground mining shall also be mailed to operators of a pipeline. In its submittal of this amendment, Indiana stated that notification of pipeline operators is added to the rules in the interest of added safety. The Director finds that the proposed language is in accordance with SMCRA section 516 concerning the surface effects of underground coal mining operations and no less effective than 30 CFR 817.122 which provides for public notice to owners of structures above underground workings.

The proposed language also provides that copies of the notices discussed above shall be maintained at the mine office, or other location approved by the director of IDNR, and shall be available for inspection by the director of IDNR. In its submittal of this language, Indiana stated that this added stipulation of availability is consistent with other availability requirements of the Indiana program. The Director finds that the proposed language is in accordance with SMCRA section 516 concerning the surface effects of underground coal mining operations, and not inconsistent with and no less effective than the

Federal regulations at 30 CFR 817.122 concerning public notice.

4. 310 IAC 12–5–133 Underground Mining; Subsidence Control; Buffer Zones

The proposed amendments to 310 IAC 12–5–133 were originally submitted with Indiana's 92–1 amendment package. The amendments were subsequently transferred by OSM to the Indiana 92–7 amendment package due to an apparent duplication between the proposed amendments to 310 IAC 12–5–133 submitted with amendment 92–1 and the proposed amendments to 310 IAC 12–5–130.1 submitted with amendment 92–7. Indiana has indicated that the duplication will be corrected as the final rule is promulgated. Therefore, the Director is deferring action on 310 IAC 12–5–133 until after Indiana makes final changes during its promulgation process. At that time, OSM will review Indiana's actions to determine if 310 IAC 12–5–133 is no less effective than the Federal regulations. If significant changes to 310 IAC 12–5–133 have been made, OSM will reopen the public comment period.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service (FWS) commented that the proposed rules would require subsidence evaluation and control if the affected area contains "renewable resource lands" or water bodies with a volume greater than 20 acre-feet. The FWS stated that it is not clear whether these rules address perennial streams and other drainageways. The FWS recommended that, if they do not address perennial streams and other drainageways, they should be revised to do so.

The Federal regulations at 30 CFR 701.5 define "renewable resource lands" as aquifers and areas for the recharge of aquifers and other underground waters, areas for agriculture or silvicultural production of food and fiber, and grazing lands. The Indiana program contains a counterpart definition of "renewable resource lands" which is substantively identical to and no less effective than the Federal definition.

The Federal regulations at 30 CFR 817.121(d) provide that mining activities shall not be conducted beneath or adjacent to impoundments with a storage capacity of 20 acre-feet or more, or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of such features or facilities. The counterpart Indiana rule at 310 IAC 12–5–130.1(d) is substantively identical to and no less effective than the Federal regulations.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the January 14, 1993, **Federal Register** (58 FR 4372). The comment period closed on February 16, 1993. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Midwestern Gas Transmission commented in support of the addition of the word "pipeline" at 310 IAC 12–5–130.1(g). As discussed in Finding 2(b) above, the Director has found the addition of the word "pipeline" to 310 IAC 12–5–130.1(g) to be in accordance with and no less stringent than the protection afforded by SMCRA at section 516(c) and no less effective than the counterpart Federal regulations at 30 CFR 817.121(f).

Midwestern Gas Transmission also commented in support of the addition of the phrase "including operators of a pipeline" at 310 IAC 12–5–131.1. As discussed above in Finding 3, the Director has found the requirement to notify operators of a pipeline of anticipated underground mining to be in accordance with SMCRA and no less effective than the Federal regulations at 30 CFR 817.122.

V. Director's Decision

Based on the findings above, and except as noted below, the Director is approving Indiana's program amendment number 92–7 as submitted by Indiana on December 2, 1992. As discussed in Finding 1(a) above, the Director is not approving 310 IAC 12–3–87.1(c)(2) to the extent that the rule affords a lesser degree of protection to occupied residential dwellings, related structures and noncommercial buildings than SMCRA as revised.

As discussed in Finding 2 above, the Director is not approving 310 IAC 12–5–130.1(c)(2) to the extent that the rule affords a lesser degree of protection to occupied residential dwellings, related structures and noncommercial buildings than SMCRA at section 720.

As discussed in Finding 4 above, the Director is deferring action on the amendments to 310 IAC 12–5–133 until after Indiana makes final changes to the rule during Indiana's promulgation process.

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, by letter dated January 13, 1993 (Administrative Record Number IND–1205), EPA responded and concurred without comment.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by

section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 3, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (ss) is added to read as follows:

§ 914.15 Approval of regulatory program amendments

* * * * *

(ss) The following amendment (Program Amendment Number 92–7) to the Indiana program as submitted to OSM on December 2, 1992, is approved except as noted below, effective May 17, 1993: 310 IAC 12–3–87.1 concerning subsidence control plan, except to the extent that subsection 87.1(c)(2) affords a lesser degree of protection to occupied residential dwellings, related structures and noncommercial buildings than SMCRA at section 720; 310 IAC 12–5–130.1 concerning general requirements for subsidence control, except to the extent that subsection 130.1(c)(2) affords a lesser degree of protection to occupied residential dwellings, related structures and noncommercial buildings than SMCRA at section 720; 310 IAC 12–5–131.1 concerning subsidence control public notice. Action on 310 IAC 12–5–133 is deferred.

[FR Doc. 93–11589 Filed 5–14–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 920

Maryland Regulatory Program; Effluent Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment adopts, by reference, applicable State laws and regulations, the Federal Clean Water Act, as amended, and the U.S. Environmental Protection Agency's regulations, 40 CFR part 434, to regulate discharges of water from areas disturbed by coal mining. The amendment revises the Maryland program to be no less effective than the corresponding Federal regulations.

EFFECTIVE DATE: May 17, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, suite 3C, Harrisburg, PA 17101; Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982 **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16.

II. Submission of Amendments

By letter dated October 21, 1992, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD–559.04). The proposed amendment deletes the current provisions of the Code of Maryland Regulations (COMAR) at section 08.13.09.24B(1)–(8)—Water Quality Standards and Effluent Limitations. Current subsection (9) is renumbered as section (2). The amendment replaces portions of the deleted language and is cited as COMAR 08.13.09.24B(1). The amendment states as follows: "Discharges of water from areas disturbed by surface mining shall be made in compliance with applicable State laws and regulations, the Federal Clean Water Act, as amended, and with effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434."

OSM announced receipt of the proposed amendment in the December 30, 1992, **Federal Register** (57 FR 62277) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on January 29, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on October 21, 1992. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal rules. Revisions which are not discussed below revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

COMAR 08.13.09.24B—Water Quality Standards and Effluent Limitations. Maryland is proposing to delete subsections B (1)–(8) and add a new subsection B(1). Subsections B(1), (B)(2), (B)(3), and (B)(4) were previously approved by OSM on August 9, 1991 (56 FR 37879) and appear at COMAR 08.13.09.24F (1)(b), (2)(b), (2)(e), and 5, respectively. Subsections B (5)–(8) address specific effluent limitations and are replaced by new subsection B(1) which incorporates the Environmental Protection Agency (EPA) standards in 40 CFR 434 by reference.

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations at 30 CFR 816.42, the Director finds that Maryland's proposed rule is no less effective than the Federal rule.

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the December 30, 1992, **Federal Register** (57 FR 62277) ended on January 29, 1993. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of the Interior, Bureau of Mines, the Department of Labor, Mine Safety and Health Administration, and the Department of the Army, Corps of Engineers, concurred without comment. The Department of Agriculture, Soil Conservation Service, had several comments which refer to sections of Maryland's program approved by OSM on August 9, 1991 (56 FR 37839) with the exception of COMAR 08.13.09.24B(8). Subsection B(8) is being replaced by this amendment, which incorporates the cross-reference to 40 CFR part 434.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

The Director solicited EPA's concurrence with the proposed amendment by letter dated October 29, 1992. The EPA responded by letter dated April 6, 1993 (Administrative Record No. MD–559.12) and concurred with comment. The EPA noted that it interprets the proposed amendment, which references the Federal Clean Water Act (CWA), to include section 301(p) of the CWA. Based on this interpretation, EPA concludes that the amendment demonstrates the legal authority, administrative capability, and the technical conformity with controlling National Pollutant Discharge Elimination System regulations necessary to maintain water quality standards promulgated under the authority of the CWA, as amended (33 U.S.C. 1251 *et seq.*).

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Maryland on October 21, 1992.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The State submittal which is the subject of this rule is based upon counterpart Federal regulations for

which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 920.15, a new paragraph (u) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory programs.

* * * * *

(u) The following amendment submitted to OSM on October 21, 1992, is approved effective May 17, 1993. The amendment consists of the following modifications to the Maryland program:

(1) Revision of the following regulation of the Code of Maryland Administrative Regulations:

08.13.09.24B Water Quality Standards and Effluent Limitations

[FR Doc. 93–11587 Filed 5–14–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[IL39–1–5424; FRL–4654–9]

Appendix G—Provisions for an Alternative Method of Demonstrating Compliance With 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: At the request of Central Illinois Public Service Company (CIPS), USEPA is approving a technical amendment to 40 CFR part 60, appendix G, for CIPS Newton Power Station. CIPS submitted a request for a revision of their compliance method, because the equipment used for emissions monitoring, as specified in 40 CFR part 60, appendix G, has been superseded by more technically advanced equipment. This revision allows CIPS to utilize their advanced equipment to reduce the recordkeeping costs associated with appendix G.

DATES: This action will be effective July 16, 1993 unless notice is received by June 16, 1993 that someone wishes to submit adverse or critical comments or requests a public hearing. If the effective date is delayed, timely notice will be published in the **Federal Register**.

Comments on this requested NSPS revision must be received by June 16, 1993 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzar by June 16, 1993 at the address below. Interested persons may call Ms. Hattie Geisler at (312) 886–3199 to see if a hearing will be held and the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this action, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to J. Elmer Bortzar, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of this action, the scope of which is discussed below.

Docket: Pursuant to section 307(d)(1) of the Act, 42 U.S.C. 7607(d)(1), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, A–92–49, which is available for public inspection and copying between 8 a.m. and 4 p.m. Monday through Friday, at the following addresses. We recommend that you contact Fayette Bright before visiting the Chicago location and Jaqueline Brown before visiting the Washington, DC location. A reasonable fee may be charged for copying. U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6069. U.S. Environmental Protection Agency, Docket No. A–92–49, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M. Street SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6069.

SUPPLEMENTARY INFORMATION: Section 111 of the Act requires the USEPA Administrator to establish and enforce certain "standards of performance for new stationary sources (NSPS)." These NSPS are intended to reduce emissions, consistent with consideration of costs and other impacts. It is important to note that the USEPA August 4, 1987, (52 FR 28946) rulemaking action did not result in a NSPS separate from subpart D, but rather it allowed an alternative method of determining compliance with subpart D, for CIPS Newton Units 1 and 2. This alternative method of compliance is termed a compliance "bubble".[2] The SO_2 emissions from Units 1 and 2 are "averaged together" as though the units are under an imaginary "bubble".[2] The Newton Power Station is subject to conditions designed to assure overall emission rates less than those which would be produced by facility-by-facility compliance with subpart D without the bubble. CIPS has estimated that cost savings under the bubble could total an estimated $22 million annually. The actual savings will depend on relative fuel prices and other factors, and will probably be lower than CIPS originally estimated, although still significant.

The NSPS for SO_2 emissions for the Newton units is an emission limit of 520 nanograms per joule heat input (ng/J) (1.2 pounds per million British Thermal Units (lbs/MMBTU)). 40 CFR 60.43. The bubble, approved by the USEPA rulemaking of August 4, 1987, permitted the alternative combined SO_2 emission limit of 470 ng/J (1.1 per lbs/MMBTU) for Newton Units 1 and 2. Approval of the compliance bubble was based on a determination by the Administrator that the bubble would result in SO_2 emission rates that were lower than the rates that would be achieved from the Newton units without the bubble; that the

[1] Appendix G, the product of the rulemaking, merely amended subpart D to allow CIPS to demonstrate compliance with the existing NSPS in a different manner. Section 111 does not require USEPA to make a new Best Demonstrated Technology (BDT) for the Newton Units before approving the bubble. For further discussion refer to August 4, 1987, 52 FR 28949, "Legality Under Section 111".

[2] For further information regarding the USEPA National Administrator's decision to propose the bubble, refer to August 4, 1987, 52 FR 28947, "Determination of Bubble Emissions".

bubble would result in reduced cost of compliance; that the dual alkali flue gas desulfurization system (DAFGDS) on Unit 1 is essentially different from the technologies selected as representative of best demonstrated technology (BDT); and that the inclusion of continuous monitoring provisions would ensure continuous compliance with the bubble emission limit. These findings were consistent with the criteria for future NSPS bubble approvals, as described in the rulemaking of August 4, 1987, (52 FR 28947).

The important elements of this compliance bubble are the combined SO_2 emission limit of 1.1 lbs/MMBTU, the use of a 30-day rolling average for computing the SO_2 emission rate, and that CIPS install CEMs on each unit for the purpose of determining compliance on a continuous basis. In addition, the bubble contains more prescriptive requirements regarding the treatment of emissions during the periods of control equipment malfunction.

Submittal of September 23, 1992

Part 60, appendix G—Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company is amended as follows:

1. Designation of Affected Facilities

1.1 The affected facilities to which this alternative compliance method applies are the Units 1 and 2 coal-fired steam generating units located at the Central Illinois Public Service Company's (CIPS) Newton Power Station in Jasper County, Illinois. Each of these units is subject to the Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Commenced After August 17, 1971 (Subpart D).

2. Definitions

2.1 All definitions in Subparts D and Da of Part 60 apply to this provision except that:

"24-hour period" means the period of time between 12:00 midnight and the following midnight.

"Boiler operating day" means a 24-hour period during which any fossil fuel is combusted in either the Unit 1 or Unit 2 steam generating unit and during which the provisions of § 60.43(e) are applicable.

"CEMs" means continuous emission monitoring system. "Coal bunker" means a single or group of coal trailers, hoppers, silos or other containers that:

(1) are physically attached to the affected facility; and (2) provide coal to the coal pulverizers.

"DAFGDS" means the dual alkali flue gas desulfurization system for the Newton Unit 1 steam generating unit.

3. Compliance Provisions

3.1 If the owner or operator of the affected facility elects to comply with the 470 ng/J (1.1 lbs/MMBTU) of combined heat input emission limit under § 60.43(e), he shall notify the Regional Administrator, of the United States Environmental Protection Agency (USEPA), Region 5 and the Director, of the Illinois Environmental Protection Agency (IEPA) at least 30 days in advance of the date such election is to take effect, stating the date such operation is to commence. When the owner or operator elects to comply with this limit after one or more periods of reverting to the 520 ng/J heat input (1.2 lbs/MMBTU) limit of § 60.43(a)(2), as provided under 3.4, he shall notify the Regional Administrator of the USEPA, Region 5 and the Director of the IEPA in writing at least ten (10) days in advance of the date such election is to take effect.

3.2 Compliance with the sulfur dioxide emission limit under § 60.43(e) is determined on a continuous basis by performance testing using CEMs. Within 60 days after the initial operation of Units 1 and 2 subject to the combined emission limit in § 60.43(e), the owner or operator shall conduct an initial performance test, as required by § 60.8, to determine compliance with the combined emission limit. This initial performance test is to be scheduled so that the thirtieth boiler operating day of the 30 successive boiler operating days is completed within 60 days after initial operation subject to the 470 ng/J (1.1 lbs/MMBTU) combined emission limit. Following the initial performance test, a separate performance test is completed at the end of each boiler operating day Unit 1 and Unit 2 are subject to § 60.43(e), and a new 30 day average emission rate calculated.

3.2.1 Following the initial performance test, a new 30 day average emission rate is calculated for each boiler operating day the affected facility is subject to § 60.43(e). If the owner or operator of the affected facility elects to comply with § 60.43(e) after one or more periods of reverting to the 520 ng/J heat input (1.2 lbs/MMBTU) limit under § 60.43(a)(2), as provided under 3.4, the 30 day average emission rate under § 60.43(e) is calculated using emissions data of the current boiler operating day and data for the previous 29 boiler operating days when the affected facility was subject to § 60.43(e). Periods of operation of the affected facility under § 60.43(a)(2) are not considered boiler operating days. Emissions data collected during operation under § 60.43(a)(2) are not considered relative to 4.6 and emissions data are not included in calculations of emissions under § 60.43(e).

3.2.2 When the affected facility is operated under the provisions of § 60.43(e), the Unit 1 DAFGDS bypass damper must be fully closed. The DAFGDS bypass may be opened only during periods of DAFGDS startup, shutdown, malfunction or testing as described under Sections 3.5.1, 3.5.2, 3.5.3, 3.5.4, and 4.8.2.

3.3 Compliance with the sulfur dioxide emission limit set forth in § 60.43(e) is based on the average combined hourly emission rate from Units 1 and 2 for 30 successive boiler operating days determined as follows:

$$E30 = \frac{1}{n}\sum_{i=1}^{n} EC(i)$$

where:

n=the number of available hourly combined emission rate values in the 30 successive boiler operating day period where Unit 1 and Unit 2 are subject to § 60.43(e).

E30=average emission rate for 30 successive boiler operating days where Unit 1 and Unit 2 are subject to § 60.43(e).

EC=the hourly combined emission rate from Units 1 and 2, in ng/J or lbs/MMBTU.

3.3.1 The average hourly combined emission rate for Units 1 and 2 for each hour of operation of either Unit 1or 2, or both, is determined as follows:

$EC=[(E1)+(E2)]/[H1+H2]$

where:

EC=the hourly combined SO_2 emission rate, lbs/MMBTU, from Units 1 and 2 when Units 1 and 2 are subject to § 60.43(e).

E1=the hourly SO_2 mass emission, lb/hr, from Unit 1 as determined from CEMs data using the calculation procedures in Section 4 of this Appendix.

E2=the hourly SO_2 mass emission, lb/hr, from Unit 2 as determined from CEMs data using the calculation procedures in Section 4 of this Appendix.

H1=the hourly heat input, MMBTU/HR to Unit 1 as determined in Section 4 of this Appendix.

H2=the hourly heat input, MMBTU/HR, to Unit 2 as determined by Section 4 of this Appendix.

3.3.2 If data for any of the four hourly parameters (E1, E2, H1 and H2, under 3.3.1 are unavailable during an hourly period, the combined emission

rate (EC) is not calculated and the period is counted as missing data under 4.6.1, except as provided under 3.5 and 4.4.2.

3.4 After the date of initial operation subject to the combined emission limit, Units 1 and 2 shall remain subject to the combined emission limit and the owner or operator shall remain subject to the requirements of this Appendix until the initial performance test as required by 3.2 is completed and the owner or operator of the affected facility elects and provides notice to revert on a certain date to the 520 ng/J heat input (1.2 lbs/MMBTU) limit of § 60.43(a)(2) applicable separately at each unit. The Regional Administrator of the USEPA, Region 5 and the Director of the IEPA shall be given written notification from CIPS as soon as possible of CIPS' decision to revert to the 520 ng/J heat input (1.2 lbs/MMBTU) limit of § 60.43(a)(2) separately at each unit, but no later than 10 days in advance of the date such election is to take effect.

3.5 Emission monitoring data for Unit 1 may be excluded from calculations of the 30 day rolling average only during the following times:

3.5.1 Periods of DAFGDS startup.

3.5.2 Periods of DAFGDS shutdown.

3.5.3 Period of DAFGDS malfunction during system emergencies as defined in § 60.41(a).

3.5.4 The first 250 hours per calendar year of DAFGDS malfunctions of Unit 1 DAFGDS provided that efforts are made to minimize emissions from Unit 1 in accordance with § 60.11(d), and if, after 16 hours but not more than 24 hours of DAFGDS malfunction, the owner or operator of the affected facility begins (following the customary loading procedures) loading into the Unit 1 coal bunker, coal with a potential SO_2 emission rate equal to or less than the emission rate of Unit 2 recorded at the beginning of the DAFGDS malfunction. Malfunction periods under 3.5.3 are not counted toward the 250 hour/yr limit under this section.

3.5.4.1 The malfunction exemption in 3.5.4 is limited to the first 250 hours per calendar year of DAFGDS malfunction.

3.5.4.2 For malfunctions of the DAFGDS after the 250 hours per calendar year limit (cumulative), other than those defined in 3.5.3, the owner or operator of the affected facility shall combust lower sulfur coal or use any other method to comply with the 470 ng/J (1.1 lbs/MMBTU) combined emission limit.

3.5.4.3 During the first 250 hours of DAFGDS malfunction per year or during periods of DAFGDS startup, or DAFGDS shutdown, CEMs emissions data from Unit 2 shall continue to be included in the daily calculation of the combined 30 day rolling average emission rate; that is, the load on Unit 1 is assumed to be zero (H1 and E1=O; EC=E2/H2).

3.6 The provision for excluding CEMs data from Unit 1 during the first 250 hours of DAFGDS malfunctions from combined hourly emissions calculations supersedes the provisions of § 60.11(d). However, the general purpose contained in § 60.11(d) (i.e., following good control practices to minimize air pollution emission even during malfunctions) has not been superseded.

4. Continuous Emission Monitoring

4.1 The CEMs required under Section 3.2 are operated and data are recorded for all periods of operation of the affected facility including periods of the DAFGDS startup, shutdown and malfunction except for CEMs breakdowns, repairs, calibration checks, and zero and span adjustment. All provisions of Section 60.45 apply except as follows:

4.2 The owner or operator shall install, calibrate, maintain, and operate CEMs and monitoring devices for measuring the following:

4.2.1 For Unit 1:

4.2.1.1 Sulfur dioxide, oxygen or carbon dioxide, and volumetric flow rate for the Unit 1 DAFGDS stack.

4.2.1.2 Sulfur dioxide, oxygen or carbon dioxide, and volumetric flow rate for the Unit 1 DAFGDS bypass stack.

4.2.1.3 Moisture content of the flue gas must be determined continuously for the Unit 1 DAFGDS stack and the Unit 1 DAFGDS bypass stack, if the sulfur dioxide concentration in each stack is measured on a dry basis.

4.2.2 For Unit 2, sulfur dioxide, oxygen or carbon dioxide, and volumetric flow rate.

4.2.2.1 Moisture content of the flue gas must be determined continuously for the Unit 2 stack, if the sulfur dioxide concentration in the stack is measured on a dry basis.

4.2.3 For Units 1 and 2, the hourly heat input, the hourly steam production rate, and the hourly gross electrical power output from each unit.

4.3 For the Unit 1 bypass stack and the Unit 2 stack, the span value of the sulfur dioxide analyzer shall be equivalent to 200 percent of the maximum estimated hourly potential sulfur dioxide emissions of the fuel fired in parts per million sulfur dioxide. For the Unit 1 DAFGDS stack, the span value of the sulfur dioxide analyzer shall be equivalent to 100 percent of the maximum estimated hourly potential emissions of the fuel fired in parts per million sulfur dioxide. The span value for volumetric flow monitors shall be equivalent to 125 percent of the maximum estimated hourly flow in standard cubic meters/minute (standard cubic feet per minute). The span value of the continuous moisture monitors, if required by 4.2.1.3 and 4.2.2.1, shall be equivalent to 100 percent by volume. The span value of the oxygen or carbon dioxide analyzers shall be equivalent to 25 percent by volume.

4.4 The monitoring devices required in 4.2 shall be installed, calibrated, and maintained as follows:

4.4.1 Each volumetric flow rate monitoring device specified in 4.2 shall be installed at approximately the same location as the sulfur dioxide emission monitoring sample location.

4.4.2 Hourly steam production rate and hourly electrical power output monitoring devices for Unit 1 and Unit 2 shall be calibrated and maintained according to manufacturer's specifications. The data from either of these devices may be used in the calculation of the combined emission rate in Section 3.3.1, only when the hourly heat input for Unit 1 (H1) or the hourly heat input for Unit 2 (H2) cannot be determined from CEM data, and the hourly heat input to steam production or hourly heat input to electrical power output efficiency over a given segment of each boiler or generator operating range, respectively, varies by less than 5 percent within the specified operating range, or the efficiencies of the boiler/generator units differ by less than 5 percent. The hourly heat input for Unit 1 (H1) or the hourly heat input for Unit 2 (H2) in Section 3.3.1 may also be calculated based on the fuel firing rates and fuel analysis.

4.5 The hourly mass emissions from Unit 1 (E1) and Unit 2 (E2) and the hourly heat inputs from Unit 1 (H1) and Unit 2 (H2) used to determine the hourly combined emission rate for Units 1 and 2 (EC) in Section 3.3.1 are calculated using CEM data for each respective stack as follows:

4.5.1 The hourly SO_2 mass emission from each respective stack is determined as follows:

$$E=(C)(F)(D)(K)$$

Where:

E=SO_2 mass emission from the respective stack in lb per hour.

C=SO_2 concentration from the respective stack ppm.

F=flue gas flow rate from the respective stack in scfm.

D=density of SO_2 in lb per standard cubic feet.

K=time conversion, 60 mins./hr.

4.5.2 The hourly heat input from each respective stack is determined as follows:

$H=[(F)(C)(K)]/(F_c)$

where:

H=heat input from the respective stack in MMBTU per hour

C=CO_2 or O_2 concentration from the respective stack as a decimal

F=flue gas flow rate from the respective stack in scfm

K=time conversion, 60 mins./hr.

F_c=fuel constant for the appropriate diluent in scf/MMBTU as per § 60.45(f) (4) and (5)

4.5.3 The hourly SO_2 mass emission for Unit 1 in pounds per hour (E1) is calculated as follows, when leakage or diversion of any DAFGDS inlet gas to the bypass stack occurs:

E1=(EF)+(EB)

Where:

EF=Hourly SO_2 mass emission measured in DAFGDS stack, lb/hr, using the calculation in Section 4.5.1.

EB=Hourly SO_2 mass emission measured in bypass stack, lb/hr, using the calculation in Section 4.5.1.

Other than during conditions under 3.5.1, 3.5.2, 3.5.3, 3.5.4, or 4.8.2, the DAFGDS bypass damper must be fully closed and any leakage will be indicated by the bypass stack volumetric flow and SO_2 measurements, and when no leakage through the bypass damper is indicated:

E1=EF

4.5.4 The hourly heat input for Unit 1 in MMBTU per hour (H1) is calculated as follows, when leakage or diversion of any DAFGDS inlet gas to the bypass stack occurs:

H1=(HF)+(HB)

where:

HF=Hourly heat input as determined from the DAFGDS stack CEMs, in MMBTU per hour, using the calculation in Section 4.5.2.

HB=Hourly heat input as determined from the DAFGDS bypass stack CEMs, in MMBTU per hour, using the calculation in Section 4.5.2

4.6 For the CEMs required for Unit 1 and Unit 2, the owner or operator of the affected facility shall maintain and operate the CEMs and obtain combined emission data values (EC) for at least 75 percent of the boiler operating hours per day for at least 26 out of each 30 successive boiler operating days.

4.6.1 When hourly SO_2 emission data are not obtained by the CEMs because of CEMs breakdowns, repairs, calibration checks and zero and span adjustment, hourly emission data required by 4.6 are obtained by using Methods 6 or 6C and 3 or 3A, 6A, or 8 and 3, or by other alternative methods approved by the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA. Failure to obtain the minimum data requirements of 4.6 by CEMs, or by CEMs supplemented with alternative methods of this section, is a violation of performance testing requirements.

4.6.2 Independent of complying with the minimum data requirements of 4.6, all valid emissions data collected are used to calculate combined hourly emission rates (EC) and 30-day rolling average emission rates (E30) are calculated and used to judge compliance with § 60.43(e).

4.7 For each continuous emission monitoring system, a quality control plan shall be prepared by CIPS and submitted to the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA. The plan is to be submitted to the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA 45 days before initiation of the initial performance test. At a minimum, the plan shall contain the following quality control elements:

4.7.1 Calibration of continuous emission monitoring systems (CEMS) and volumetric flow measurement devices.

4.7.2 Calibration drift determination and adjustment of CEMs and volumetric flow measurement devices.

4.7.3 Periodic CEMs, volumetric flow measurement devices and relative accuracy determinations.

4.7.4 Preventive maintenance of CEMs and volumetric flow measurement devices (including spare parts inventory).

4.7.5 Data recording and reporting.

4.7.6 Program of corrective action for malfunctioning CEMs and volumetric flow measurement devices.

4.7.7 Criteria for determining when the CEMs and volumetric flow measurement devices are not producing valid data.

4.7.8 Calibration and periodic checks of monitoring devices identified in 4.4.2.

4.8 For the purpose of conducting the continuous emission monitoring system performance specification tests as required by § 60.13 and Appendix B, the following conditions apply:

4.8.1 The calibration drift specification of Performance Specification 2, Appendix B shall be determined separately for each of the Unit 1 SO_2 CEMs and the Unit 2 SO_2 CEMs. The calibration drift specification of Performance Specification 3, Appendix B shall be determined separately for each of the Unit 1 diluent CEMs and Unit 2 diluent CEMs.

4.8.2 The relative accuracy of the combined SO_2 emission rate for Unit 1 and Unit 2, as calculated from CEMs and volumetric flow data using the procedures in 3.3.1, 4.5.1, 4.5.2 and 4.5.3 shall be no greater than 20 percent of the mean value of the combined emission rate, as determined from testing conducted simultaneously on the DAFGDS stack, the DAFGDS bypass stack and the Unit 2 stack using reference methods 2, 3, or 3A and 6 or 6C, or shall be no greater than 10 percent of the emission limit in § 60.43(e), whichever criteria is less stringent. The relative accuracy shall be computed from at least nine comparisons of the combined emission rate values using the procedures in Section 7 and the equations in Section 8, Performance Specification 2, Appendix B. Throughout, but only during, the relative accuracy test period the DAFGDS bypass damper shall be partially opened such that there is a detectable flow.

4.9 The total monitoring system required by 4.2 shall be subject only to an annual relative accuracy test audit (RATA) in accordance with the quality assurance requirements of Section 5.1.1 of 40 CFR part 60, appendix F. Each SO_2 and diluent CEMs shall be subject to cylinder gas audits (CGA) in accordance with the quality assurance requirements of Section 5.1.2 of Appendix F with the exception that any SO_2 or diluent CEMs without any type of probe or sample line shall be exempt from the CGA requirements.

5. Recordkeeping Requirements

5.1 The plant owner or operator shall keep a record of each hourly emission rate, each hourly SO_2 CEMs value and hourly flow rate value, and each hourly Btu heat input rate, hourly steam rate, or hourly electrical power output, and a record of each hourly weighted average emission rate. These records shall be kept for all periods of operation of Unit 1 or 2 under provisions of § 60.43(e), including operations of Unit 1 (E1) during periods of DAFGDS startup, shutdown, and malfunction when H1 and E1 are assumed to be zero (0) (see 4.5).

5.2 The plant owner or operator shall keep a record of each hourly gas flow rate through the DAFGDS stack, each hourly stack gas flow rate through the bypass stack during any periods that the DAFGDS bypass damper is opened or flow is indicated, and reason for bypass operation.

6. Reporting Requirements

6.1 The owner or operator of any affected facility shall submit the written reports required under 6.2 of this section and Subpart A to the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA for every calendar quarter. All quarterly reports shall be submitted by the 30th day following the end of each calendar quarter.

6.2 For sulfur dioxide, the following data are submitted to the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA for each 24-hour period:

6.2.1 Calendar date

6.2.2 The combined average sulfur dioxide emission rate (ng/J or lbs/MMBTU) for the past 30 successive boiler operating days (ending with the last 30-day period in the quarter); and, for any noncompliance periods, reasons for noncompliance with the emission standards and description of corrective action taken.

6.2.3 Identification of the boiler operating days for which valid sulfur dioxide emissions data required by 4.6 have not been obtained for 75 percent of the boiler operating hours; reasons for not obtaining sufficient data; and description of corrective actions taken to prevent recurrence.

6.2.4 Identification of the time periods (hours) when Unit 1 or Unit 2 were operated but combined hourly emission rates (EC) were not calculated because of the unavailability of parameters E1, E2, H1, or H2 as described in 3.2.

6.2.5 Identification of the time periods (hours) when Unit 1 and Unit 2 were operated and where the combined hourly emission rate (EC) equalled Unit 2 (E2/H2) emissions because of the Unit 1 malfunction provisions under 3.5.3, and 3.5.4.

6.2.6 Identification of the time periods (hours) when emissions from the Unit 1 DAFGDS have been excluded from the calculation of average sulfur dioxide emission rates because of Unit 1 DAFGDS startup, shutdown, malfunction, or other reasons; and justification for excluding data for reasons other than startup or shutdown. Reporting of hourly emission rate of Unit 1 (E1/H2) during each hour of the DAFGDS startup, malfunction under 3.5.1, 3.5.2, 3.5.3, and 3.5.4 (see 4.5).

6.2.7 Identification of the number of days in the calendar quarter that the affected facility was operated (any fuel fired).

6.2.8 Identify any periods where Unit 1 DAFGDS malfunctions occurred and the cumulative hours of Unit 1 DAFGDS malfunction for the quarter.

6.2.9 Identify any periods of time that any exhaust gases were discharged to the DAFGDS bypass stack and the hourly gas flow rate through the DAFGDS stack and through the DAFGDS bypass stack during such periods and reason for bypass operation.

Summary of Final Rulemaking Action

As previously stated CIPS request for alternative monitoring procedures is necessary because of equipment advances. The equipment used for emissions monitoring as specified in 40 CFR part 60, appendix G has been superseded by more technically advanced equipment. Two-thirds of the equipment which is referenced in CIPS revisions is currently in service on Newton Unit 1 and has satisfactorily met performance criteria stated in 40 CFR part 60, appendix B Performance Specifications 2, 3 and 6 for sulfur dioxide, carbon dioxide, and CEMs rates for stationary sources. Performance Specification testing was completed July and August, 1989, and the Newton Unit CEMs for sulfur dioxide rate determination was certified by IEPA October, 1989. The CEMs which is installed on Newton Unit 1 accurately determines the combined sulfur dioxide emission rate for Unit 1 from two separate stacks.

USEPA is approving CIPS alternative compliance method because CIPS equipment includes CEMs state-of-the-art ultrasonic flow measuring equipment which has demonstrated the ability to obtain continuous emission data over 90 percent of the time and CIPS fully expects to install the necessary CEMs on Unit II as well as implementing the compliance provisions outlined in today's action. Procurement of the equipment necessary for implementation will take place upon promulgation of today's action. CIPS plans to use a computer based system for continuous computation of the emission rates from each unit and the combined emission rates from both units. Continuous compliance will be determined according to the continuous monitoring requirements in § 60.45 and requirements discussed further in the Continuous Emission Monitoring section and in the Recordkeeping and Reporting Requirements section in today's action.

USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will become effective on July 16, 1993. However, if we receive notice by June 16, 1993, that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 16, 1993.

This docket is an organized and complete file of all the information considered by USEPA in the development of this action. The docket is a dynamic file, since material is added throughout the development of this amendment. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the development process. Along with the statements of basis and purpose of the proposed and promulgated amendment and USEPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review. (Section 307(d)(7)(A) of the Act).

Section 317 of the Act requires the Administrator to prepare an economic impact assessment for any revision of a new source standard of performance which he determines to be substantial. Because the Administrator has determined that this revision is not "substantial," preparation of an economic impact assessment is not required.

The Paperwork Reduction Act of 1980 requires that the Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" The reporting and recordkeeping requirements associated with this alternative compliance method for CIPS do not qualify as an ICR since they will affect fewer than 10 firms. However, this rulemaking must be reviewed by OMB because it is a promulgation.

Under Executive Order 12291, USEPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The USEPA has determined that the CIPS bubble regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The USEPA has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small entities. The Act specifically requires the completion of a Regulatory

Flexibility Analysis for those regulations that would result in a significant impact on a substantial number of small entities. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this amendment will not have a significant impact on a substantial number of small entities. Because the CIPS amendment imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 16, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subject in 40 CFR Part 60

Air pollution control, Fossil-fuel-fired steam generating units, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 20, 1993.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble 40 CFR part 60, appendix G is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Appendix G is amended by revising section 2.1, 3.1, 3.2, 3.2.1, 3.2.2, 3.3, 3.3.1, 3.3.2, 3.4, 3.5.4, 4.1, 4.2, 4.2.1.1, 4.2.1.2, 4.2.1.3, 4.2.2, 4.3, 4.4.1, 4.4.2, 4.5, 4.6, 4.6.1, 4.7, 4.7.1, 4.7.2, 4.7.3, 4.7.4, 4.7.6, 4.7.7, 4.8.1, 4.8.2, 5.1, 5.2, 6.1, 6.2, 6.2.5, 6.2.6, 6.2.9; by removing and reserving section 3.5.5, 3.5.6, 3.5.7, 4.3.1, 4.3.2, 4.4.3, 4.4.4, 4.4.5, 4.8.3, 4.8.3.1, 4.8.3.2, 4.8.3.3, 4.8.3.4, 6.2.10; and by adding sections 3.5.4.1, 3.5.4.2, 3.5.4.3, 3.6, 4.2.2.1, 4.5.1, 4.5.2, 4.5.3, 4.5.4, 4.7.8, 4.9 to read as follows:

Appendix G —Provisions for an Alternative Method of Demonstrating Compliance With 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company

* * * * *

2.1 All definitions in subparts D and Da of part 60 apply to this provision except that:

24-hour period means the period of time between 12:00 midnight and the following midnight.

Boiler operating day means a 24-hour period during which any fossil is combusted in either the Unit 1 or Unit 2 steam generating unit and during which the provisions of § 60.43(e) are applicable.

CEMs means continuous emission monitoring system.

Coal bunker means a single or group of coal trailers, hoppers, silos or other containers that:

(1) are physically attached to the affected facility; and

(2) provide coal to the coal pulverizers.

DAFGDS means the dual alkali flue gas desulfurization system for the Newton Unit 1 steam generating unit.

* * * * *

3.1 If the owner or operator of the affected facility elects to comply with the 470 ng/J (1.1 lbs/MMBTU) of combined heat input emission limit under § 60.43(e), he shall notify the Regional Administrator, of the United States Environmental Protection Agency (USEPA), Region 5 and the Director, of the Illinois Environmental Protection Agency (IEPA) at least 30 days in advance of the date such election is to take effect, stating the date such operation is to commence. When the owner or operator elects to comply with this limit after one or more periods of reverting to the 520 ng/J heat input (1.2 lbs/MMBTU) limit of § 60.43(a)(2), as provided under 3.4, he shall notify the Regional Administrator of the USEPA, Region 5 and the Director of the (IEPA) in writing at least ten (10) days in advance of the date such election is to take effect.

3.2 Compliance with the sulfur dioxide emission limit under § 60.43(e) is determined on a continuous basis by performance testing using CEMs. Within 60 days after the initial operation of Units 1 and 2 subject to the combined emission limit in § 60.43(e), the owner or operator shall conduct an initial performance test, as required by § 60.8, to determine compliance with the combined emission limit. This initial performance test is to be scheduled so that the thirtieth boiler operating day of the 30 successive boiler operating days is completed within 60 days after initial operation subject to the 470 ng/J (1.1 lbs/MMBTU) combined emission limit. Following the initial performance test, a separate performance test is completed at the end of each boiler operating day Unit 1 and Unit 2 are subject to § 60.43(e), and a new 30 day average emission rate calculated.

3.2.1 Following the initial performance test, a new 30 day average emission rate is calculated for each boiler operating day the affected facility is subject to § 60.43(e). If the owner or operator of the affected facility elects to comply with § 60.43(e) after one or more periods of reverting to the 520 ng/J heat input (1.2 lbs/MMBTU) limit under § 60.43(a)(2), as provided under 3.4, the 30 day average emission rate under § 60.43(e) is calculated using emissions data of the current boiler operating day and data for the previous 29 boiler operating days when the affected facility was subject to § 60.43(e). Periods of operation of the affected facility under § 60.43(a)(2) are not considered boiler operating days. Emissions data collected during operation under § 60.43(a)(2) are not considered relative to 4.6 and emissions data are not included in calculations of emission under § 60.43(e).

3.2.2 When the affected facility is operated under the provisions of § 60.43(e), the Unit 1 DAFGDS bypass damper must be fully closed. The DAFGDS bypass may be opened only during periods of DAFGDS startup, shutdown, malfunction or testing as described under Sections 3.5.1, 3.5.2, 3.5.3, 3.5.4, and 4.8.2.

3.3 Compliance with the sulfur dioxide emission limit set forth in § 60.43(e) is based on the average combined hourly emission rate from Units 1 and 2 for 30 successive boiler operating days determined as follows:

$$E30 = \frac{1}{n}\sum_{i=1}^{n} EC(i)$$

where:

n=the number of available hourly combined emission rate values in the 30 successive boiler operating day period where Unit 1 and Unit 2 are subject to § 60.43(e).

E30=average emission rate for 30 successive boiler operating days where Unit 1 and Unit 2 are subject to § 60.43(e).

EC=the hourly combined emission rate from Units 1 and 2, in ng/J or lbs/MMBTU

3.3.1 The average hourly combined emission rate for Units 1 and 2for each hour of operation of either Unit 1 or 2, or both, is determined as follows:

$EC=[(E1)+(E2)]/[H1+H2]$

where:

EC=the hourly combined SO_2 emission rate, lbs/MMBTU, from Units 1 and 2 when Units 1 and 2 are subject to § 60.43(e).

E1=the hourly SO_2 mass emission, lb/hr, from Unit 1 as determined from CEMs data using the calculation procedures in Section 4 of this Appendix.

E2=the hourly SO_2 mass emission, lb/hr, from Unit 2 as determined from CEMs data using the calculation procedures in Section 4 of this Appendix.

H1=the hourly heat input, MMBTU/HR to Unit 1 as determined in Section 4 of this Appendix.

H2=the hourly heat input, MMBTU/HR, to Unit 2 as determined by Section 4 of this Appendix.

3.3.2 If data for any of the four hourly parameters (E1, E2, H1and H2, under 3.3.1 are unavailable during an hourly period, the combined emission rate (EC) is not calculated and the period is counted as missing data under 4.6.1., except as provided under 3.5. and 4.4.2.

3.4 After the date of initial operation subject to the combined emission limit, Units 1 and 2 shall remain subject to the combined

emission limit and the owner or operator shall remain subject to the requirements of this Appendix until the initial performance test as required by 3.2 is completed and the owner or operator of the affected facility elects and provides notice to revert on a certain date to the 520 ng/J heat input (1.2 lbs/MMBTU) limit of § 60.43(a)(2) applicable separately at each unit. The Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA shall be given written notification from CIPS as soon as possible of CIPs' decision to revert to the 520 ng/J heat input (1.2 lbs/MMBTU) limit of § 60.43(a)(2) separately at each unit, but no later than 10 days in advance of the date such election is to take effect.

* * * * *

3.5.4 The first 250 hours per calendar year of DAFGDS malfunctions of Unit 1 DAFGDS provided that efforts are made to minimize emissions from Unit 1 in accordance with § 60.11(d), and if, after 16 hours but not more than 24 hours of DAFGDS malfunction, the owner or operator of the affected facility begins (following the customary loading procedures) loading into the Unit 1 coal bunker, coal with a potential SO_2 emission rate equal to or less than the emission rate of Unit 2 recorded at the beginning of the DAFGDS malfunction. Malfunction periods under 3.5.3 are not counted toward the 250 hour/yr limit under this section.

3.5.4.1 The malfunction exemption in 3.5.4 is limited to the first 250 hours per calendar year of DAFGDS malfunction.

3.5.4.2 For malfunctions of the DAFGDS after the 250 hours per calendar year limit (cumulative), other than those defined in 3.5.3, the owner or operator of the affected facility shall combust lower sulfur coal or use any other method to comply with the 470 ng/J (1.1 lbs/MMBTU) combined emission limit.

3.5.6 [Reserved]

3.5.4.3 During the first 250 hours of DAFGDS malfunction per year or during periods of DAFGDS startup, or DAFGDS shutdown, CEMs emissions data from Unit 2 shall continue to be included in the daily calculation of the combined 30 day rolling average emission rate; that is, the load on Unit 1 is assumed to be zero (H1 and E1=O; EC=E2/H2).

3.5.5 [Reserved]

3.5.6 [Reserved]

3.5.7 [Reserved]

3.6 The provision for excluding CEMs data from Unit 1 during the first 250 hours of DAFGDS malfunctions from combined hourly emissions calculations supersedes the provisions of § 60.11(d). However, the general purpose contained in § 60.11(d) (i.e., following good control practices to minimize air pollution emission during malfunctions) has not been superseded.

* * * * *

4.1 The CEMs required under Section 3.2 are operated and data are recorded for all periods of operation of the affected facility including periods of the DAFGDS startup, shutdown and malfunction except for CEMs breakdowns, repairs, calibration checks, and zero and span adjustment All provisions of § 60.45 apply except as follows:

4.2 The owner or operator shall install, calibrate, maintain, and operate CEMs and monitoring devices for measuring the following:

* * * * *

4.2.1.1 Sulfur dioxide, oxygen or carbon dioxide, and volumetric flow rate for the Unit 1 DAFGDS stack.

4.2.1.2 Sulfur dioxide, oxygen or carbon dioxide, and volumetric flow rate for the Unit 1 DAFGDS bypass stack.

4.2.1.3 Moisture content of the flue gas must be determined continuously for the Unit 1 DAFGDS stack and the Unit 1 DAFGDS bypass stack, if the sulfur dioxide concentration in each stack is measured on a dry basis.

4.2.2 For Unit 2, sulfur dioxide, oxygen or carbon dioxide, and volumetric flow rate.

4.2.2.1 Moisture content of the flue gas must be determined continuously for the Unit 2 stack, if the sulfur dioxide concentration in the stack is measured on a dry basis.

* * * * *

4.3 For the Unit 1 bypass stack and the Unit 2 stack, the span value of the sulfur dioxide analyzer shall be equivalent to 200 percent of the maximum estimated hourly potential sulfur dioxide emissions of the fuel fired in parts per million sulfur dioxide. For the Unit 1 DAFGDS stack, the span value of the sulfur dioxide analyzer shall be equivalent to 100 percent of the maximum estimated hourly potential emissions of the fuel fired in parts per million sulfur dioxide. The span value for volumetric flow monitors shall be equivalent to 125 percent of the maximum estimated hourly flow in standard cubic meters/minute (standard cubic feet per minute). The span value of the continuous moisture monitors, if required by 4.2.1.3 and 4.2.2.1, shall be equivalent to 100 percent by volume. The span value of the oxygen or carbon dioxide analyzers shall be equivalent to 25 percent by volume.

4.3.1 [Reserved]

4.3.2 [Reserved]

* * * * *

4.4.1 Each volumetric flow rate monitoring device specified in 4.2 shall be installed at approximately the same location as the sulfur dioxide emission monitoring sample location.

4.4.2 Hourly steam production rate and hourly electrical power output monitoring devices for Unit 1 and Unit 2 shall be calibrated and maintained according to manufacturer's specifications. The data from either of these devices may be used in the calculation of the combined emission rate in Section 3.3.1, only when the hourly heat input for Unit 1 (H1) or the hourly heat input for Unit 2 (H2) cannot be determined from CEM data, and the hourly heat input to steam production or hourly heat input to electrical power output efficiency over a given segment of each boiler or generator operating range, respectively, varies by less than 5 percent within the specified operating range, or the efficiencies of the boiler/generator units differ by less than 5 percent. The hourly heat input for Unit 1 (H1) or the hourly heat input for Unit 2 (H2) in Section 3.3.1 may also be calculated based on the fuel firing rates and fuel analysis.

4.4.3 [Reserved]

4.4.4 [Reserved]

4.4.5 [Reserved

4.5 The hourly mass emissions from Unit 1 (E1) and Unit 2 (E2) and the hourly heat inputs from Unit 1 (H1) and Unit 2 (H2) used to determine the hourly combined emission rate for Units 1 and 2 (EC) in Section 3.3.1 are calculated using CEM data for each respective stack as follows:

4.5.1 The hourly SO_2 mass emission from each respective stack is determined as follows:

E=(C) (F) (D) (K)

Where:

E=SO_2 mass emission from the respective stack in lb per hour

C=SO_2 concentration from the respective stack ppm

F=flue gas flow rate from the respective stack in scfm

D=density of SO_2 in lb per standard cubic feet

K=time conversion, 60 mins./hr

4.5.2 The hourly heat input from each respective stack is determined as follows:

H=[(F) (C) (K)/(F_c)

where:

H=heat input from the respective stack in MMBTU per hour

C=CO_2 or O_2 concentration from the respective stack as a decimal

F=flue gas flow rate from the respective stack in scfm

K=time conversion, 60 mins./hr

F_c=fuel constant for the appropriate diluent in scf/MMBTU as per §§ 60.45(f) (4) and (5)

4.5.3 The hourly SO_2 mass emission for Unit 1 in pounds per hour (E1) is calculated as follows, when leakage or diversion of any DAFGDS inlet gas to the bypass stack occurs:

E1=(EF)+(EB)

Where:

EF=Hourly SO_2 mass emission measured in DAFGDS stack, lb/hr, using the calculation in Section 4.5.1.

EB=Hourly SO_2 mass emission measured in bypass stack, lb/hr, using the calculation in Section 4.5.1.

Other than during conditions under 3.5.1, 3.5.2, 3.5.3, 3.5.4, or 4.8.2, the DAFGDS bypass damper must be fully closed and any leakage will be indicated by the bypass stack volumetric flow and SO_2 measurements, and when no leakage through the bypass damper is indicated:

E1=EF

4.5.4 The hourly heat input for Unit 1 in MMBTU per hour (H1) is calculated as follows, when leakage or diversion of any DAFGDS inlet gas to the bypass stack occurs:

H1=(HF)+(HB)

where:

HF=Hourly heat input as determined from the DAFGDS stack CEMs, in MMBTU per hour, using the calculation in Section 4.5.2

HB=Hourly heat input as determined from the DAFGDS bypass stack CEMs, in MMBTU per hour, using the calculation in Section 4.5.2

4.6 For the CEMs required for Unit 1 and Unit 2, the owner or operator of the affected facility shall maintain and operate the CEMs and obtain combined emission data values (EC) for at least 75 percent of the boiler operting hours per day for at least 26 out of each 30 successive boiler operating days.

4.6.1 When hourly SO_2 emission data are not obtained by the CEMs because of CEMs breakdowns, repairs, calibration checks and zero and span adjustment, hourly emission data required by 4.6 are obtained by using Methods 6 or 6C and 3 or 3A, 6A, or 8 and 3, or by other alternative methods approved by the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA. Failure to obtain the minimum data requirements of 4.6 by CEMs, or by CEMs supplemented with alternative methods of this section, is a violation of performance testing requirements.

* * * * *

4.7 For each continuous emission monitoring system, a quality control plan shall be prepared by CIPS and submitted to the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA. The plan is to be submitted to the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA 45 days before initiation of the initial performance test. At a minimum, the plan shall contain the following quality control elements:

4.7.1 Calibration of continuous emission monitoring systems (CEMs) and volumetric flow measurement devices.

4.7.2 Calibration drift determination and adjustment of CEMs and volumetric flow measurement devices.

4.7.3 Periodic CEMs, volumetric flow measurement devices and relative accuracy determinations.

4.7.4 Preventive maintenance of CEMs and volumetric flow measurement devices (including spare parts inventory).

* * * * *

4.7.6 Program of corrective action for malfunctioning CEMs and volumetric flow measurement devices.

4.7.7 Criteria for determining when the CEMs and volumetric flow measurement devices are not producing valid data.

4.7.8 Calibration and periodic checks of monitoring devices identified in 4.4.2.

* * * * *

4.8.1 The calibration drift specification of Performance Specification 2, appendix B shall be determined separately for each of the Unit 1 SO_2 CEMs and the Unit 2 SO_2 CEMs. The calibration drift specification of Performance Specification 3, appendix B shall be determined separately for each of the Unit 1 diluent CEMs and Unit 2 diluent CEMs.

4.8.2 The relative accuracy of the combined SO_2 emission rate for Unit 1 and Unit 2, as calculated from CEMs and volumetric flow data using the procedures in 3.3.1, 4.5.1, 4.5.2 and 4.5.3 shall be no greater than 20 percent of the mean value of the combined emission rate, as determined from testing conducted simultaneously on the DAFGDS stack, the DAFGDS bypass stack and the Unit 2 stack using reference methods 2, 3, or 3A and 6 or 6C, or shall be no greater than 10 percent of the emission limit in § 60.43(e), whichever criteria is less stringent. The relative accuracy shall be computed from at least nine comparisons of the combined emission rate values using the procedures in section 7 and the equations in section 8, Performance Specification 2, appendix B. Throughout, but only during, the relative accuracy test period the DAFGDS bypass damper shall be partially opened such that there is a detectable flow.

4.8.3 [Reserved]

4.8.3.1 [Reserved]

4.8.3.2 [Reserved]

4.8.3.3 [Reserved]

4.8.3.4 [Reserved]

4.9 The total monitoring system required by 4.2 shall be subject only to an annual relative accuracy test audit (RATA) in accordance with the quality assurance requirements of section 5.1.1 of 40 CFR part 60, appendix F. Each SO_2 and diluent CEMs shall be subject to cylinder gas audits (OGA) in accordance with the quality assurance requirements of section 5.1.2 of appendix F with the exception that any SO_2 or diluent CEMs without any type of probe or sample line shall be exempt from the OGA requirements.

* * * * *

5.1 The plant owner or operator shall keep a record of each hourly emission rate, each hourly SO_2 CEMs value and hourly flow rate value, and each hourly Btu heat input rate, hourly steam rate, or hourly electrical power output, and a record of each hourly weighted average emission rate. These records shall be kept for all periods of operation of Unit 1 or 2 under provisions of § 60.43(e), including operations of Unit 1 (E1) during periods of DAFGDS startup, shutdown, and malfunction when H1 and E1 are assumed to be zero (0) (see 4.5).

5.2 The plant owner or operator shall keep a record of each hourly gas flow rate through the DAFGDS stack, each hourly stack gas flow rate through the bypass stack during any periods that the DAFGDS bypass damper is opened or flow is indicated, and reason for bypass operation.

* * * * *

6.1 The owner or operator of any affected facility shall submit the written reports required under 6.2 of this section and subpart A to the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA for every calendar quarter. All quarterly reports shall be submitted by the 30th day following the end of each calendar quarter.

6.2 For sulfur dioxide, the following data resubmitted to the Regional Administrator of the USEPA, Region 5 and the Director, of the IEPA for each 24-hour period:

* * * * *

6.2.5 Identification of the time periods (hours) when Unit 1 and Unit 2 were operated and where the combined hourly emission rate (EC) equalled Unit 2 (E2/H2) emissions because of the Unit 1 malfunction provisions under 3.5.3, and 3.5.4.

6.2.6 Identification of the time periods (hours) when emissions from the Unit 1 DAFGDS have been excluded from the calculation of average sulfur dioxide emission rates because of Unit 1 DAFGDS startup, shutdown, malfunction, or other reasons; and justification for excluding data for reasons other than startup or shutdown. Reporting of hourly emission rate of Unit 1 (E1/H2) during each hour of the DAFGDS startup, malfunction under 3.5.1, 3.5.2, 3.5.3, and 3.5.4 (see 4.5).

* * * * *

[FR Doc. 93–11392 Filed 5–14–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 580

[Docket No. 93–01]

Electronic Filing of Military Rates

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC"), pursuant to section 16 of the Shipping Act of 1984 ("1984 Act"), is exempting from the filing requirements of the 1984 Act and removing from the requirements of its rules, on certain conditions, transportation of U.S. Department of Defense ("DOD") cargo moving under terms and conditions negotiated and approved by the Military Sealift Command ("MSC") and set forth in a rate guide, quotation or tender. In addition, military rates filed in a commercial tariff by a carrier or conference may become effective upon filing, as currently provided for in existing rules. These amendments will remove unnecessary filing requirements, thereby lessening any burden of compliance imposed by current rules.

EFFECTIVE DATE: June 16, 1993.

FOR FURTHER INFORMATION CONTACT:

John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: MSC is responsible for arranging ocean transportation services for all components of DOD. Although MSC can utilize commercial tariff rates and service contracts for the carriage of DOD cargo, most DOD cargo moves pursuant to rates tendered to MSC in bid form, *i.e.*, "tenders," which, if accepted, become special contractual arrangements which MSC enters into with the carriers. While military tenders are required to be filed with the Commission, they are not required to conform to tariff notice, form and content requirements. The

Commission's rules at 46 CFR 580.1(d) specifically provide that:

(d) The following services are subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the [1984] Act and the form and content requirements of this part: Transportation of U.S. Department of Defense cargo by American-flag common carriers under terms and conditions negotiated and approved by the Military Sealift Command (MSC), if all the following conditions are met:

(1) Exact copies of all common carrier quotations or tenders accepted by MSC are filed with the Commission as soon as possible after they are approved by MSC, but on not less than one day's filing notice prior to the effective date thereof;

(2) All tenders are filed in triplicate, one copy of which is signed and maintained at the Commission's Washington Office for public inspection;

(3) A letter of transmittal accompanies the filing stating that the documents are submitted in accordance with the requirements of the Shipping Act of 1984 and this section;

(4) Tenders submitted for filing are to be numbered by the respective common carriers as part of a distinct tariff series, with each common carrier's series to begin with the number "1" and run consecutively thereafter;

(5) Each tender which supersedes a prior tender must specifically cancel the prior tender by its series number; and

(6) Amendments or supplements to tenders must also be filed with the Commission upon not less than one day's filing notice and contain an appropriate reference to the original tender being amended or supplemented.

In Docket No. 90–23, Tariffs and Service Contracts, the Commission is developing rules in 46 CFR part 514 to govern the electronic formatting and filing of all tariff data pursuant to the Automated Tariff Filing and Information ("ATFI") system. As a part of Docket No. 90–23, the Commission published an interim rule on August 12, 1992, which contained *inter alia*, a continuing special permission to deviate from the 30-day notice requirement but not from the form and manner requirements of part 514. The continuing special permission, which appeared in § 514.3(b)(4) of the interim rule, reads as follows:

[514.3(b)] (4) *Department of Defense cargo in foreign commerce—certain requirements.* Transportation in foreign commerce of U.S. Department of Defense cargo by American-flag common carriers, under terms and conditions negotiated and approved by the Military Sealift Command ("MSC"), is subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the 1984 Act, if all of the following conditions are met:

(i) All common carrier quotations or tenders, including amendments thereto, are filed with the Commission as soon as possible after they are accepted and approved by MSC, but no later than on the effective date;

(ii) MSC tenders are filed in the carrier's foreign commodity tariff(s) covering the trade route(s) applicable to the tender(s);

(iii) MSC tenders are filed for distinct commodities or as separate TLI's within a commodity, as applicable, using the filing/amendment code "M" under section 514.9(b)(13);

(iv) The use of the filing/amendment code "M" is understood by the filer to mean that the tariff material filed is submitted in accordance with the requirements of the Shipping Act of 1984 and this part; and

(v) The terms and conditions governing the military rates, as set forth in the applicable MSC rate agreement(s), are included in Tariff Rule 32, section 514.15(b)(32), and assessorials are properly formatted and linked to the commodity description and/or TLI.

Pursuant to the interim rule's invitation for further comment in Docket No. 90–23, comments on the electronic filing of military rates were filed by MSC, as well as by two U.S.-flag ocean carriers, Farrell Lines, Inc. ("Farrell") and Sea-Land Service, Inc. ("Sea-Land").

Sea-Land and Farrell argued that § 514.3(b)(4) has "reregulated" the filing of U.S. military rates, thereby eviscerating the tariff filing exemption now found in 46 CFR 580.1(d). Under the interim rule, they noted, each filing carrier would be required to take all the rates accepted by MSC, enter them into ATFI, and draft algorithms for assessorial charges, although these rates are used by only one shipper, *i.e.*, MSC. The carriers therefore concluded that there is no interest served by filing MSC rates in ATFI format.

Because these comments raised issues not originally within the scope of proposed part 514, the Commission determined to sever the issues from Docket No. 90–23, and to address them separately in a notice of proposed rulemaking ("NPRM") in this proceeding. The NPRM, which was issued on January 13, 1993, 58 FR 4137, invited comments on a proposal to exempt the transportation of DOD cargo moving under terms and conditions negotiated and approved by MSC from the tariff filing requirements of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. section 817, the Intercoastal Shipping Act, 1933, 46 U.S.C. app. section 844, and 1984 Act, 46 U.S.C. app. section 1707, and remove such transportation from the rules of this part, provided a copy of the applicable military rate guide or tender is filed with the Commission. Section 514.15(b)(32), which requires Tariff Rule 32 to contain all terms and conditions pertaining to MSC tenders, was proposed to be deleted as unnecessary. However, § 514.9(b)(13), which prescribes the symbol "M" for military rates, would be retained, but amended for situations where the military rates may be filed by the carrier in its commercial tariff.

Comments

MSC, Sea-Land, Farrell, American President Lines ("APL") and Lykes Bros. Steamship Co., Inc. ("Lykes") filed comments in response to the NPRM. U.S.-flag carriers Sea-Land, Farrell, APL and Lykes support the proposed exemption, while MSC opposes it.

Farrell notes that MSC is the only user of these rates and has its own computerized rate system. Thus, it is said, DOD can access and compile its rates without resorting to ATFI. Allegedly, there is no issue of the shipper not being aware of the applicable rates because MSC is the only shipper and determines what rates it will accept. Farrell also observes that the rates in military tenders remain in effect for six months and thus there is no concern over rate changes. It believes that requiring carriers to file electronically in ATFI those rates published in military rate guides would be burdensome and would serve no regulatory purpose. Finally, Farrell believes that it is unnecessary to extend the exemption to all carriers regardless of flag because, under Department of Transportation policy, foreign-flag vessels cannot participate in MSC tenders.

APL favors the exemption, but suggests a technical modification. It points out that often the rate guide is not distributed until after its effective date. APL suggests that the rule be reworded to make it clear that the exemption will be effective pending receipt of the rate guide.

Sea-Land's letter supporting the proposed exemption enclosed its comments which were previously filed in Docket No. 92–25, Regulation of Military Rates under the Shipping Act of 1984, 26 S.R.R. 599 (1992) and Docket No. 90–23. No separate comments were filed in this proceeding.

Lykes takes the position that it is not appropriate at this time to include MSC rates in the ATFI program. It is said that the cost and administrative burden of their inclusion is not warranted. Lykes can see no disadvantage to continuing the exemption, but would not oppose reconsideration of the inclusion of military rates under ATFI at a later date once ATFI has become operational and experience under the system has been obtained.

MSC wants military rates filed electronically and fully integrated into the commercial rate publications of common carriers in order to facilitate rate comparisons between commercial and military rates. This allegedly will assist it in making rate comparisons so that the rate limitations in the Cargo Preference Act of 1904, 10 U.S.C. section 2631, and the anti-discrimination standards of the 1984 Act can be enforced. MSC states that if military rates are "deregulated" and isolated from the commercial environment, where market forces control rate levels, then no "check and balance" will exist to control the level of rates. This, MSC contends, would likely raise the cost to the taxpayer.

Discussion

Section 16 of the 1984 Act, 46 U.S.C. app. section 1715, provides that the Commission may grant an exemption if it finds that it will not substantially impair effective regulation, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce. We are satisfied that these findings can be made here.

The exemption will not substantially impair effective regulation by the Commission. Since 1968, quotations or tenders of rates or charges for the transportation of military cargo have been exempt from the Commission's regulations pertaining to the form and manner of commercial tariffs. Transportation of U.S. Military Cargo by American-Flag Common Carriers by Water; Special Permission, 10 S.R.R. 151 (1968). For rate analyses, and for the purposes of investigation, surveillance and enforcement, the rate guides, quotations and tenders in their present format have been sufficient. Indeed, MSC cites numerous FMC cases involving military rates. While MSC may wish to have the carriers file all military rates electronically in commercial format to facilitate comparisons with commercial rates, it is unnecessary for military rates to be incorporated into the ATFI system in order for the Commission to carry out its regulatory responsibilities. Comparisons between military and commercial rates have been made in the past even though the military rates were not published in a commercial tariff format. There is nothing to prevent such comparisons in the future when commercial rates are electronically filed in the ATFI system. Nor should the exemption impair MSC's ability to make rate comparisons. Throughout the period prior to ATFI, MSC supported an exemption from the Commission's regulations prescribing the form of commercial tariffs. At no time did MSC suggest that such an exemption hampered its ability to make rate comparisons. MSC does not explain how the subject exemption differs in effect from the previous exemption contained in the continuing special permission, and no difference is apparent to the Commission. The proposed exemption will preserve the *status quo* with respect to the treatment of rates contained in military rate guides, quotations or tenders.

Certainly, MSC does not need military rates to be filed electronically in the ATFI system to facilitate their retrieval. Unlike the commercial shipper who, being faced with a myriad of tariffs, may not be able to determine the lowest applicable rate, MSC has no such difficulty. MSC negotiates the rate which is included in MSC's rate guide and is entered in DOD's computer system. Although MSC seeks to have the carriers file military rates in ATFI, there is no indication that MSC would rely on ATFI as a source of military rate information. It appears that users of military rates would continue to rely on rate guides published by MSC and DOD's own computerized system of military rates. The military rates filed by carriers in the ATFI system would duplicate, not replace, these existing sources of military rate information.

It also appears that MSC is seeking to have the Commission direct carriers to do something MSC itself has never been able to do. MSC's contracts do not comport with the Commission's regulations governing the publication and filing of commercial tariffs and service and loyalty contracts. Indeed, in comments filed in Docket No. 92–25, MSC observed that some contract clauses required by federal procurement statutes and regulations may be inconsistent with the Commission's service contract regulations. It is therefore difficult to understand why MSC believes carriers can successfully convert military rates, which are based on those contracts, into a commercial tariff format.

In sum, the comments of MSC fail to demonstrate that the exemption will substantially impair effective regulation. Nor has it been shown that it would be unjustly discriminatory, result in substantial reduction in competition, or be detrimental to commerce. Since 1968, quotations or tenders of rates or charges for the transportation of military cargo have been exempt from the Commission's regulations pertaining to the form and manner of commercial tariffs. In the twenty five years this exemption has been in effect the Commission has not observed that it has resulted in unjust discrimination, reduced competition or been detrimental to commerce. The subject exemption is essentially a continuation of the current exemption. Accordingly, the Commission concludes that it too meets the standards for an exemption under section 16 of the 1984 Act.[1]

A few additional matters need to be addressed. The proposed exemption included military cargo moving in both the foreign and domestic offshore trades. However, MSC advises that all military transportation in the domestic offshore trades is subject to the jurisdiction of the Interstate Commerce Commission. Accordingly, the exemption will be limited to the military cargo moving in the foreign commerce of the United States.

The final rule also has been modified to accomodate APL's concern that the exemption not be conditioned on the filing of the rate guide with the Commission prior to its effective date. A revision of 46 CFR 580.1(d) has been included to conform that provision to the language of the exemption adopted herein.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the proposed rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. section 605(n), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. To the extent that rates on military cargo may be filed by a small entity, this final rule will decrease filing burdens by reverting to the status quo

[1] The exemption is available to any carrier transporting military cargo, regardless of flag. This should not be interpreted as a statement of position on the issue of whether MSC may utilize foreign-flag carriers for the carriage of military cargo. This is beyond the Commission's jurisdiction to decide.

ante, whereby military rates will usually be filed by the Military Sealift Command, rather than by the small-entity carriers, as required by current part 514.

The collection of information requirements contained in 46 CFR parts 514 and 580 have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35. The amendments to parts 514 and 580 contained in this rulemaking contain no information collection requirements additional to those already approved.

List of Subjects

46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and recordkeeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 580

Cargo, Cargo vessels, Exports, Freight, Harbors, Imports, Maritime carriers, Rates, Reporting and recordkeeping requirements, Surety bonds, Water carriers, Water transportation.

Therefore, for the reasons set forth in the preamble, and pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; section 2(b) of Public Law 101–92, and section 502 of Public Law 102–582; parts 514 and 580 of title 46, Code of Federal Regulations, are amended as follows:

PART 514—TARIFFS AND SERVICE CONTRACTS

1. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. In § 514.3, paragraph (b)(4) is revised to read as follows:

§ 514.3 Exemptions and exclusions.

* * * * *

(b) * * *

(4) *Department of Defense cargo in foreign commerce.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Sealift Command ("MSC") and published in a rate guide, quotation or tender is exempt from the tariff filing requirements of the 1984 Act and the rules of this part. An exact copy of the rate guide, quotation or tender, including any amendments thereto, shall be filed in paper format with the Commission as soon as it becomes available.

* * * * *

3. In § 514.9, paragraph (b)(13) is revised to read as follows:

§ 514.9 Filing/Amendment codes and required notice periods.

* * * * *

(b) * * *

(13) *"M" Transportation of U.S. Department of Defense Cargo.* Where a rate for military cargo is incorporated as a separate TLI in the commercial tariff of a carrier or conference in foreign commerce, the filing/amendment code "M" shall be used to identify the TLI. Any such military rate may be effective upon filing.

* * * * *

§ 514.15 [Amended]

4. In § 514.15, paragraph (b)(32) is removed and reserved.

PART 580—PUBLISHING AND FILING OF TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

5. The authority citation for part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1721.

6. Section 580.1(d) is revised to read as follows:

§ 580.1 Exemption and exclusions.

* * * * *

(d) Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Sealift Command ("MSC") and published in a rate guide, quotation or tender is exempt from the tariff filing requirements of the 1984 Act and the rules of this part. An exact copy of the rate guide, quotation or tender, including any amendments thereto, shall be filed in paper format with the Commission as soon as it becomes available.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 11548 Filed 5–14–93; 8:45 am]

BILLING CODE 6730–01–W

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 930513–3113]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

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

ACTION: Temporary rule with request for comments.

SUMMARY: NMFS establishes all inshore and offshore waters from Cape Canaveral, Florida (28°24.6′ N. latitude), to the Virginia-North Carolina border (36°30.5′ N. latitude) as the leatherback conservation zone and notifies owners and operators of shrimp trawlers operating in that zone that it may be necessary to restrict their fishing operations in specific areas having relatively high abundance levels so endangered leatherback sea turtles. If relatively high abundance levels of leatherback sea turtles are documented in specific areas based on weekly surveys, NMFS will close those areas to any shrimp trawler required to have an NMFS-approved Turtle Excluder Device (TED) installed in each net that is rigged for fishing unless the TED installed is a NMFS-approved Taylor TED or a Morrison TED modified to have an escape opening of a minimum of 96 inches (244 cm) in taut length. Specific area closures are expected to be of short duration (less than 2 weeks). Owners and operators of shrimp trawlers operating in the leatherback conservation zone must carry observers aboard their vessels if requested to do so by the Regional Director for the Southeast Region.

This temporary rule is necessary to reduce mortality of leatherback sea turtles incidentally captured in shrimp trawls. NMFS may extend these requirements beyond 30 days or impose additional temporary sea turtle conservation measures on shrimp trawling vessels as necessary to protect leatherback turtles.

DATES: These measures are effective from May 12, 1993 through June 11, 1993. Comments must be submitted by June 11, 1993.

ADDRESSES: Requests for a copy of the environmental assessment (EA) or the contingency plan for this action and comments should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910.

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

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. The incidental take and mortality of these species, as a result of fishing activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard.

Under the ESA and its implementing regulations, taking sea turtles is prohibited. However, the incidental taking of turtles during fishing in the Atlantic Ocean off the coast of the Southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition if specified sea turtle conservation measures are employed.

Existing sea turtle conservation regulations (50 CFR part 227) require most shrimp trawlers to have a NMFS-approved TED installed in each net rigged for fishing, year round. The required use of TEDs is expected to reduce significantly shrimp trawler related mortalities of loggerhead, Kemp's ridley, hawksbill, and green sea turtles. Unfortunately, because leatherback sea turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs will not be an effective means of protecting leatherback turtles.

The existing sea turtle conservation regulations allow the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) to restrict fishing activities in order to conserve a species listed under the ESA (50 CFR 227.72(e)(6)(ii)). Such action may be taken if the Assistant Administrator determines that restrictions are necessary to avoid unauthorized taking that may be likely to jeopardize the continued existence of a listed species. The provision is particularly applicable to leatherback turtles, where, despite the required use of TEDs, takings by shrimp trawlers can occur. In accordance with the endangered status of leatherbacks, NMFS considers preventable take of leatherbacks to be inappropriate. Thus, if leatherbacks are relatively abundant in areas where shrimp trawlers are fishing, restrictions to minimize impacts to leatherbacks must be imposed.

Because of their primarily pelagic existence, leatherbacks normally occur outside areas where they would be subject to take by shrimp trawlers. During most months of the year, leatherbacks are not considered abundant in shrimping areas, and only isolated incidents of take by trawlers are expected. However, coastal waters of northern Florida, Georgia, South Carolina, and North Carolina experience relatively high abundance levels of leatherbacks as a periodic spring phenomenon. When leatherback abundance is high and shrimp trawlers are fishing, leatherback stranding pulses have been documented on adjacent beaches. The NMFS biological opinion prepared for the December 4, 1992, final rule specifically addressed episodic stranding events from Florida through North Carolina and required NMFS to develop and implement a contingency plan to resolve this problem.

A contingency plan for protection of leatherback turtles on the Atlantic seaboard that can be implemented if the need arises was prepared in cooperation with State officials from Florida, Georgia, and South Carolina. In addition, informal discussions with members of the fishing industry were considered in drafting this rule. The necessity for implementation of protective measures for leatherback turtles is expected to be short-term in nature and highly area-specific. Several options to provide protection were considered in the plan, and any and all options may be implemented if necessary, pursuant to 50 CFR 227.72(e)(6).

Presence of Leatherback Sea Turtles and Shrimp Trawlers

From late February through April 1993, NMFS received several reports of leatherback sightings in northern Florida. These sightings occurred during aerial surveys for right whales conducted by the State of Florida from St. Marys, Georgia, to Sebastian Inlet, Florida. During late February, sighting rates ranged from 40 to 46 leatherbacks per survey. During the first week of March, 91 sightings were reported during a single aerial survey and 12 shrimp trawlers were sighted within the survey area. During the last week of March, 52 leatherbacks were sighted in a single aerial survey and five shrimp trawlers were reported within the survey area. Most recently, in a single aerial survey during the first week of April, 12 leatherbacks were sighted as far north as southern Georgia, and 7 shrimp trawlers were reported within the survey area.

Three leatherback strandings in waters of northern Florida have been reported since February. According to a survey of NMFS port agents, there is very little current shrimp trawler fishing. However, NMFS received one unconfirmed report of a shrimp fisherman operating off northern Florida who caught a leatherback in his try net. Should shrimping effort increase, there will be an increased likelihood of leatherback turtle mortality. When the roe shrimp fishery begins in northern Florida, Georgia, and South Carolina later this spring, there is a potential for hundreds of shrimp trawlers to be fishing in relatively small areas.

Sea Turtle Conservation Measures

Based on the information presented and evidence indicating that shrimp trawlers may incidentally take endangered leatherback sea turtles, the Assistant Administrator has determined that immediate action is necessary to conserve leatherback sea turtles. The Assistant Administrator has determined that incidental takings of leatherback sea turtles during shrimp trawling in the leatherback conservation zone are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements. A biological opinion addressing the potential adverse effects of shrimp trawling to endangered and threatened species was prepared in 1992 for the final sea turtle conservation regulations. That opinion concluded that, "[e]pisodic take of leatherback turtles by shrimp trawlers during periods of high jellyfish abundance must be eliminated." A biological opinion on this action analyzed the impact of shrimp trawl fishing in the leatherback conservation zone on endangered leatherback sea turtles. The opinion emphasizes the need for additional protective measures such as requiring the use of TEDs with escape openings large enough for leatherback sea turtles to escape in areas where high abundance levels of leatherbacks are observed. The incidental take statement issued with this opinion allows for the documented take of 20 leatherback turtles and mortality of four leatherback turtles. If observer reports or other information indicate that authorized take is met or exceeded, consultation must be reinitiated, and the Assistant Administrator may require additional or more stringent conservation measures.

NMFS-Approved TEDs With Escape Opening Large Enough for Leatherback Sea Turtles

NMFS recently approved the Taylor TED. Unlike other NMFS-approved TEDs, the Taylor TED has an escape opening that is large enough to allow leatherback turtles to escape the trawl. Also, NMFS recently has approved modifications to the Morrison TED that will allow leatherback turtles to escape the trawl.

Requirements

The definitions in 50 CFR 217.12 are applicable to this action, as are all relevant provisions in 50 CFR parts 217, 222, and 227.

The term "leatherback conservation zone" means all inshore and offshore waters of the Atlantic area from Cape Canaveral, Florida (28°24.6′ N. latitude), to the North Carolina-Virginia border (36°30.5′ N. latitude).

NMFS hereby notifies owners and operators of shrimp trawlers operating in the leatherback conservation zone that short-term restrictions on shrimp trawling in specific areas may be required to protect leatherback turtles. Weekly aerial surveys will be conducted from northern Florida through the North Carolina-Virginia border. If sightings of leatherback turtles during such surveys exceed 20 animals per 100 nautical miles (nm) of trackline, NMFS will temporarily restrict shrimp trawling in specific areas of relatively high leatherback abundance by closing those areas to any shrimp trawler required to have an NMFS-approved TED installed in each net that is rigged for fishing unless the TED installed is an NMFS-approved Taylor TED or a Morrison TED modified to have an escape opening of a minimum of 96 inches (244 cm) in taut length. Descriptions of the Taylor TED and allowable modifications to the Morrison TED, appears in this **Federal Register** and are codified at 50 CFR 227.72(e)(4)(ii)(A)(2) and (e)(4)(ii)(D). Specific area closures will be announced in the **Federal Register**, on the NOAA weather channel, and in newspapers and other media. Shrimp trawlers in the leatherback conservation zone are responsible for monitoring the NOAA weather channel for closure announcements. Shrimp trawlers may also call (813) 893–3163 for updated area closure information.

If a specific area is closed as described above, no shrimp trawler required by 50 CFR 227.72(e)(2) to have an NMFS-approved TED installed in each net that is rigged for fishing may operate in the restricted area unless each such net has a Taylor TED or modified Morrison TED installed.

Owners or operators of shrimp trawlers in the leatherback conservation zone must carry a NMFS approved observer onboard such vessel(s) if requested to do so by the Regional Director of the Southeast Region and comply with the terms and conditions of such request including providing information on trawling hours, gear modifications, and turtle captures.

Anyone who wishes to use an experimental TED rather a Taylor or modified Morrison TED may apply to the Regional Director for permit to do so, pursuant to 50 CFR 227.72(e)(5)(ii).

Additional Sea Turtle Conservation Measures

NMFS anticipates that shrimp trawlers will continue to interact with leatherback turtles through the summer. As is necessary, the Assistant Administrator may extend for additional 30-day periods the restrictions described in this temporary rule through notification in the **Federal Register.**

The Assistant Administrator, at any time, may modify the requirements of this action through notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, if NMFS determines that shrimp trawlers are having a significant adverse effect on sea turtles. Likewise, conservation measures may be modified if monitoring to assess turtle mortality indicates that the incidental take level is approaching the incidental take level established by the biological opinion for this action issued as a result of consultation under section 7 of the ESA. That level is 20 documented or estimated takes (four by mortality) of leatherback turtles.

The Assistant Administrator may impose additional conservation measures on the fishery if the incidental take level is met or exceeded, if significant or unanticipated levels of lethal or nonlethal takings or stranding of sea turtles associated with fishing activities in the leatherback conservation area occur, or if there is noncompliance with this action. Such additional restrictions may include closing areas or the entire leatherback conservation zone to all shrimping. Notification will be published in the **Federal Register** announcing any additional sea turtle conservation measures, including any extension of the 30-day requirement.

Classification

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to conserve and provide adequate protection for endangered leatherback sea turtles. This action is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under Executive Order 12291 because it is not a major rule.

Pursuant to section 553(b)(B) and 553(d) of the Administrative Procedure Act (APA), the Assistant Administrator finds there is good cause to take this action on an emergency basis. It is impracticable, unnecessary, and contrary to the public interest to provide notice and opportunity for prior comment. Relatively high levels of leatherback sea turtles recently have been reported in Florida and Georgia, and closures and/or restrictions may need to be imposed quickly. The action announced by this notice is needed at this time so that shrimp trawlers will monitor NOAA weather radio and prepare for closures and/or restrictions in specific areas where relatively high leatherback sea turtle concentrations are identified. Comments were solicited on potential leatherback conservation measures (57 FR 57348, December 4, 1992), and a summary of the comments received and the response to those comments appears at 57 FR 40859, September 8, 1992. NMFS also solicited comments in meetings with fishing groups and state officials concerning this problem. Pursuant to section 553(d), the Assistant Administrator finds there is good cause to waive the usual 30-day delay in the effective date for this action. Advance preparation is not necessary to monitor NOAA weather radio. While time may be needed to make or procure a Taylor TED or a modified Morrison TED, restricted areas will be relatively small in size and shrimp trawlers should be able to operate in other areas with existing gear.

Because neither section 553 of the APA nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an EA for the final rule (57 FR 57348, December 4, 1992). A supplemental EA prepared specifically for this action concludes that, with specified mitigation measures, this action will have no significant impact on the human environment.

This action does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: May 12, 1993.

Samuel W. McKeen,

Acting Deputy Director, National Marine Fisheries Service.

[FR Doc. 93-11637 Filed 5-12-93; 4:33 pm]

BILLING CODE 3510-22-M

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50 CFR Part 227

[Docket No. 920780-2180]

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Turtle excluder device exemption.

SUMMARY: NMFS will continue to allow limiting tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina for 30 days. Tow times will be limited to no longer than 30 minutes. This area seasonally exhibits high concentrations of brown algae, *Dictyopteris* sp., and a red alga, *Halymenia* sp. Shrimp live within the algae, which shrimpers harvest. TEDs are impractical because they clog or exclude a large portion of the algae. Limiting tow times to 30 minutes will allow fishermen to harvest shrimp efficiently and will maintain adequate protection for sea turtles that may be nesting in this area. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-time limits are allowed in lieu of TEDs and to determine whether algal concentrations continue to make TED use impracticable.

EFFECTIVE DATES: This rule is effective from May 12, 1993 through June 11, 1993.

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

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2322) or Charles A. Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, (813/893-3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531 *et seq.* Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in offshore waters of North Carolina. Under the sea turtle conservation regulations at 50 CFR parts 217 and 227, as of January 1, 1993, all shrimp trawlers, regardless of length, in offshore waters of the Atlantic Area, including off North Carolina, are required to use approved TEDs in trawls year-round, with a few exceptions not applicable to this rule.

Under 50 CFR 227.72(e)(3)(ii), the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may allow compliance with tow-time restrictions as an alternative to the TED requirement if he/she determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area make trawling with TED-equipped nets impracticable. The Assistant Administrator has determined that immediate action is necessary to conserve sea turtles pursuant to the regulations at 50 CFR 227.72(e)(6). The Assistant Administrator has also determined that incidental takings of sea turtles during shrimp trawling are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements.

Special Environmental Conditions and Need for Special Restrictions

NMFS has determined that the environmental conditions in the restricted area continue to render TED use impracticable. In addition, no sea turtles have been stranded in the North Carolina restricted area during exemption periods and state officials have reported complete compliance with tow-time restrictions. Therefore, the Assistant Administrator extends the authorization to use restricted tow times previously issued on April 12, 1993 (58 FR 19361), as an alternative to the requirement to use TEDs, in the North Carolina restricted area. Specifically, all shrimp trawlers in the North Carolina restricted area from May 12, 1993 through June 11, 1993 are authorized, as an alternative to the otherwise required use of TEDs, to limit tow times to 30 minutes for the next 30 days.

The Assistant Administrator has determined that tows should be limited to no more than 30 minutes in order to provide sufficient protection for nesting turtles in this area. NMFS prepared a biological opinion (April 1, 1993) for a proposed rule exempting shrimpers in the North Carolina restricted area year-round. In that opinion, the Assistant Administrator determined that the restrictive tow-time limit of 30 minutes is necessary during North Carolina's sea turtle nesting season (May 15 through August 15) to provide sufficient protection for nesting females and attendant males that gather off nesting beaches in the restricted area. Tow times of 30 minutes will not impact shrimper's normal trawl times because heavy alga concentrations characteristic of these warmer months cause shrimpers to shorten their tow times to approximately 15-30 minutes.

This action provides shrimpers in the North Carolina restricted area with immediate relief from having to comply with an impractical TED-use requirement, while comments are being received on a proposed rule that would amend 50 CFR parts 217 and 227 to provide permanent relief. The tow-time limit and other requirements imposed by this action will provide adequate protection for endangered and threatened sea turtles in the North Carolina restricted area.

Comments on the Previous TED Exemption

Only one comment, from the Center for Marine Conservation (CMC), has been received to date on the April 15, 1993, action allowing restricted tow times instead of TEDs in the North Carolina restricted area. CMC raised four primary concerns: (1) Not enough information is known about the effects of this exemption on sea turtles to support a permanent exemption; (2) tow-time restrictions do not provide protection comparable to TEDs; (3) tow-time enforcement and incidental take documentation is difficult without 100-percent observer coverage; and (4) the exemption should be terminated if strandings indicate that tow times are causing turtle mortalities.

NMFS Response

NMFS intends to propose regulations making the TED exemption permanent in the North Carolina restricted area.

Meanwhile, NMFS is monitoring the effects of this temporary exemption on sea turtles. To date, no adverse effects on sea turtles related to this exemption have been documented. During NMFS' continued review of shrimping in the restricted area, there have been no observed takes and no strandings that were related to shrimping activities.

While NMFS agrees with CMC that TEDs provide a better means of protection of sea turtles, limited tow times are an adequate alternative to TEDs when TED use is impracticable.

NMFS also agrees with CMC's comment that an observer on board each vessel using tow times is a preferable way of monitoring the incidental take of turtles. However, NMFS does not believe that full observer coverage is necessary because of the law number of stranded turtles when exemptions were in effect and the absence of any observed or reported captures or mortalities of turtles. NMFS and State officials intend to observe fishing activities in the North Carolina restricted area every other day during the nesting season.

Finally, NMFS agrees that this exemption should be modified if strandings or other information indicate that limited tow times are taking turtles. If limited tow times in the North Carolina restricted area cause one death of a Kemp's ridley, hawksbill, green, or leatherback sea turtle, or two loggerhead turtle deaths, then NMFS may terminate or change the terms of the exemption.

Sea Turtle Conservation Measures

Shrimp trawlers in the North Carolina restricted area may restrict tow times to 30 minutes or less as an alternative to the requirement to use TEDs. "Tow times" are measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the two time is measured from the time the codend enters the water until it is removed from the water. The "North Carolina restricted area" is that portion of the offshore waters between Rich Inlet, North Carolina (34°17.6′ N. latitude), and Browns Inlet, North Carolina (34°35.7′ N. latitude), the inner boundary of which is the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972) and the outer boundary of which is 1 nautical mile (nm) seaward of that line.

The owner or operator of a shrimp trawler trawling in the North Carolina restricted area must register with the Director, Southeast Region, NMFS, by telephoning at 813/893–3141. The following information is required: (1) The name and official number of the vessel; (2) the time and date of the telephone registration; (3) the number of the state permit authorizing fishing in the restricted area; (4) the dates trawling operations in the North Carolina restricted area are expected to be conducted; and (5) if the owner or operator intends to trawl in the North Carolina restricted area using the 30-minute limited tow-time option, a statement to that effect.

If required by the Assistant Administrator, or his designee, the owner and operator of a shrimp trawler trawling in the North Carolina restricted area must carry a NMFS-approved observer. The observer will monitor compliance with required conservation measures, including restricted two times, and resuscitation of captured turtles in accordance with 50 CFR 227.72(e)(1)(i).

Any person who does not comply with any requirement in this action is in violation of 50 CFR 227.72(e)(3).

Additional Sea Turtle Conservation Measures

The Assistant Administrator, at any time during the effectiveness of this action, may modify the required conservation measures through notification in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, including requiring more restrictive tow times or synchronized tow times, if the Assistant Administrator determines that: (1) there is insufficient compliance with the required conservation measures; (2) the conservation measures are indequate to protect sea turtles; or (3) compliance cannot be monitored effectively. Likewise, conservation measures may be modified if the incidental take level of sea turtles, established by the biological opinion written for this action under section 7 of the ESA, is reached. That level is one lethal take of a Kemp's ridley, green, hawksbill, or leatherback turtle; or two lethal takes of loggerhead turtles.

The Assistant Administrator may terminate this exemption for the North Carolina restricted area if the incidental take level is reached, if conditions do not make trawling with TEDs impracticable, or if conditions do not allow adequate enforcement of the tow-time alternative. NMFS will monitor algal concentrations regularly in the restricted area to evaluate the need for continued TED exemption for this local fishery. Finally, the Assistant Administrator may terminate this exemption for the North Carolina restricted area if shrimpers refuse to accept observers when requested to do so and the level of observer coverage is insufficient to monitor incidental take adequately. The Assistant Administrator may take such action, for these or other reasons, as appropriate, at any time. Notification will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow-time option in the North Carolina restricted area.

Classification

The Assistant Administrator has determined that this action is necessary to provide relief from an impractical TED-use requirement, while providing adequate protection for listed sea turtles, and while comments are being received for the proposed rule that would amend 50 CFR parts 217 and 227 to allow for a permanent tow-time allowance in the North Carolina restricted area. It is anticipated that this action will be extended for one or two additional 30-day periods to allow completion of the permanent rulemaking. This action is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under Executive Order 12291 because it is not a major rule.

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the final rule published on December 4, 1992, (57 FR 56348), the interim final rule published on September 8, 1992, (57 FR 40861), the two previous interim final rules implementing this TED exemption program (57 FR 33452, July 29, 1992; and 57 FR 40859, September 8, 1992), and the notice actions (57 FR 45986, October 6, 1992), (57 FR 52735, November 5, 1992), (57 FR 57968, December 8, 1992) and (58 FR 19631, April 15, 1993) which continued the exemption through May 12, 1993. An EA prepared for this action concludes that, with specified mitigation measures, this action would have no significant impact on the human environment.

This action contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, requests for registration to trawl in the North Carolina restricted area. This

collection of information has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see ADDRESSES).

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

Dated: May 12, 1993.

Samuel W. McKeen,

Acting Deputy Director, National Marine Fisheries Service.

[FR Doc. 93–11636 Filed 5–12–93; 4:33 pm]

BILLING CODE 3510–22–M

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50 CFR Part 227

[Docket No. 910779–3119]

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule, technical amendment, to amend the regulations requiring most shrimp trawlers operating in the Gulf of Mexico and the Atlantic Ocean off the southeastern United States to use Turtle Excluder Devices (TEDs) to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. This technical amendment adds the Taylor TED to the list of approved soft TEDs and authorizes modifications to the Morrison TED that will allow leatherback turtles to escape. The intended effect of this rule is to approve TEDs that will allow leatherback turtles caught in shrimp trawls to escape.

EFFECTIVE DATE: Effective May 12, 1992.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713–2319) or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/839–3366).

SUPPLEMENTARY INFORMATION:

Background

Regulations at 50 CFR 227.72(e) require, with certain exceptions, that shrimp trawlers in the Atlantic Area and Gulf Area have NMFS-approved TEDs installed in nets that are rigged for fishing. TEDs are designed to allow sea turtles caught in shrimp trawls to escape. The regulations currently allow the use of hard TEDs, which have rigid deflector grids and meet specified generic standards, and soft TEDs, which have deflector panels made from polypropylene or polyethylene webbing and meet specified standards. In the existing regulations there are three approved soft TEDS: The Morrison, Parrish, and Andrews. This final rule allows the use of a fourth TED, the Taylor TED, and allows two specific modifications to the Morrison TED. The Taylor TED and a modified Morrison TED have escape openings large enough for leatherback turtles. The dimensions of the escape openings of the other approved TEDs are insufficient for leatherback turtles. Leatherback turtles are significantly larger than other sea turtles.

The Taylor TED and the modified Morrison TED have escape openings no less than 96-inches (244cm) in taut length. These openings allow leatherback turtles ample room to escape. Based on strandings data, the largest leatherback turtle encountered measured 65 inches (165 cm) over-the-curve width, which roughly translates to a circumference of 130 inches (330 cm). A 96-inch (244 cm) straight-line opening translates to a circumference of 192 inches (488 cm) and is designed to avoid potential entanglement of front flippers which on leatherback turtles may span over 100 inches (254 cm).

Taylor TED Testing

Regulations at 50 CFR 227.72(e)(5) contain a provision for approval of new TEDs if the TEDs are tested according to procedures specified in published protocols (52 FR 24262, June 29, 1987; 55 FR 41093, October 9, 1990) and are found to be 97-percent effective in releasing sea turtles from trawls. The Taylor TED, a soft TED with a triangular piece of 6-inch (15.2 cm) polyethylene webbing that angles upward within the trawl to an exit opening on the top of the trawl ahead of the extension, was tested by NMFS at Panama City, Florida, in August 1991. The trials consisted of two parts: (1) An evaluation of actual turtle release from TED- equipped nets by NMFS scuba divers who videotaped the tests; and (2) an evaluation of test results by a panel of industry and Sea Grant representatives, sea turtle experts, and NMFS scientists and gear specialists. The NMFS TED previously approved and found to be 97-percent effective in releasing sea turtles was used as the control; i.e., the Taylor 6-inch (15.2-cm) TED design tested had to meet the same turtle exclusion rate as the NMFS TED.

In initial testing, the NMFS Ted-equipped control net released 23 turtles out of 25 introduced, setting the performance standard. In comparison, during the Taylor TED test, 20 of the 20 turtles introduced into the net escaped. Turtles were observed to make contact with the 6-inch (15.2-cm) panel, but were able to remove their flippers from the mesh. The TED flap, which was weighted with chain, did not appear to hamper the escape of the turtles. Because the Taylor TED demonstrated a 100-percent exclusion rate, which exceeds the performance requirement in the testing protocol, the Taylor TED is approved.

Authorized Modifications of the Morrison TED

The first authorized modification to the Morrison TED consists of a horizontal cut, in addition to the presently required vertical cut, at the escape opening. The opening thus becomes triangular shaped with the apex pointing to the rear of the trawl. This modification creates an enlarged opening that should allow the escape of large turtles. A flap of no larger than 2-inch (5.1-cm) stretched mesh, untreated nylon webbing may be attached at the forward edge of the opening to reduce shrimp loss.

The second authorized modification to the Morrison TED allows reconfiguration to meet specifications of the Taylor TED. The Taylor TED is basically a Morrison TED with the apex removed and with a horizontal instead of a vertical cut for the escape opening. Given that the 6-inch (15.2-cm) Taylor TED passed the testing protocol, modification of the 8-inch (20.3-cm) Morrison TED to the configuration of the Taylor TED should only increase turtle exclusion capabilities, and should be beneficial to leatherback turtles in that the escape opening is enlarged.

Classification

This action is authorized by 50 CFR 227.72(e)(5) and is consistent with the Endangered Species Act (ESA) and other applicable law.

This final rule technical amendment adds another soft TED to the list of authorized TEDs and allows two modifications to a previously authorized TED. Pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), finds that it is unnecessary and contrary to the public interest to provide prior notice and opportunity for comment on this action because it merely notifies the public that the Taylor TED has been approved and that the Morrison TED may be modified in certain respects. Because this action relieves a restriction, pursuant to section 553(d) of the APA, 30-day delayed effectiveness for this action is not required.

The Assistant Administrator finds that this action is in compliance with E.O. 12291. This final rule, technical amendment, does not change any of the regulatory impacts previously analyzed. Accordingly, a regulatory impact review for this final rule was not prepared.

Because this final rule, technical amendment, is being issued without prior public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

Because this action does not alter the conclusions of previous environmental impact analyses and environmental assessments, it is categorically excluded by NOAA Administrative Order 216–6 from the requirement to prepare an environmental assessment.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

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

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: May 12, 1993.

Samuel W. McKeen,

Acting Deputy Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72 after the paragraph heading for (e)(4)(ii)(A), the existing text is redesignated as paragraph (e)(4)(ii)(A)(*1*) with the heading "*Description.*"; paragraphs (e)(4)(ii)(A)(*2*) and (e)(4)(ii)(D) are added; and the introductory text to paragraph (e)(4)(iii) is revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(A) * * *

(*2*) *Allowable Modifications.* The Morrison TED described in paragraph (e)(4)(ii)(A)(*1*) of this section may be modified to increase the size of the escape opening to the dimensions specified in the description of the Taylor TED in paragraph (e)(4)(ii)(D) of this section and a webbing flap over the escape opening may be installed as specified in the description of the Taylor TED in that paragraph. For the Morrison TED, the apex may be removed no more than 48 inches (122 cm) forward of the rear edge. A rectangular section 48 inches (122 cm) long must be sewn evenly to the rear of the deflector panel to maintain the length prescribed in the description of the Morrison TED. The Morrison TED may also be altered as described for the Taylor TED by cutting a horizontal opening of not less than 96 inches (244 cm) at a point where its entire length is above the deflector panel—the forward edge of the opening must extend from the attachment of the deflector panel on one side of the body, across the top of the body, to the attachment of the deflector panel on the other side.

* * * * *

(D) *Taylor TED* (Figures 9a and 9b). The Taylor TED is constructed of 6-inch (15.2-cm) polyethylene or polypropylene webbing that is heat-set knotted or braided. The Taylor TED deflector panel must be not less than 228 inches (580 cm) on the leading edge and not less than 120 inches (305 cm) long. The leading edge, sides, and apex of the deflector panel must be sewn to the trawl body so as to form a complete barrier to large objects inside the trawl net forward of the codend or extension. The apex may be removed not more than 24 inches (61 cm) forward of the rear point. If the apex is removed, a rectangular section 24 inches (61 cm) long must be sewn evenly to the rear of the deflector panel to maintain the 120-inch (305 cm) length. The leading edge of the Taylor TED deflector panel must be sewn to the bottom body of the trawl net. The rear point of the deflector panel, or rear edge, if the apex is removed, must be sewn evenly, centered across the top body. An escape opening must be located on the top of the trawl body centered over the deflector panel. The opening must measure not less than 96 inches (244 cm), must be in a single row of meshes, and must be located no farther forward than the point where its entire length is above the deflector panel—the forward edge of the opening must extend from the attachment of the deflector panel on one side of the body, across the top of the body, to the attachment of the deflector panel on the other side. All trawl webbing above the deflector panel between the 96-inch (244 cm) cut and the posterior edge of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-inch (5.1-cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap may not exceed the length of the forward edge of the triangular opening. The flap may extend not more than 12 inches (30.5 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the body, but may not be attached farther aft than the rear point of the escape opening. One row of chain not larger than 3/16 inch (4.76 mm) may be sewn evenly to the back edge of the flap. The length of the chain may not exceed the width of the flap.

(iii) *Allowable modifications.* No modifications may be made to an approved soft TED, except for the modifications described in (e)(4)(ii). Only the following modifications may be made to an approved hard TED:

* * * * *

3. Figures 9a and 9b are added to the part to read as follows:

BILLING CODE 3510–22–M

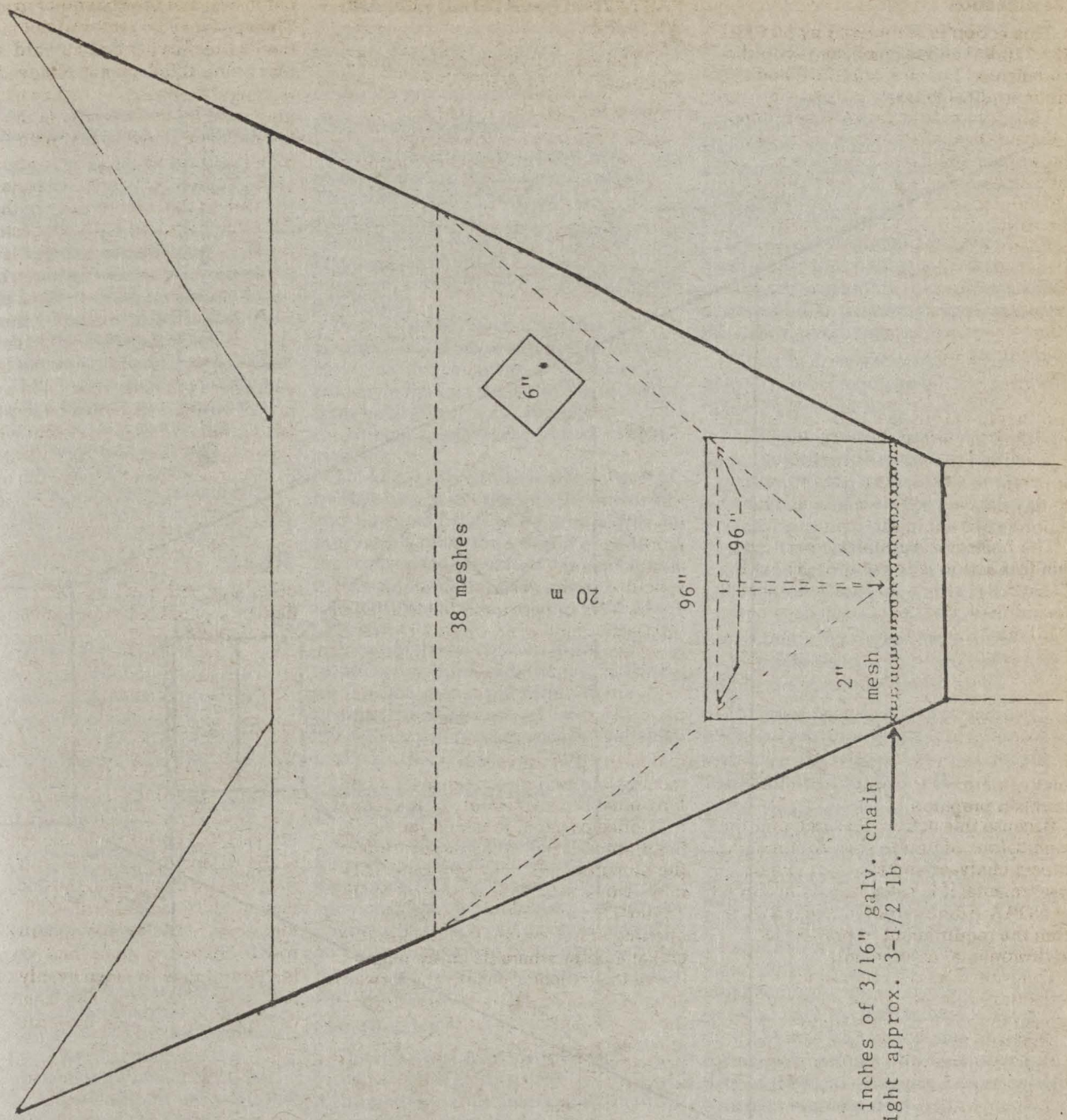
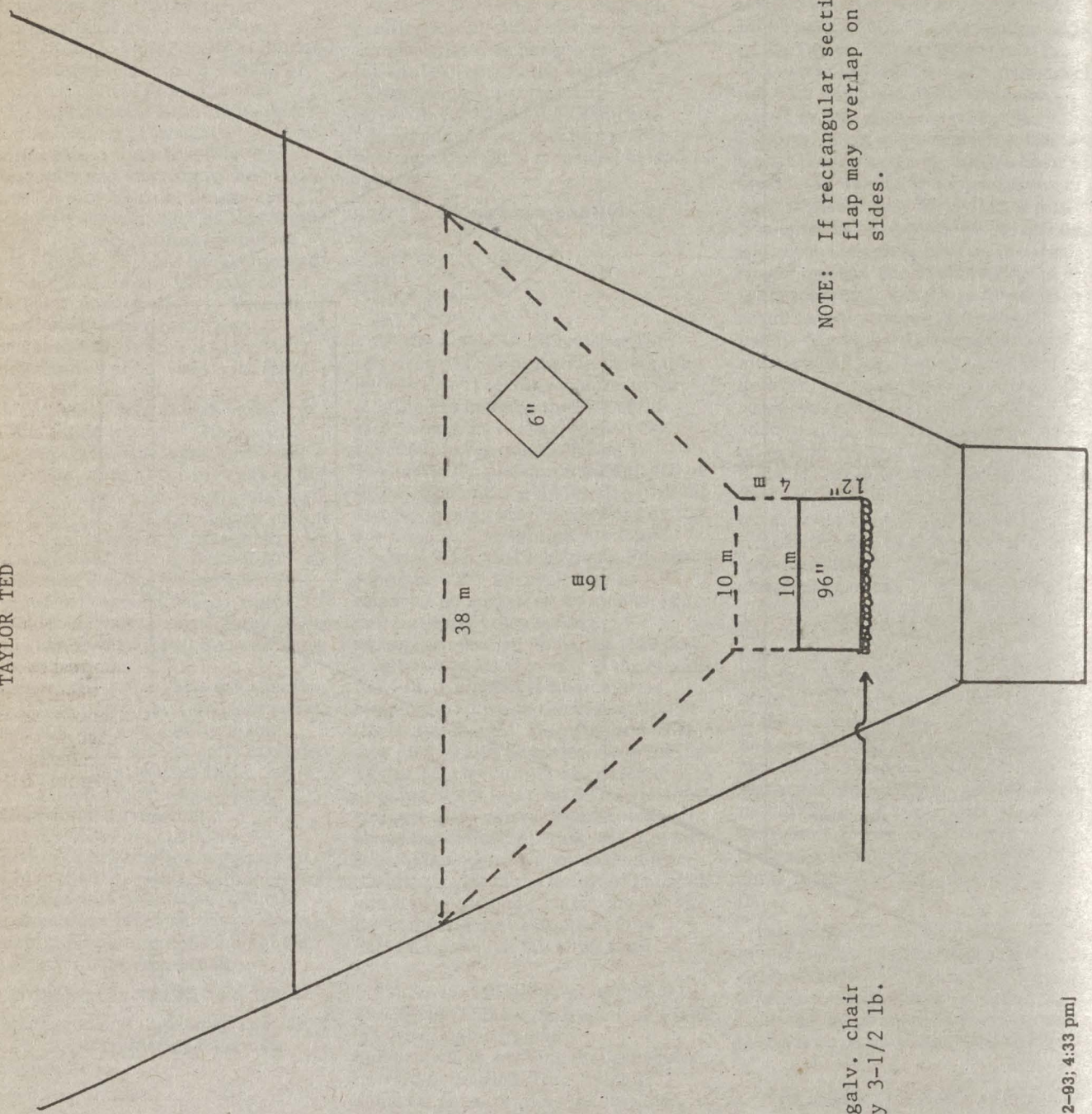


FIGURE 9a

TAYLOR TED

FIGURE 9b

TAYLOR TED



NOTE: If rectangular section is used flap may overlap on all four sides.

96 inches of 3/16" galv. chair weight approximately 3-1/2 lb.

[FR Doc. 93-11638 Filed 5-12-93; 4:33 pm]
BILLING CODE 3510-22-C

50 CFR Parts 672 and 675

[Docket No. 930357-3103]

RIN 0648-AF05

Groundfish of the Gulf of Alaska; Bering Sea and Aleutian Islands Area

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

ACTION: Final rule.

SUMMARY: NMFS is establishing mandatory careful release procedures for Pacific halibut taken incidental to the hook-and-line gear fisheries for groundfish of the Bering Sea and Aleutian Islands area (BSAI) and Gulf of Alaska (GOA). This rule is necessary to reduce halibut bycatch mortality rates, increase the amount of groundfish harvested by hook-and-line gear fisheries under halibut bycatch mortality restrictions, and potentially decrease overall halibut bycatch mortality in the groundfish fisheries. This rule is intended to further the goals and objectives of the fishery management plans for the groundfish fisheries off Alaska.

EFFECTIVE DATE: May 15, 1993.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Division, (907) 586-7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries in the exclusive economic zone of the GOA and BSAI are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the U.S. fishery codified at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries are codified at 50 CFR part 620.

At its December 1992 meeting, the Council recommended that NMFS issue mandatory careful release procedures for Pacific halibut taken incidental to the hook-and-line gear fisheries for groundfish of the GOA and BSAI. A proposed rule was published in the **Federal Register** on April 6, 1993 (58 FR 17821) that would implement the Council's recommended action.

Response to Comments

Only one letter of comment was received during the comment period. This comment and response is summarized below.

Comment 1: Regulations include language that implies a subjective judgment call at 50 CFR 672.7(k)(4) and 675.7(k)(4).

Response: NMFS concurs that this language could involve a judgment call. However, this language is necessary to acknowledge that the stripping of hooks from halibut can occur through intentional passive actions and must be avoided.

This final rule prohibits the release of halibut caught incidentally in the hook-and-line gear fisheries for groundfish, by procedures other than as specified in the regulations. This rule does not apply to vessels operating in the Pacific halibut fishery in accordance with 50 CFR part 301.

A complete description of careful release procedures and the justification for this action was published in the preamble to the proposed rule. Additional information also is available in the EA/RIR/FRFA.

Changes in the Final Rule From the Proposed Rule

One change was made in the final rule from the proposed rule as follows. Paragraphs 672.7(k)(4) and 675.7(m)(4) were changed by eliminating the phrase "punctured by the gaff or other device or." This phrase was redundant because it also is found in paragraphs 672.7(k)(3) and 675.7(m)(3).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

NMFS prepared an EA for this final rule that discusses the impacts on the environment as a result of this rule. The Assistant Administrator concluded that no significant impact on the human environment will result from its implementation. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a major rule requiring a regulatory impact analysis under E.O. 12291. This determination is based on the RIR prepared by NMFS. A copy of the EA/RIR/FRFA may be obtained (see **ADDRESSES**).

NMFS prepared a FRFA, which concludes that this rule could have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The Alaska Regional Director determined that fishing activities conducted under this rule will not affect endangered or threatened species under the Endangered Species Act.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. Consistency is inferred because the appropriate State agency did not reply within the statutory time period.

This rule does not contain policies with federalism implication sufficient to warrant preparation of the Federalism Assessment under E.O. 12612.

The Assistant Administrator has determined, under section 553(d)(3) of the Administrative Procedure Act, that good cause exists for waiving the minimum 30-day delayed effectiveness period for this final rule. This determination was reached because mandatory careful release measures must be implemented by May 15, 1993, to avoid high bycatch mortality rates in the GOA and BSAI hook-and-line gear fisheries. Without a mid-May effective date of the final rule, unnecessarily high bycatch mortality rates will subsequently constrain all GOA and BSAI hook-and-line gear fisheries under existing halibut bycatch mortality restrictions. Therefore, the Assistant Administrator is waiving the 30-day delayed effectiveness period for this final rule so that it may be effective immediately to achieve the desired beneficial economic and resource effects.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: May 11, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In § 672.7, paragraph (l) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(l) With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for Pacific halibut in accordance with part 301 of this title—

(1) Fail to release the halibut outboard a vessel's rails;

(2) Release the halibut by any method other than;

(i) Cutting and gangion;

(ii) Positioning the gaff on the hook and twisting the hook from the halibut; or

(iii) Straightening the hook by using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel;

(3) Puncture the halibut with a gaff or other device; or

(4) Allow the halibut to contact the vessel, if such contact causes, or is capable of causing, the halibut to be stripped from the hook.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for 50 CFR part 675 continues to read as follows:

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

4. In § 675.7, paragraph (m) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(m) With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for Pacific halibut in accordance with part 301 of this title—

(1) Fail to release the halibut outboard a vessel's rails;

(2) Release the halibut by any method other than;

(i) Cutting the gangion;

(ii) Positioning the gaff on the hook and twisting the hook from the halibut; or

(iii) Straightening the hook by using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel;

(3) Puncture the halibut with a gaff or other device; or

(4) Allow the halibut to contact the vessel, if such contact causes, or is capable of causing, the halibut to be stripped from the hook.

[FR Doc. 93–11520 Filed 5–14–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 93
Monday, May 17, 1993

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150-AE49

FY 1991 and 1992 Proposed Rule Implementing the U.S. Court of Appeals Decision and Revision of Fee Schedules; 100% Fee Recovery, FY 1993: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule published April 23, 1993 (58 FR 21662), which proposes to amend the licensing, inspection, and annual fees charged to NRC applicants and licensees. This action is necessary to correct erroneous information.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4301.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 23, 1993, beginning on page 21662, in the issue of Friday, April 23, 1993, make the following corrections:

1. On page 21665, in the first column, the fifteenth line of the first full paragraph, "three" should read "four".
2. On page 21665, in the third column, fourth line of the last paragraph, "1 and 3" should read "1, 3, and 4".
3. On page 21677, in the second column, fifth line of the second full paragraph, "$289,000" should read "$100,000".

Dated at Bethesda, Maryland, this 12th day of May, 1993.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Acting Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 93-11582 Filed 5-14-93; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-31-AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 series airplanes. This proposal would require a one-time visual inspection of the airbrake servo-valve assembly to determine whether an improperly manufactured servo-valve has been installed, and replacement of discrepant parts. This proposal is prompted by reports that, during production, faulty feedback springs were installed in certain airbrake servo-valves. The actions specified by the proposed AD are intended to prevent malfunction of the airbrake; this could result in uncommanded airbrake extension or retraction, which, subsequently, could adversely affect airplane performance.

DATES: Comments must be received by July 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-31-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Inc., Avro Division, 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-31-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-31-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Model BAe 146 series airplanes. The CAA advises that during production of these airplanes, improperly manufactured feedback springs were installed in one batch of servo-valves. The improperly manufactured feedback springs failed

prematurely. This condition, if not corrected, could result in malfunction of the airbrake; this could result in uncommanded airbrake extension or retraction, which, subsequently, could adversely affect airplane performance.

British Aerospace has issued BAe 146 Inspection Service Bulletin S.B. 27–133, dated January 31, 1992, that describes procedures for a one-time visual inspection of the airbrake servo-valve assembly to determine whether an improperly manufactured servo-valve has been installed. The service bulletin also describes a visual inspection to detect the presence of metallic debris in the filter mesh in improperly manufactured servo-valves, and procedures for replacement of discrepant airbrake actuators and servo-valve assemblies. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection of the airbrake servo-valve assembly to determine whether an improperly manufactured servo-valve has been installed and to detect the presence of metallic debris in the servo-valve. Discrepant parts would be required to be replaced prior to further flight. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $18,480, or $385 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace: Docket 93–NM–31–AD.

Applicability: Model BAe 146 series airplanes; on which Fairey Hydraulics airbrake servo-valve assembly, part number 3799H1, has been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the airbrake; this could result in uncommanded airbrake extension or retraction, which, subsequently, could adversely affect airplane performance, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time visual inspection to determine whether Abex servo-valve, part number 72189, has been installed and to identify the serial number on the Abex servo-valve, in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 27–133, dated January 31, 1992.

(1) If an Abex servo-valve, part number 72189, has been installed, having a serial number listed in Table I of the service bulletin: Prior to further flight, accomplish the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Remove the existing servo-valve assembly in accordance with the service bulletin.

(ii) Perform a visual inspection to detect metallic debris in the filter mesh in the servo-valve in accordance with the service bulletin. If any debris is detected, replace the currently installed airbrake actuator with a new or serviceable airbrake actuator, and install a new or serviceable servo-valve assembly in accordance with the service bulletin.

(2) If an Abex servo-valve has been installed and has a serial number listed in Table 2 of the service bulletin: Prior to further flight, reidentify the servo-valve in accordance with the service bulletin.

(3) If an Abex servo-valve has been installed and has a serial number not listed in either Table 1 or 2 of the service bulletin: No further action is required by this AD.

(b) As of the effective date of this AD, no Fairey Hydraulics airbrake servo-valve assembly, part number 3799H1, shall be installed on any airplane unless that airbrake servo-valve assembly is in compliance with the requirements of this AD.

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

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

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

Issued in Renton, Washington, on May 11, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–11574 Filed 5–14–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

Customs Service Field Organization; Establishment of Lehigh Valley Port of Entry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to Customs field organization by establishing a new port of entry in the Customs District of Philadelphia, Pennsylvania, Northeast Region. The new port of entry would be designated as Lehigh Valley and would include the Allentown-Bethlehem-Easton International Airport, which is located in Lehigh County, Pennsylvania, and currently operated as a user-fee airport. This change will assist the Customs Service in its continuing efforts to achieve more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before July 16, 1993.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th St., NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Office of Workforce Effectiveness and Development, Office of Inspection and Control (202) 927-0456.

SUPPLEMENTARY INFORMATION:

Background

To achieve more efficient use of its personnel, facilities, and resources, and in order to provide better services to carriers, importers, and the public in the Northeast Region, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by establishing a new port of entry in the Customs District of Philadelphia, Pennsylvania. The new port of entry, located in Lehigh County, Pennsylvania, would be designated as Lehigh Valley and would include the Allentown-Bethlehem-Easton International Airport (hereinafter, A-B-E), currently operating and listed in § 122.15, Customs Regulations (19 CFR 122.15, formerly § 122.39, but redesignated as § 122.15 in T.D. 92-90 (57 FR 43395)), as a user-fee airport.

The criteria used by Customs in determining whether to establish a port of entry are found in T.D. 82-37 (47 FR 10137), as revised by T.D. 86-14 (51 FR 4559) and T.D. 87-65 (52 FR 16328). Under these criteria, a community requesting a port of entry designation must: (1) Demonstrate that the benefits to be derived justify the Federal Government expense involved; (2) be serviced by at least two major modes of transportation (rail, air, water, or highway); (3) have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius); and, (4) make a commitment to make optimal use of electronic data transfer capabilities to permit integration with Customs Automated Commercial System (ACS), which provides a means for the electronic processing of entries of imported merchandise. Further, the actual or potential Customs workload (minimum number of transactions per year) at the proposed port of entry must meet one of several alternative minimum requirements, one of which is conditioned that no more than half of the required 2,500 consumption entries can be attributable to one private party. Lastly, facilities at the proposed port of entry must include cargo and passenger facilities, warehousing space for the secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas and other space necessary for regulator Customs operations.

The proposal set forth in this document originated as a request from the Lehigh-Northampton Airport Authority that A-B-E be designated as a port of entry. With regard to the above criteria, the Airport Authority has stated that the Federal Government would benefit from the port of entry designation because A-B-E would thus be available to share the workload presently handled at ports of entry such as Wilkes-Barre, Harrisburg, Baltimore, Philadelphia, Newark or JFK International Airports. The Airport Authority further stated that A-B-E is served by 24 non-scheduled and 10 scheduled air carriers and 35 freight lines, and that U.S. Route 22 provides highway access to A-B-E. The population of the Lehigh County-area is stated to be 291,130 and that of the adjacent Northampton County-area is 247,105, for a total of 538,235 which is well above the minimum 300,000 required. Further, the Airport Authority pointed out that the surrounding counties of Carbon, Bucks, Monroe, and Berks offered a combined additional population of 1,025,000. The number of formal Customs entries in fiscal year 1991 was 2,687, with a representation that no more than 47.8% were attributable to one private party. Regarding electronic data transfer capabilities, it was stated that two Automated Broker Interface (ABI) brokers currently maintain offices at A-B-E and that an additional thirteen brokers have provided services there. Lastly, since A-B-E is currently a Customs user fee airport, it was stated that office, storage, and examination space are currently available and utilized by Customs. The district director at Philadelphia has verified that A-B-E's entries for the year 1991 exceed 2,500 formal entries, and the Regional Commissioner for the Northeast Region has advised that A-B-E appears to meet the criteria for port of entry status.

Based on the above, Customs believes that there is sufficient justification for establishment of the requested port of entry; that A-B-E meets an appropriate combination of the workload criteria specified, and that the necessity for the new facility is justified.

Description of Port of Entry Limits

The geographical limits of the proposed Lehigh Valley port of entry would be as follows:

In Lehigh County, Pennsylvania, beginning at the intersection of Pennsylvania Route 987 and Race Street and proceeding south along Pennsylvania Route 987 to the Lehigh Valley Thruway (U.S. Route 22), and then southwest along the Lehigh Valley Thruway to the Lehigh River, and then north along the Lehigh River to where it meets Race Street, and then northwest along Race Street to the point of beginning.

Proposed Amendments

If the proposed port of entry designation is adopted, the list of Customs regions, districts, and ports of entry at § 101.3 will be amended to include Lehigh Valley as a port of entry in the Customs District of Philadelphia, and the Allentown-Bethlehem-Easton Airport will be deleted from the list of user-fee airports in § 122.15.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments 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 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR

103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court 4th floor, 1099 14th St., NW., Washington, DC.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12291

Customs routinely establishes, expends, and consolidates Customs ports of entry throughout the United State to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the same reasons stated above, this proposal is not subject to a regulatory impact analysis under Executive Order 12291.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

Approved: April 23, 1993.

Michael H. Lane,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 93–11550 Filed 5–14–93; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSM is reopening and extending the public comment period on a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to make the requirements of the Illinois program no less effective than the Federal program, to enhance the clarity of Illinois' regulations, and to meet State codification rule and guidelines. It concerns changes made to the Illinois Administrative Code (IAC), Title 62, Mining, Chapter I. Illinois has proposed further revisions to this amendment in response to comments received during the initial public comment period.

This document sets forth the times and location that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment 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 June 16, 1993. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on June 11, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 1, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone (217) 492–4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, suite 300, Springfield, Illinois 62791, Telephone: (217) 782–4970

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

OSM notified Illinois of deficiencies in its program regulations which were determined to be less effective than the Federal regulation requirements for surface mining and reclamation operations in the **Federal Register** decision notice of an Illinois program amendment approved by the Director on December 13, 1991 (58 FR 64986). Illinois identified additional regulations that required amendment in order to clarify their purposes and to be consistent with their Federal counterparts. Illinois is also taking this opportunity to reorganize its hearing regulations in order to more effectively carry out its responsibilities under the State Act. The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors and to accomplish necessary recodification required by the addition or deletion of provisions.

In response to the OSM notification and its own initiatives, Illinois by letter dated June 22, 1992 (Administrative Record No. IL–1192) submitted proposed changes to its program.

OSM announced receipt of the proposed amendment in the August 18, 1992, **Federal Register** (57 FR 37127), and, in the same document, opened the public comment period seeking comments on the adequacy of the proposed amendment. The public comment period ended on September 17, 1992. The public hearing scheduled for September 14, 1992, was not held because no one requested an opportunity to testify.

By letter dated April 27, 1993, (Administrative Record No. IL–1207), Illinois submitted revisions to its proposed amendment in response to issue letters prepared by OSM on September 2 and October 2, 1992, and in response to comments received from other agencies and individuals. Illinois proposes the following modifications to its revisions at 62 IAC 1701.APPENDIX A, which contains general definitions. Non-substantive modifications to regulation citations were made. The proposed definition for "riparian zone" was withdrawn. The definition of "valid existing rights" was restored.

Illinois made non-substantive modifications to regulation citations in part 62 IAC 1702, which contains the

provisions for exemption for coal extraction incidental to the extraction of other minerals.

Illinois proposes the following modifications to its revisions in part 62 IAC 1761, which contains provisions for areas designated by Act of Congress. Non-substantive modifications to regulation citations were made. Proposed new section 1761.5, which defined "valid existing rights" and specified how such rights may be established, was withdrawn. In section 1761.11, subsection (h), which prohibits surface coal mining in protected areas, was restored. In section 1761.12, proposed new subsection (b), which specified what information must be submitted during the permitting process by a person claiming to have VER to mine in a Section 1761.11 area, was withdrawn.

Illinois proposes the following modifications to its revisions in part 62 IAC 1773, which contains requirements for permits and permit processing. Non-substantive modifications were made to regulation citations throughout this part. In section 1773.13, the proposed change to subsection (c)(2), which revised the time limit within which the Department must hold an informal conference regarding its decision on a permit application from 75 days to a reasonable time, was withdrawn. In section 1773.15, new language was added to subsection (d) to clarify that a new permit application must be submitted for a specific site if the written findings approving an existing permit application for this site expired.

Illinois proposes the following modifications to its revisions in part 62 IAC 1774, which contains requirements for permit revision, permit renewal, and transfer, assignment, or sale of permit rights. Non-substantive modifications were made to regulation citations throughout this part. In section 1774.13, the proposed revision to subsection (b)(2)(E), which defined under what circumstances a significant permit revision would be required for land use changes, was modified by removing the 50-acre limitation and clarifying that the limitation is 5 percent of the original total permit acreage. Proposed new subsection (d)(6), which provided public notice and comment for incidental boundary revision applications, was withdrawn.

Illinois proposes the following modifications to its revisions in section 62 IAC 1777.17, which contains the requirements for submission of permit fees. Non-substantive modifications were made to regulation citations in this section. In the first sentence of subsection (a), the word "permit" was added before the word "issuance" for clarification.

At section 62 IAC 1778.15, which contains provisions for right-of-entry information, Illinois proposes non-substantive modifications to regulation citations.

Illinois proposes the following modifications to its revisions in part 62 IAC 1780, which contains the minimum requirements for the reclamation and operation plans for surface mining permit applications. Non-substantive modifications were made to regulation citations throughout this part. In section 1780.21, which contains the requirements for hydrologic information, the revision to subsection (b)(1)(A) requiring six groundwater analyses was withdrawn.

Illinois proposes the following modifications to its revisions in part 62 IAC 1784, which contains the minimum requirements for the reclamation and operation plans for underground mining permit applications. Non-substantive modifications were made to regulation citations throughout this part. In section 1784.14, which contains the requirements for hydrologic information, the revision to subsection (b)(1)(A) requiring six groundwater analyses was withdrawn.

Illinois proposes the following modifications to its revisions in part 62 IAC 1800, which contains provisions for bonding and insurance requirements for surface coal mining and reclamation operations. Non-substantive modifications to regulation citations were made in this part. In section 1800.11, the proposed new subsection (a)(2), which provided provisions and restrictions for filing of a minimum performance bond, was withdrawn. In section 1800.50, the proposed new subsection (g), which provided an election to not proceed with state enforcement actions during bond forfeiture proceedings in specified situations, was withdrawn.

Illinois proposes the following modifications to its revisions in part 62 IAC 1816, which contains the permanent program performance standards for surface mining activities. Non-substantive modifications to regulation citations were made throughout this part. The substantive revisions to section 1816.42 regarding the Illinois Groundwater Protection Act and the additional information necessary to implement groundwater quality standards were withdrawn. In section 1816.43, the proposed revision to subsection (b)(4), which clarified the design standards for post-mining riparian zones, was withdrawn. In section 1816.49, provisions for demonstration by the operator and certification by a qualified registered professional engineer that the impoundment will safely control the design precipitation event was added to the proposed revision at subsection (c)(2)(B), which provides alternate spillway system provisions for temporary impoundments. In section 1816.116, which contains requirements for revegetation success standards for surface mining operations, the justification for the proposed revisions to subsection (a)(2)(C) was modified to further define normal husbandry practices in Illinois and subsection (b)(2) was modified to include reporting of reclamation activities specifically required to evaluate a normal husbandry practice and to restore the listing of activities to be reported. In section 1816.117, which contains the revegetation requirements for tree and shrub vegetation, the proposed revision to subsection (b), which clarified the tree or shrub population requirement for riparian zones, was withdrawn.

Illinois proposes the following modifications to its revisions in part 62 IAC 1817, which contains the permanent program performance standards for underground mining operations. Non-substantive modifications to regulation citations were made throughout this part. The substantive revisions to section 1817.42 regarding the Illinois Groundwater Protection Act and the additional information necessary to implement groundwater quality standards were withdrawn. In section 1817.43, the proposed revision to subsection (b)(4), which clarified the design standards for post-mining riparian zones, was withdrawn. In section 1817.49, provisions for demonstration by the operator and certification by a qualified registered professional engineer that the impoundment will safely control the design precipitation event was added to the proposed revisions at subsection (c)(2)(B), which provides alternate spillway system provisions for temporary impoundments. In section 1817.116, which contains requirements for revegetation success standards for underground mining operations, the justification for the proposed revisions to subsection (a)(2)(C) was modified to further define normal husbandry practices in Illinois and subsection (b)(2) was modified to include reporting of reclamation activities specifically required to evaluate a normal husbandry practice to restore the listing of activities to be reported. In section 1817.117, which contains the revegetation requirements for tree and

shrub vegetation, the proposed revision to subsection (b), which clarified the tree or shrub population requirement for riparian zones, was withdrawn.

The proposed revision to 62 IAC 1827.12(d), which added ground water quality compliance requirements for coal preparation plants, was withdrawn. Illinois proposes the following modifications to its revisions in part 62 IAC 1843, which provides provisions for state enforcement. Non-substantive changes to the regulation citations were made throughout this part. The proposed revision to section 1843.14(a)(2) was modified to provide that alternative service of notices and orders may be made by any means consistent with the rules governing service of summons and complaint in the Illinois circuit courts.

Illinois proposes the following modifications to its revisions in part 62 IAC 1845, which provides provision for civil penalties. Non-substantive changes to the regulation citations were made throughout this part. Modifications were made to section 1845.12 by revising the language in new subsection (c) for clarity and by revising the language in new subsection (d) to clarify that an assessment below $1,000 is not required to be paid unless it is the permittee's second or more related violation within a 12-month period. The definition for rapid compliance in subsection 1845.13(b)(4)(B) was modified to delete the 15-days restriction. Subsection 1845.17(b) was modified to specify that any alternative means of service was to be consistent with the rules governing service of a summons and compliant in the Illinois circuits courts.

Illinois proposes modifications to new Part 62 IAC 1847, which contains provisions for the various types of Illinois administrative reviews, in order to further clarify the Illinois hearing regulations.

Illinois proposes modifications to new Part 62 IAC 1848, which contains general rules relating to procedures and practice applicable to administrative hearings, in order to further clarify the Illinois hearing regulations.

III. Public Comment Procedures

OSM is reopening and extending the public comment period for Illinois' proposed amendment to provide the public an opportunity to comment on the proposed modifications to the amendment. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15.

If the amendment is deemed adequate, it will become part of the Illinois 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 OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

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 June 1, 1993. If no 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 amendment may request a meeting at the OSM office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "ADDRESSES". A written summary of each meting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93-11588 Filed 5-14-93; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment 93-4) consists of proposed changes to the Indiana Surface Mining Statutes concerning a "no more stringent" provision, and the Indiana bond pool. The amendment is intended to implement revisions to the Indiana Code (IC) contained in the 1993 Senate Enrolled Act (SEA) 374.

This document sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on June 16, 1993; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on June 11, 1993; and, requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 1, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this document will be available for pubic review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field

Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indian program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendment

By letter dated April 19, 1993 (Administrative Record Number IND–1228), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program concerning statutes enacted by Indiana under SEA 374 from the 1993 Indiana Legislative Session. The amendments included changes to the "no more stringent" provision at IC 13–4.1–1–5, and Indiana's bond pool provisions at IC 13–4.1–6.5–8(d).

By letter dated June 4, 1991 (Administrative Record Number IND–0894), Indiana submitted proposed changes to the Indiana program enacted under SEA 46. SEA 46 was enacted during the 1991 legislative session and, among other changes, added a "no more stringent" clause at IC 13–4.1–1–5. On December 13, 1991 (56 FR 64996), OSM announced its disapproval of the proposed language at IC 13–4.1–1–5. In that same notice, OSM also codified at 30 CFR 914.16(g), a requirement that Indiana must either delete its proposed provisions at IC 13–4.1–1–5 concerning the "no more stringent" provision, or amend IC 13–4.1–1–5 to comply with SMCRA and the Federal regulations. The language currently proposed in amendment 93–4 at IC 13–4.1–1–5 is intended to comply with the required amendment codified at 30 CFR 914.16(g).

By letter dated March 18, 1988 (Administrative Record Number IND–0559), the IDNR submitted proposed changes to the Indiana program under SEA 231. SEA 231 was enacted during the 1988 legislative session and, among other things, added IC 13–4.1–6.5 to the Indiana program with the purpose of establishing a surface coal mining reclamation bond pool. On April 20, 1992 (57 FR 14350), OSM approved the proposed bond pool provisions with the exception of IC 13–4.1–6.5–8(d) which was not approved. In the currently proposed amendment, Indiana is deleting the language at IC 13–4.1–6.5–8(d) which was not approved by OSM.

The proposed amendments are summarized below:

1. IC 13–4.1–1–5 "No More Stringent" Provision

As amended, the provision reads as follows:

(a) It is the purpose of this article to establish requirements that are no more stringent than those required to meet the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328).

(b) Neither the director nor the commission shall adopt a rule under this article that is more stringent than corresponding provisions under the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328).

2. IC 13–4.1–6.5–8(d) Fees

This provision is amended by the deletion of subsection 8(d) in its entirety. The language to be deleted reads:

(d) If the bond pool is maintained at an acceptable percentage of the bond pool's liability as determined by the director after consultation with the bond pool committee, payments due under this section shall be suspended for any operator who has made payments to the bond pool for at least five (5) years.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to 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 Indianapolis 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 the close of business on June 1, 1993. 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 who desire 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 amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "ADDRESSES". A summary of the meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an

exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 3, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–11590 Filed 5–14–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AG10

Zero Percent Disability Evaluations

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations and its schedule for rating disabilities to authorize the assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for compensable evaluation are not met. This amendment is proposed to clarify the VA's interpretation of the intent of the regulation.

DATES: Comments must be received on or before June 16, 1993. Comments will be available for public inspection until June 28, 1993. This change is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until June 28, 1993.

FOR FURTHER INFORMATION CONTACT: John L. Roberts, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: A majority of the disabilities addressed in the VA's Schedule for Rating Disabilities (38 CFR part 4) do not specify criteria for a zero percent level. Once it has been determined that a disability is service connected, it has been VA's consistent practice to assign a zero percent evaluation whenever the condition does not meet the stated minimum requirements for compensable evaluation. In recent decisions, however, the U.S. Court of Veterans Appeals (COVA) pointed out that unless an individual diagnostic code requires residual disability for a compensable evaluation, a zero percent evaluation is not authorized under §§ 3.357(a) and 4.31. See *Rabideu* v. *Derwinski*, U.S. Vet. App. No. 90–1296 and *Conley* v. *Derwinski*, U.S. Vet. App. No. 91–527. From the Court's analysis it is apparent that VA regulations are seen as being inconsistent with VA's longstanding practice of assigning a zero percent evaluation for any disability which does not meet the minimum requirements for a compensable evaluation.

We propose to amend § 4.31 to eliminate this perceived discrepancy between VA practice and regulations. We also propose to change the heading of § 4.31 from "A no-percent rating" to "zero percent evaluations" because this language more accurately represents the issue addressed in the regulation.

38 CFR 3.357(a) duplicates § 4.31 of the Schedule for Rating Disabilities and is therefore redundant. Since this issue is more appropriately addressed in the rating schedule, we propose to delete § 3.357(a), redesignate the material in § 3.357(b), which addresses the issue of civil service preference ratings, at § 3.357 and to revise the heading of § 3.357 to read "Civil service preference ratings." We are proposing editorial changes throughout the material redesignated as § 3.357 which are intended to clarify the rule and represent no substantive amendment.

This amendment is proposed to be effective the date of publication of the final rule. The Secretary finds good cause for doing so since this amendment will not work to the detriment of any claimant. This decision is fully consistent with VA's longstanding policy to administer the law under a broad interpretation for the benefit of veterans and their dependents (38 CFR 3.102).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on

a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: March 10, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 3 and 4 are proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.357 is revised to read as follows:

§ 3.357 Civil service preference ratings.

For the purpose of certifying civil service disability preference only, a service-connected disability may be assigned an evaluation of "less than ten percent." Any directly or presumptively service-connected disease or injury which exhibits some extent of actual impairment may be held to exist at the level of less than ten percent. For disabilities incurred in combat, however, no actual impairment is required.

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart A—General Policy in Rating

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

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

4. Section 4.31 is revised to read as follows:

§ 4.31 Zero percent evaluations.

In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met.

[FR Doc. 93–11566 Filed 5–14–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 89

[AMS–FRL–4652–8]

RIN 2060–AD54

Control of Air Pollution; Emissions of Oxides of Nitrogen and Smoke From New Nonroad Compression-Ignition Engines at or Above 50 Horsepower

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 213 of the Clean Air Act (CAA) as amended by the Clean Air Act Amendments of 1990 (CAAA) requires the Environmental Protection Agency (EPA) to conduct a study to determine whether emissions of carbon monoxide (CO), oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) from nonroad engines and vehicles contribute significantly to levels of ambient ozone and CO in more than one area not in compliance with the National Ambient Air Quality Standards (NAAQS) for these pollutants. In today's action, EPA is proposing to find that emissions from such nonroad sources significantly contribute to nonattainment of the NAAQS for ozone and CO in more than one area. If the Agency makes this positive determination, section 213 requires EPA to promulgate regulations that will result in reductions in emissions from nonroad sources.

Consequently, EPA is proposing in this document standards for NO_X and smoke emissions from nonroad compression-ignition engines greater than or equal to 50 horsepower (hp) (37.3 kilowatts (kw)),[1] with exclusions for certain types of engines. EPA is not proposing emission standards for other nonroad emission sources in this rulemaking as additional analysis of options, feasibility, and cost-effectiveness is still necessary.

DATES: Comments must be received on or before July 27, 1993; a public hearing will be held on June 25, 1993, at 10 a.m.; requests to present oral testimony must be received on or before June 17, 1993.

ADDRESSES: Interested parties may submit written comments (in triplicate, if possible) for EPA consideration by addressing them as follows: EPA Air Docket Number A–91–24, room M–1500, 401 M Street, SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in this docket and may be reviewed at this location from 8 a.m. until noon and from 1:30 p.m until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held in the conference room at the National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Michael A. Sabourin, Office of Mobile Sources, Certification Division, (313) 668–4595.

SUPPLEMENTARY INFORMATION:

I. Obtaining Copies of the Regulatory Language

EPA has not included in this document the proposed regulatory language. Hard copies (paper) and electronic copies (on 3.5" diskettes) of the proposed regulatory language may be obtained free of charge by visiting, writing, or calling the Environmental Protection Agency, Air Docket, Mail Code LE–131, 401 M Street, SW., room M–1500 (ground floor), Washington, DC 20460. Telephone No: (202) 260–7548. Refer to Docket No. A–91–24.

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[1] Standards and measures are expressed as grams per brake-horsepower-hour (g/bhp-hr) and horsepower (hp). Metric equivalences in grams per kilowatt-hour (g/kw-hr) and kilowatts (kw) are noted in parentheses. For emission units, the metric equivalences were calculated by truncating to one decimal place such that the metric value is always slightly less than or equal to the English value. For power units, the metric equivalences were calculated by rounding to three significant figures.

The proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of the phone call. Dial (919) 541–5742 for a 1200 bps or 2400 bps modem, or (919) 541–1447 for a 9600 bps modem. If you want more information or need help accessing the system, call the systems operator at (919) 541–5384.

II. Table of Contents

This notice of proposed rulemaking (NPRM) presents EPA's proposed determination of significance in section IV. Sections V through XI of this NPRM address the proposed emission standards for the first nonroad emission sources to be regulated: compression-ignition (CI) engines with gross maximum power at or above 50 hp (37.3 kw), with exclusions for certain types of engines.

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III. Statutory Authority and Background

Authority for the actions proposed in this notice is granted to EPA by sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301 of the Clean Air Act as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, 7601(a)).

A primary goal of the Clean Air Act (CAA) is the attainment and maintenance of National Ambient Air Quality Standards (NAAQS). Past efforts to achieve and maintain air quality standards focused on regulation of emissions from stationary sources and on-highway mobile sources. As a result of these past efforts, significant progress has been made in reducing emissions from these emission categories. However, due to several factors, including the growth in both the number of emitters and the amount of usage (e.g., vehicle miles traveled), many portions of the country have failed to attain the NAAQS, particularly those for ozone and carbon monoxide (CO).

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted in order to broaden and strengthen the CAA. While the CAA had long authorized EPA regulation of on-highway vehicle and engine emissions, the amendments extended EPA's authority to nonroad vehicles and engines for the first time. Specifically, revised section 213 directs EPA to: (1) Conduct a study of emissions from nonroad engines and vehicles; (2) determine whether emissions of CO, NO_X, and VOCs from nonroad engines and vehicles are significant contributors to ozone or CO in more than one area which has failed to attain the NAAQS for ozone or CO; and (3) regulate those categories or classes of nonroad engines and vehicles that contribute to such air pollution if nonroad emissions are determined to be significant. EPA may also regulate other emissions from new nonroad engines or vehicles if the Agency determines that they contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Finally, EPA is to regulate emissions from new locomotives.

The Nonroad Engine and Vehicle Emission Study required by section 213(a)(1) was completed in November 1991 (see section IV.A.). The purpose of this notice is to implement section 213(a) (2), (3), and (4) by proposing to determine that emissions from nonroad engines and vehicles are significant contributors to ozone and CO nonattainment, and by proposing regulations containing standards applicable to emissions from nonroad engines and vehicles.

IV. Proposed Determination of Significance

A. The Nonroad Engine and Vehicle Emission Study

Pursuant to section 213(a) of the CAA, EPA conducted a study [2] of emissions from nonroad engines and vehicles.[3]

[2] Nonroad Engine and Vehicle Emission Study, EPA publication number 21A–2001, November, 1991. Available in EPA docket A–91–24 or from the National Technical Information Service (NTIS).

[3] Section 216(10) of the CAA, as amended, defines "nonroad engine" as an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 (new stationary sources) or section 202 (motor vehicles) of the CAA. As defined in section 216(2) of the

Since Congress expressly directed that the study was to be used to determine the nonroad source contribution to ozone and CO nonattainment, the study primarily focused on CO and on the pollutants that contribute to ozone formation—VOCs and NO_X.[4]

The Nonroad Engine and Vehicle Emission Study (hereafter, called "the nonroad study") revealed that nonroad engines and vehicles are contributors to ozone and CO pollution.[5] For example, nonroad engines and vehicles emit a national total of 9,509–17,686 tons of VOCs per summer day[6] (tpsd),[7] while highway vehicles contribute an estimated 16,996 tpsd of VOCs. The only other source category with greater national summertime VOC emissions is solvent evaporation. Further, in the 19 ozone nonattainment areas included in the nonroad study, nonroad engines and vehicles contribute a median of 7–13% to summertime VOC emissions. In the New York CMSA/NECMA,[8] an area with nonroad VOC emissions near the median of the 19 nonattainment areas, nonroad engines and vehicles are estimated to contribute 8–13% to summertime VOC emissions, as compared to 5.7–6.0% from all highway vehicles other than light-duty gasoline vehicles (that is, passenger cars).

Similarly for NO_X, nonroad engines and vehicles are estimated to contribute 9,724–10,892 tpsd of NO_X nationally, while highway vehicles contribute 19,733 tpsd. The only other source category with national summertime NO_X emissions greater than nonroad engines and vehicles is electrical generation. In the 19 ozone nonattainment areas included in the nonroad study, nonroad engines and vehicles contribute a median of 14–17% of summertime NO_X emissions. Nonroad engines and vehicles are estimated to contribute 14–17% of summertime NO_X emissions in the Philadelphia CMSA—slightly more than the 12.0–12.5% contribution from all heavy-duty highway vehicles.

In the case of wintertime CO emissions, nonroad sources and highway vehicles contribute 22,431–36,905 tons per winter day (tpwd) and 84,904 tpwd, respectively, on a nationwide basis. The only other source category with greater national wintertime CO emissions is residential fuel use.[9] In the 14 CO nonattainment areas included in the nonroad study, nonroad engines and vehicles contribute a median of 5–13% to wintertime CO emissions. In the Denver-Boulder CMSA, nonroad engines and vehicles are estimated to contribute 5–9% to wintertime CO emissions, as compared to 6.7–7.0% from all heavy-duty highway vehicles, or 6.0–6.3% from all other area and point sources. Thus, the median local VOC, NO_X, and CO emissions from nonroad engines and vehicles approach or exceed emissions from several currently regulated major source categories.[10]

As discussed in the following section, a careful consideration of the estimated emissions from nonroad sources in nonattainment areas and throughout the nation supports the determination that those emissions are significant contributors to nonattainment and that EPA should therefore promulgate emission standards.

B. Significance Determination

Based on the emission of CO, NO_X, and VOCs from nonroad engines and vehicles as determined by the nonroad study, EPA is proposing to find that the nonroad contribution to concentrations of these pollutants is significant in more than one ozone or CO nonattainment area. Pursuant to section 213 of the CAA, EPA is required to make this affirmative significance determination as a prerequisite to the promulgation of emission standards for pollutants contributing to such nonattainment for nonroad engines and nonroad vehicles.

In concluding that emissions from nonroad sources contribute significantly to ozone and CO nonattainment, EPA took into consideration the legislative history and scope of the CAAA and a comparison of nonroad emissions to emissions from other regulated sources.

Section 213(a)(2) of the CAA provides that after notice and public comment, EPA shall determine, based on the completed nonroad study, whether nonroad emissions are significant contributors to ozone or CO in more than one nonattainment area. If so, such a determination will be included in the rulemaking that promulgates emission standards for those classes of nonroad engines that contribute to the air pollution. Therefore, based on the results of the nonroad study, EPA is proposing to make an affirmative significance determination in today's rulemaking.

The proposed affirmative determination is predicated upon a finding that emissions of VOCs, NO_X, and CO from new and existing nonroad sources are "significant" contributors to ozone and CO nonattainment in more than one ozone or CO nonattainment area. Section 213(a) of the CAA, however, provides no guidance as to what constitutes a "significant" contribution. Nevertheless, guidance can be found in the legislative history and the scope of the CAAA, the emission contribution of nonroad engines and vehicles, and a comparison of nonroad emissions to emissions from other regulated sources.

In describing the emission impact of nonroad engines and vehicles, the Senate committee that drafted the Senate's version of the CAAA reported that such sources "now make up a significant portion of pollution * * * While inventories of these emissions are not precise, estimates indicate the extent to which they contribute to ozone and other pollution problems." (S.R. Rept. No. 101–228, p. 104). As an example of what Congress views as significant, the report notes that "[e]missions inventories from EPA estimate that farm and construction equipment emit 3.7 percent of CO nationwide, four percent of nationwide NO_X, and 1.3 percent of total hydrocarbons * * * And a preliminary study prepared for EPA by the Radian Corporation estimates that NO_X emissions from nonroad diesel engines make up over 12 percent of total NO_X emissions nationwide, including four percent from diesel locomotives." (S.R. Rept. No. 101–228, p. 104). These figures provide an indication of how much nonroad vehicles and engines have to contribute to nationwide levels of specified pollutants in order for

CAA, "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway. Section 216(11) of the CAA, as amended, defines "nonroad vehicles" as a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

[4] The study also estimated emissions of particulate matter, oxides of sulfur, aldehydes, benzene, gasoline vapors, and 1,3-butadiene.

[5] In the Nonroad Engine and Vehicle Emission Study, EPA considered the terms "nonroad engines" and "nonroad vehicles" to include a diverse collection of equipment ranging from small equipment like lawnmowers and chain saws, to recreational equipment, to farm equipment and construction machinery. More than 80 different types of equipment were considered by EPA in the report. Additional information on the types of equipment included may be found in chapter 2 of the nonroad study. The equipment included in the study is not all inclusive of nonroad engines and vehicles.

[6] One U.S. ton is equal to .907 metric tons. When the term "ton" is used in this document it refers to a U.S. ton.

[7] In the nonroad study, emissions from nonroad sources were calculated using four different sets of data. The differences are represented here by the range of the results. The numbers represent estimates of the emissions from these sources.

[8] Consolidated Metropolitan Statistical Area/New England County Metropolitan Area.

[9] Includes residential combustion of gas, oil, coal, wood, and so forth for heating and other purposes.

[10] These contributions are larger than what was expected by Congress when this provision was passed. For further discussion on the basis of this provision see section "IV.B. Significance Determination."

Congress to consider such nonroad sources significant contributors.[11]

Although the Senate figures represent nationwide estimates, it is reasonable to conclude that comparable or greater emission contributions from a class or category of nonroad engines or vehicles in any area, particularly a nonattainment area, would also be significant. Agriculture and construction equipment in four of the areas studied, Miami, Hartford, El Paso, and New York, contribute 11.6–12.8%, 16.4–24.7%, 10.2–16.8% and 9.1–14.1% of the total summertime NO_X emission, respectively. Lawn and garden equipment in Washington, D.C., Atlanta, Baltimore, and Miami, contribute 4.4–10.7%, 3.2–6.2%, 2.7–6.0%, and 2.3–5.6% of total summertime VOC emission, respectively. Light commercial equipment respectively contributes 4.2–7.7%, 3.5–6.4%, 2.6–4.7%, and 2.3–4.1% of the total wintertime CO emission in New York, Boston, Denver, and Hartford. Since these figures approach or exceed those cited in the Senate Report as significant, it is reasonable to conclude that the emission contribution of these nonroad sources is significant in these nonattainment areas.

EPA has also estimated the impact of nonroad mobile sources on ambient concentrations of ozone and CO. As the basis for these calculations EPA used estimates of the total emission from nonroad sources in certain nonattainment areas included in the nonroad study.

For each ozone nonattainment area, two estimates of the ambient concentration of ozone were calculated based on EPA's Empirical Kinetic Modeling Approach[12] (EKMA) projections of ozone design values.[13] These projections were based on total emission inventories with and without nonroad engine and vehicle emissions. The results from 16 ozone nonattainment areas indicated that without nonroad engine and vehicle emissions, local ozone design values[14] in the areas studied would be lower depending on the ozone nonattainment area, by about 4 to 13 parts per billion. This amounts to reduction of about 3 to 8% from current levels in the 16 ozone nonattainment areas. The average difference indicated was 4.7%, and differences in excess of 5% were indicated in 8 of the 16 areas.

It is important to recognize that the ozone impact of any category of emissions is highly dependent on the level of emissions from other sources. The analysis described in the previous paragraph was based on the best available estimates of current emissions from nonroad engine and vehicle sources, highway vehicles, and other area and point sources. However, a similar analysis of projected future emission levels that accounts for emission control programs that will be applied to highway vehicles, point sources, and other area sources, would likely show that, without control, nonroad mobile source emissions would constitute a substantially larger relative portion of future ozone concentrations. However, EPA is not confident that such projections would be illustrative due to the uncertainties currently associated with projected future emission levels.

EPA estimated the reduction in the area-wide component of CO concentrations based on CO emission inventories without nonroad sources. Reductions were estimated using the following equation:

$$CO' = \left[\frac{EI'}{EI} \times (CO + 1\ \text{ppm})\right] - 1\ \text{ppm}$$

in which

CO=CO component for overall emission inventory

EI=CO emission inventory for all sources

CO'=CO component for emission inventory without nonroad sources

EI'=CO emission inventory without nonroad sources

A natural background CO concentration of 1 ppm is included in this equation. Results for 14 CO nonattainment areas indicated an average contribution of 9% from nonroad sources to ambient CO concentrations.

Thus, it is reasonable to conclude that the emission contribution from nonroad sources is significant based on the estimated contributions of nonroad sources to ambient concentrations of ozone and CO.[15]

An affirmative determination of significance is also supported by a comparison of the contribution to NO_X, VOC, and CO inventories from nonroad engines and vehicles to those from regulated source categories. Table 1 compares estimated nationwide daily summertime NO_X and VOC emissions (tpsd) and wintertime CO emissions (tpwd) from nonroad engines and vehicles to those from other sources.[16] Only one NO_X source has emissions which exceed nonroad source NO_X emission. Only two VOC sources have emissions which exceed nonroad source VOC emission. Only two CO sources have emissions which exceed nonroad source CO emission.

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[11] According to the nonroad study, nonroad engines and vehicles contribute at least 14.9% and 14.4% to nationwide summertime NO_X and VOC emissions, as well as 11.5% to wintertime CO emissions. For each pollutant, the total percentage of nonroad emissions contributions to the inventory substantially exceeds the figures cited in the Senate Report. For the nonattainment areas included in the nonroad study, nonroad engines and vehicles accounted for, on average, 14.8–18.9%, 7.1–12.5%, and 6.4–11.7% of the total summertime NO_X and VOC emissions and wintertime CO emissions, respectively.

[12] EKMA generates area-specific ozone isopleths (an isopleth is a curve describing the combinations of initial VOC and NO_X levels that yield the same ozone concentration) by treating the air that is transported from an area of high emissions to one of high ozone as a box in which emissions of VOC and NO_X accumulate. The calculated ozone isopleths can then be used to estimate the effect on design value ozone concentrations of variations in VOC and/or NO_X emissions. Although inputs for grid-based models are being developed to replace EKMA for urban ozone attainment demonstrations, such models are not yet available for all nonattainment areas.

[13] The "design value" is a measure of the actual level of ambient pollution in an area. For ozone, the fourth highest maximum one hour daily monitored value over a three year period is generally used. For CO, the highest second high nonoverlapping eight hour average CO concentration in a two-year period was used for the most recently reported design values. On August 16, 1990, EPA published a list of design values for the 96 areas that failed to meet the ozone NAAQS and the 41 areas that failed to meet the CO NAAQS.

[14] Projected ozone design values are expressed here in ambient parts per billion (ppb). The NAAQS for ozone and CO are 120 ppb and 9 parts per million (ppm), respectively.

[15] Due to the fact that the nonroad study did not include all nonroad sources, EPA believes the estimated contributions of nonroad source emissions to ambient concentrations of ozone and CO discussed above to be underestimated.

[16] Insignificant levels of pollutants are indicated by "—".

TABLE 1.—EMISSIONS FROM VARIOUS SOURCES

Source	NO_X tpsd	VOC tpsd	CO tpwd
Nonroad engines and vehicles ..	9,724–10,892	9,509–17,686	22,431–36,905
Heavy-duty gasoline highway vehicles ..	888	952	10,084
Heavy-duty diesel highway vehicles ..	7,647	136	1,815
Light-duty vehicles ..	7,852	11,353	52,435
Light-duty trucks	3,346	4,555	20,571
Petroleum refining	.....	2,108	
Solvent evaporation	.....	16,452	
Petroleum storage/transfer ...	.....	4,623	
Electrical generation	21,986		
Industrial combustion	9,422		
Industrial processes	1,775		
Residential fuel use[1] .	.....	.....	40,334
tpsd=tons per summer day			
tpwd=tons per winter day			

[1] Includes wood burning stoves, residential oil burners, and natural gas heaters.

Further evidence of the relevance of nonroad NO_X, VOC, and CO contributions is shown by comparing nonroad source contributions to the contributions from other regulated sources in specific nonattainment areas.

In the California South Coast Air Basin, the estimated contributions to total NO_X emission from electric utility fuel combustion and on-highway heavy-duty diesel trucks are 40 and 150 tpsd, respectively, while the contribution from nonroad sources is 242–415 tpsd. In Philadelphia, estimated NO_X contributions from heavy-duty highway vehicles and light-duty trucks are 121 and 44 tpsd, respectively, while the contribution from nonroad sources is 128–158 tpsd.

In Washington, DC, the estimated contributions to total VOC emissions from heavy-duty highway vehicles and light-duty trucks are 23 and 52 tpsd, respectively, while the contribution from nonroad sources is 61–105 tpsd. In New York, estimated VOC emission from the heavy-duty vehicles and light-duty trucks are 59 and 122 tpsd, respectively, while the contribution from nonroad sources is 231–390 tpsd.

Further, in, New York, the estimated contributions to total CO emission from heavy-duty gasoline vehicles and residential fuel use are 677 and 358 tpwd, respectively, while the contribution from nonroad sources is 708–1,351 tpwd. In Boston, estimated CO emission from heavy-duty gasoline vehicles and residential fuel use are 170 and 74 tpwd, respectively, while the nonroad contribution is 191–357 tpwd.

Congress has deemed emissions from various point, area, and mobile sources to be significant enough to regulate. As the preceding comparisons indicate, in numerous nonattainment areas other sources are regulated that have lower emissions than the total from nonroad engines in that area. Therefore, it is reasonable to conclude that the higher contributions from nonroad sources in those areas are also significant enough to justify the regulation of NO_X, VOC, and CO emissions from nonroad engines and vehicles.

Moreover, because nonroad sources have not previously been regulated nationally, emission reductions from nonroad sources are likely to be more substantial than reductions that will be obtained from additional control of currently regulated source categories. EPA expects that introduction of controls on nonroad sources would, at the least, achieve benefits in the range of many other control programs now mandated by Congress in the CAA. EPA regulation of on-highway mobile sources has resulted in emission reductions of 75–90% from passenger cars and 45–70% from heavy-duty diesel engines, when compared to their uncontrolled emission levels. The similarities among many nonroad and on-highway engines indicate that substantial reductions in the emission rates of nonroad engines should be possible.

Thus, based on the above information, EPA is proposing to determine that emissions from nonroad engines and vehicles are significant contributors to ozone and CO concentrations in more than one ozone or CO nonattainment area. In addition, EPA believes that, given the level and cost of emission controls being considered for many other sources, it is appropriate to regulate emissions from nonroad engines and vehicles.

V. Executive Summary of Proposed NO_X and Smoke Regulation

EPA has the authority to require emission standards for nonroad sources under section 213(a)(3) of the CAA, based on the proposed affirmative significance determination presented in the previous section. Moreover, EPA has authority under section 213(a)(4) to regulate any nonroad emissions not referred to in the significance determination if EPA determines that such emissions contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA is proposing NO_X emission and smoke standards for new nonroad compression-ignition (CI)[17] engines with gross maximum power output measured at or above 50 hp (37.3 kw) (hereafter, "large nonroad CI engines") with exclusions for certain types of engines. The proposed NO_X emission standard is 6.9 grams per brake horsepower hour (g/bhp-hr) (9.2 g/kw-hr) and the proposed smoke opacity standard is 20% on acceleration mode, 15% on lug mode and 50% peak opacity on either the acceleration or lug mode.[18] EPA believes that emission standards for HC, CO, and PM are not appropriate at this time because available test procedures have not been demonstrated capable of predicting emissions of these pollutants from nonroad engines (see discussion in section VII.B.). The effective dates of the NO_X and smoke standards would be staggered, depending on the horsepower of the engine, beginning with the 1996 model year. The first standards to take effect would be for engines at or above 175 hp (131 kw) but at or below 750 hp (559 kw). The proposed emission standards would result in a substantial reduction in the NO_X contribution from nonroad engines and would reduce the deleterious effects of smoke particles on the environment.

This proposed rulemaking, the first for nonroad sources, focuses on NO_X reductions from large nonroad CI engines for several reasons. First, EPA determined from the nonroad study that large nonroad CI engines contribute 9.2% to the entire national NO_X inventory and 75% of NO_X emissions from all nonroad engines. In this proposal these engines would realize a reduction in NO_X emissions of 37% from current levels, which represents a 3.4% reduction in the national NO_X

[17] A compression-ignition (CI) engine is an internal combustion engine in which air is compressed to a temperature sufficiently high to ignite fuel injected into the combustion chamber.

[18] The acceleration and lug modes are described at 40 CFR 86.884–7.

emissions inventory. Second, the projected reductions are technically achievable within a short time period because the emission control technologies necessary to meet the proposed standards are already proven effective on similar on-highway engines. Finally, due to transferable technology from similar on-highway engines and the high emission levels of current nonroad engines, this proposal is cost-effective relative to other NO_X emission control strategies being considered for regulation.

EPA is also proposing a number of regulatory features to reduce the burden of this regulation without compromising the expected emission benefit. For instance, the regulatory burden is reduced by staggering the introduction dates by horsepower categories to spread out development costs. Manufacturers would also be allowed to participate in an averaging, banking, and trading program, which would allow an engine manufacturer to apply a fleet average technology mix that will minimize the manufacturer's cost and the impact on its equipment manufacturer customers. Incorporation of these provisions minimizes the economic burden on all affected manufacturers.

Today's proposal is compatible with California requirements for similar nonroad engines in that the NO_X emission and smoke standards are the same. However, unlike California, EPA is not proposing hydrocarbon (HC), CO, and particulate matter (PM) emission standards. EPA believes that emission standards for HC, CO, and PM are not appropriate at this time because available test procedures have not been demonstrated capable of predicting emissions of these pollutants from nonroad engines. These concerns are discussed in a following section (VII.B. "Lack of Standards for HC, CO, and PM Emissions").

VI. Requirements of the Proposed Rule

The general provisions of the regulation are briefly described in the following section, and rationales for key parts of the proposal are discussed.

A. Overview

EPA proposes to regulate the emission of NO_X and smoke for large nonroad CI engines. A NO_X standard of 6.9 g/bhp−hr (9.2 g/kw−hr) and smoke opacity standards of 20% on acceleration mode, 15% on lug mode, and 50% peak opacity in either the acceleration or lug mode are proposed. These standards would apply to large nonroad CI engines used for any purpose with four exclusions. Engines explicitly excluded are the following: (1) large nonroad CI engines regulated by the Mining Safety and Health Administration (MSHA) for underground use,[19] (2) engines used in aircraft,[20] (3) engines used to propel a locomotive,[21] and (4) engines used in marine "vessels" as defined in the General Provisions of the United States Code, 1 U.S.C. 3 (1992).[22]

A compliance program involving pre-sale certification and in-use enforcement is also proposed for large nonroad CI engines. The proposed program would be similar to the current on-highway engine program, including:

- Designation of product line into groups of engines with similar emission characteristics (such groups are called engine families),
- manufacturer emission testing of selected engines with the specified test procedure to demonstrate compliance with emission standards,
- labeling of engines from each engine family,
- submission of application for certification for each engine family by model year,
- issuance of an emission compliance certificate for each engine family,
- prohibition against sale of engines not certified by EPA,
- recordkeeping and reporting,
- EPA confirmatory certification testing,
- production line Selective Enforcement Auditing (SEA),
- in-use testing and enforcement,
- warranty and prohibition on tampering, and
- importation provisions.

Certain modifications to the on-highway program are proposed for the nonroad program. These modifications include:

- Broader criteria for defining engine families,
- no certification requirements for durability demonstration,
- only one emission test engine required, and
- an averaging, banking, and trading program modified to suit this industry.

EPA proposes that certification of engines begin in the 1996 model year, and that the effective date of the emission control requirements of these regulations be staggered by horsepower categories as listed in Table 2. Engines introduced into commerce on or after January 1 of the implementation year in column 1 would have to be certified according to the requirements in effect for that year.

TABLE 2.—PROPOSED CERTIFICATION EFFECTIVE DATES.[1]

Implementation year	Gross maximum power output
1996	Greater than or equal to 175 hp (131 kw) but less than or equal to 750 hp (559 kw).
1997	Greater than or equal to 100 hp (74.6 kw) but less than 175 hp (131 kw).
1998	Greater than or equal to 50 hp (37.3 kw) but less than 100 hp (74.6 kw).
2000	Greater than 750 hp (559 kw).

[1] Optional early certification is allowed one year prior to the applicable effective date for engines participating in the averaging, banking, and trading program.

B. Definition of Nonroad Engine

Section 216(10) of the CAA as amended defines the term "nonroad engine" as "an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 or section 202." Section 111(a)(3) notes, however, that "Nothing in title II of this Act relating to nonroad engines shall be construed to apply to stationary internal combustion engines." EPA is proposing that the engines encompassed by the statutory definition of nonroad engine include internal combustion engines meeting one of the following criteria: (1) Any internal combustion engine, including the fuel system, of any size that is used to propel any vehicle if the engine is not otherwise excluded (exclusions are discussed below); these engines would include any internal combustion engine that serves a dual function by both propelling a vehicle and operating a device while stationary, such as a mobile crane; (2) any internal combustion engine that is located in or on a nonroad vehicle and that is an

[19] See 30 CFR parts 7, 31, 32, 36, 56, 57, 70, and 75.

[20] Defined in § 87.1 (a) of this title, "'[a]ircraft engine' means a propulsion engine which is installed in or which is manufactured for installation in an aircraft" . . . "'Aircraft' means any airplane for which a U.S. standard airworthiness certificate or equivalent foreign airworthiness certificate is issued."

[21] As defined in response to comments received to 56 FR 45866, September 6, 1991, entitled, "Waiver of Preemption to California for Nonroad Engine and Vehicle Standards; Proposed Rule," locomotive means "a self-propelled piece of on-track equipment (other than equipment designed for operation both on highways and rails, specialized maintenance equipment, and other similar equipment) designed for moving other equipment, freight, or passenger traffic."

[22] A "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. 1 U.S.C. 3 (1992)

integral part[23] of the nonroad vehicle at the time of its manufacture and that is not otherwise excluded; or (3) any internal combustion engine or combination of internal combustion engines arranged to function together, regardless of application, with a combined output of up to 175 hp (131 kw), and not otherwise excluded. For example, auxiliary engines that power refrigerated trailers transported by any means (such as trucks, locomotives, aircraft, or marine vessels) are included. The term "nonroad vehicle" is defined in section 216 of the Act as a vehicle that is propelled by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

Several specific exclusions are included in the proposed definition of nonroad engine just described. An internal combustion engine would not be considered a nonroad engine if: (1) It is used to propel a motor vehicle or a vehicle used solely for competition; (2) it is regulated under section 111 (new stationary sources) or section 202 (motor vehicles), regardless of size; or (3) it is located on a trailer or other platform attached to (but not an integral part of) a nonroad vehicle or is otherwise not an integral part of a nonroad vehicle and it has an output greater than or equal to 175 hp (131 kw).[24]

EPA believes that this definition of nonroad engine is consistent with the Clean Air Act and effectuates the intent of Congress. Under CAA section 216(10), Congress authorized EPA to regulate any internal combustion engine as a nonroad engine, with exceptions for motor vehicle engines, engines used solely for competition, and engines subject to regulation under section 202 or section 111. However, EPA believes that Congress intended to temper this broad definition of nonroad engine by adding language to section 111(a)(3) excluding "stationary internal combustion engines" from this definition. EPA has broad discretion to develop a definition of nonroad engine consistent with these two provisions.

EPA believes that Congress intended all internal combustion engines that propel or are otherwise permanently attached to a nonroad vehicle to be regulated under section 213, as these engines are clearly mobile in use. However, EPA believes that emissions from internal combustion engines that may be temporarily attached to nonroad vehicles but are otherwise stationary should not be included as emissions from nonroad vehicles. Engines that are generally stationary in use are not small enough to be easily portable, but that may be transported using a nonroad vehicle, are more appropriately termed stationary engines than nonroad engines.

The determination that all internal combustion engines below 175 hp (131 kw) are to be regulated as nonroad engines is based on several factors. First, internal combustion engines below 175 hp (131 kw) are generally small enough to be easily transported between different locations and, as such, are suitable for regulation as mobile sources under Title II of the Act. Regulations promulgated under Title II are generally national in scope, rather than area-specific, because mobile sources are easily transported from area to area.

Second, EPA believes that use of a horsepower-based standard will lead to less confusion and litigation, and will be easier to enforce than a standard that attempts to distinguish all internal combustion engines in terms of their normal use. Third, based on section 209(e) of the CAA, which precludes state regulation of new engines under 175 hp (131 kw) used in construction or farm equipment or vehicles, EPA believes that Congress perceived 175 hp (131 kw) to be an appropriate cut-off point for nonroad engines. As a practical matter, most large stationary internal combustion engines, such as irrigation pumps, have maximum outputs at or above 175 hp (131 kw). Finally, if EPA subsequently determines that certain internal combustion engines below 175 hp (131 kw) would be more appropriately regulated as stationary sources due to their application, they could be so regulated by the promulgation of new source performance standards pursuant to section 111 of the CAA.

While EPA is in this rule proposing to define nonroad engines to include all engines with power output below 175 hp (131 kw), this does not mean that local jurisdictions cannot impose restrictions on these and other nonroad engines. First, nonroad engines may be subject to in-use restrictions such as limits on hours of use, and may be subject to state regulation under section 209(e)(2). In addition, while emissions from nonroad engines are excluded from the section 302(z) definition of stationary source, this exclusion is not effective until such time as these regulations are effective. In other words, EPA interprets the exclusion in section 302(z) to apply only to those internal combustion engines that are manufactured after the effective date of these regulations. In addition, EPA solicits comments on whether the exclusion in section 302(z) can be implemented such that it applies only to engines that are subject to a manufacturer's emission limitation established under section 213. Under this interpretation, engines manufactured after promulgation of these regulations would not be considered excluded under section 302(z) until they are in fact subject to an emission limitation established under section 213. Unless and until this occurs, the engine could still be regulated under Title I. EPA believes this interpretation avoids a regulatory gap which would otherwise exist between the period these regulations are promulgated and when all nonroad engines are covered by emissions standards established under Title II.

Finally, even where an engine is found to be a nonroad engine for Title II purposes in the manufacturing stage, states may in certain circumstances be able to regulate these engines as stationary sources in-use where such engines are in fact used primarily as stationary internal combustion engines (see 111(a)(3)). EPA expects to provide specific guidance on this issue in a later regulatory package.

Section 213 gives EPA the authority to require nonroad vehicle manufacturers to use certified nonroad engines; however, EPA is not proposing such a requirement in today's rulemaking. Instead, EPA requests comment on how it may assure that only certified nonroad engines be used in or on nonroad vehicles. This may be a particular concern with engines over 175 hp (131 kw), because a significant percentage of such engines will not be used in or on a nonroad vehicle and, therefore, may not be manufactured to meet nonroad emission standards.

1. Exclusions From Today's Proposal

Certain engines that are included within the proposed definition of nonroad engine just discussed, and that are compression-ignition engines at or above 50 hp (37.3 kw), are proposed to

[23] An internal combustion engine is an "integral part" of a nonroad vehicle or motor vehicle if:

1. It is permanently attached to the nonroad vehicle during the manufacturing process for the nonroad vehicle or motor vehicle; and

2. it is meant to remain permanently attached to the nonroad vehicle or motor vehicle during the life of the nonroad vehicle or motor vehicle.

[24] The third exclusion is designed to make explicit that an engine located on a trailer or other platform that can be attached to and detached from a nonroad vehicle is not considered an integral part of the nonroad vehicle, and therefore (if it has a power output of 175 hp or above) is not considered a nonroad engine under EPA's proposed definition. The exclusion is therefore somewhat redundant of the definition, in that the class of engines affected by this explicit exclusion is not in fact included in the definition of nonroad engine. However, EPA believes that this explicit exclusion would help prevent questions in the future regarding EPA's intent.

be excluded from today's emission standards

The engines explicitly excluded from this regulation are the following large nonroad CI engines:

(1) Engines regulated by the MSHA for underground use;
(2) Engines used in aircraft as defined in 40 CFR part 87 subpart A;
(3) Engines used to propel a locomotive as defined in 56 FR 45866, September 6, 1991; and
(4) Engines used in marine "vessels" as defined in 1 U.S.C. 3.

In addition, spark-ignition engines[25] would not be required to comply with the emission standards in this proposal.

EPA is not including in this proposal engines that are used in underground mining or engines used in underground mining equipment as regulated by MSHA under the authority of 30 CFR parts 7, 31, 32, 36, 56, 57, 70 and 75. The MSHA is responsible for protecting miners from unhealthy levels of air pollution in underground mines and has issued air quality standards for mines and standards for NO_X and CO emissions from some types of mining equipment. Although EPA considered applying EPA regulations to these engines, EPA chose not to include them at this time in order to avoid dual regulation of these engines.

EPA is also not including aircraft engines in this proposal. EPA is authorized to regulate these engines under Title II, part B of the CAA. Because regulations for control of air pollution from aircraft and aircraft engines are currently specified in part 87, EPA does not believe that separate regulation under section 213 is appropriate at this time.

EPA is not including engines that propel locomotives. Regulations for these engines are explicitly mandated in section 213(a)(5) of the Clean Air Act. These regulations are undergoing a separate regulation development process. EPA welcomes comment on whether other engines found and operated on locomotives should more appropriately be regulated under section 213(a)(5).

EPA is not including engines that propel or are used only on marine "vessels" as defined in 1 U.S.C. 3 for several reasons. First, these engines are currently subject to safety regulations by the Coast Guard.[26] EPA must analyze these current Coast Guard safety requirements and determine the best method for regulating emissions from these engines consistent with the Coast Guard regulations. Second, at the present time insufficient information is available as to whether the proposed nonroad engine 8-mode test procedure is sufficiently representative of the operating cycle of these engines, or whether some other cycle would be more appropriate.

Finally, the application of auxiliary engines on marine vessels allows the use of unique technological solutions not available to other engines covered in this notice (for example, use of sea water aftercoolers, or cost-effective aftertreatment devices). Therefore, use by such engines of the proposed averaging, banking, and trading program would have to be evaluated. EPA does not yet have sufficient information on emission reduction capabilities of these unique technologies, and on the appropriateness of allowing cross trading with engines used in other applications covered by this notice, to make these evaluations. EPA is currently analyzing these issues and will decide whether or not to regulate these engines after such analysis provides reliable information on which to base a decision. Consequently, if EPA decides to regulate these engines, it will be through a separate rulemaking. This exclusion includes auxiliary engines used only on vessels. EPA requests comment on whether these auxiliary engines could be regulated effectively and appropriately under this action.

2. Spark-Ignition Engines

Spark-ignition engines are not covered by this proposed NO_X and smoke regulation because little to no emission benefit would be achieved for the testing, recordkeeping, and reporting cost burdens industry would have to bear. According to the nonroad study, the average NO_X emission factor for commercial spark-ignition engines at or above 50 hp (37.3 kw) is 3.7 g/bhp-hr (4.9 g/kw-hr), with the highest being 6.6 g/bhp-hr (8.8 g/kw-hr) for agricultural tractors. This suggests that most currently unregulated spark-ignition engines could meet the proposed NO_X emission standard of 6.9 g/bhp-hr (9.2 g/kw-hr). Furthermore, since a properly maintained spark-ignition engine will not generate visible smoke under the operating conditions of the Federal Smoke Test or other typical operating conditions, setting a smoke standard for spark-ignition engines is unnecessary. Finally, for reasons discussed in the issues section of this proposal, EPA is not regulating spark-ignition engines for HC, CO, and PM emissions because the proposed test procedures have not been demonstrated to be capable of accurately predicting the levels of HC, CO, and PM emissions generated by these engines in actual use.

3. Exemptions From Today's Proposal

Pursuant to section 203(b)(1) of the CAA, the Agency is proposing categories of exemptions from new nonroad engine regulations similar to the existing exemptions for on-highway engines (see 40 CFR, part 85, subpart R). These include exemptions for purposes of research, investigations, studies, demonstrations, training, or for reasons of national security. Exemptions are justified in these cases because the sources are limited in number or scope so no environmental harm results, the particular use of the source is determined to further air quality research, and/or the exemption is vital to the security of the nation. (See 39 FR 10601, March 21, 1974.)

C. General Enforcement Provisions

Any manufacturer of a large nonroad CI engine would be responsible for obtaining from the Administrator a certificate of conformity covering any engine introduced into commerce in the United States before such an engine is sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States. All such engines must comply with the standards promulgated in EPA's final regulations.

Section 213(d) authorizes the Agency to subject nonroad engines and vehicles to certification requirements, selective enforcement auditing, and in-use enforcement. Further, section 213(d) provides for enforcement of the nonroad standards in the same manner as on-highway standards.[27]

[25] A spark-ignition (SI) engine is an internal combustion engine in which the air/fuel mixture is ignited in the combustion chamber by an electric spark.

[26] See 46 U.S.C. 331 and 46 U.S.C. 4302.

[27] Section 213(d) of the Act provides that the standards under 213 "be subject to sections [206, 207, 208, and 209,] with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section [202]. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section." Section 206 specifies requirements for motor vehicle and motor vehicle engine compliance testing and certification; section 207 requires manufacturers to warrant compliance by motor vehicles and motor vehicle engines in actual use; section 208 requires recordkeeping by manufacturers of new motor vehicles or new motor vehicle engines and authorizes EPA to collect information and require reports; and section 209 preempts states and political subdivisions from adopting or enforcing standards relating to emission control, certification, or inspection of new motor vehicles or new motor vehicle engines, and from adopting or enforcing emission control standards for certain new nonroad engines or new nonroad vehicles, unless specifically authorized to do so by EPA.

Pursuant to this authority, the Agency is proposing in today's action regulations that require nonroad sources to obtain certification and subject them to selective enforcement auditing and in-use enforcement. The Agency is also proposing regulations similar to those for on-highway vehicles under sections 203, 204, 205, and 208 of the Act.[28] These general enforcement regulations include prohibitions similar to those implementing section 203(a); prohibited acts, if committed, subject persons to the assessment of civil penalties under section 205. As applied to nonroad engines under section 213(d), such acts include, but are not limited to, the introduction into commerce of large nonroad CI engines which are not covered by a certificate of conformity issued by EPA, tampering with emission control devices or elements of design installed on or in a large nonroad CI engine, and failing to provide information to the Agency if requested. The Agency is also proposing regulations under the authority of section 205 of the Act which sets forth the maximum statutory penalties for violating the prohibitions.

The Agency is proposing general information collection provisions similar to current on-highway provisions under section 208 of the Act which include, but are not limited to, the manufacturer's responsibility to provide information to the Agency, perform testing if requested by the Agency, and maintain records. In addition, EPA is proposing emission defect reporting regulations which require manufacturers to report to EPA emission-related defects that affect a given class or category of engines. The emission defect reporting regulations also specify procedural and reporting requirements for manufacturers that initiate voluntary emission recalls. The general information collection provision will also provide authority for EPA enforcement personnel to gain entry and access to various facilities under section 208.

EPA is authorized under section 217 of the CAA to establish fees to recover compliance program costs associated with sections 206 and 207. EPA will propose to establish fees for today's nonroad compliance program at some future time, after the program has been promulgated and associated costs are determined.

D. Program Description and Rationale

This section describes several features of EPA's nonroad compliance program and EPA's rationale for including these features in the nonroad program. Specific issues related to the proposed program which require in-depth discussion are presented in "VII. Discussion of Issues."

1. Applicability

Under the proposed regulations, with limited exceptions as discussed, all nonroad CI engines with gross maximum power outputs of greater than or equal to 50 hp (37.3 kw) (herein identified as "large nonroad CI engines") must comply with the proposed emission standards.

The vast majority of large nonroad CI engines currently being used and manufactured are diesel-fueled engines. EPA believes that it will be unnecessary to use alternative fuels to meet the proposed standards. However, EPA proposes that these regulations apply to large nonroad CI engines regardless of the fuel that is used (e.g., diesel, CNG, rapeseed, methanol, ethanol, and blends).

2. Effective Dates for Certification

Effective dates for engines covered in this notice are proposed to be staggered by the horsepower categories listed in Table 2 in the Overview section. The order of staggering is intended to introduce certified versions of large nonroad CI engines to the market as quickly as possible, while minimizing unnecessary cost to the industry.

To accomplish these objectives, engines covered by this notice are divided into four horsepower categories. EPA is proposing to regulate the categories containing engines most similar to current on-highway certified versions (that is, 175 through 750 hp (131 through 559 kw)) beginning in the 1996 model year. EPA believes that manufacturers of engines and equipment will be able to implement the regulations for these engines in the two to three years of lead time, since many of these engines are unregulated versions of on-highway engines currently in use. Further, the state of California would implement emission standards for 1996 and later year heavy-duty off-road engines in this horsepower category.[29] Because most manufacturers sell engines for use in California, manufacturers have already begun research and development and are prepared to institute federal standards in 1996 for this category.

The categories to be regulated beginning in the 1997 and 1998 model years (that is, 100 through 175 hp (74.6 through 131 kw) and 50 through 100 hp (37.3 through 74.6 kw), respectively) represent progressively lower horsepower groupings of engines that are similar to certified on-highway versions, but for some there are currently no on-highway equivalent engines. The additional lead time proposed for these engines is necessary because manufacturers have not begun research and development on the product lines, and on-highway technology is not directly transferable but must be adapted. This is particularly true for engines 50 through 100 hp (37.3 through 74.6 kw) because these smaller engines are used in applications with the greatest performance and packaging constraints (see section VIII.B.).

The category to be regulated beginning with the 2000 model year (engines greater than 750 hp (559 kw)) is a smaller population of very high horsepower engines which, while cost-effective to regulate, are postponed to allow manufacturers to concentrate development efforts on larger population categories first. Further, the California standard for this category is not scheduled to take effect until the 2000 model year. EPA believes that compatibility with the California standards is important when feasible.

As discussed in the following section, manufacturers have the option to certify engines one calendar year prior to the applicable effective date in order to bank credits as a part of the averaging, banking, and trading program (see section VI.D.13. "Averaging, Banking, and Trading Program").

3. Emission Standards: Oxides of Nitrogen and Smoke

As noted above, EPA is proposing a NO_X standard of 6.9 g/bhp-hr (9.2 g/kw-hr) and smoke opacity standards consisting of 20% on acceleration mode, 15% on lug mode, and 50% peak opacity in either the acceleration or lug mode.

As explained below, the proposed NO_X and smoke standards meet the statutory criteria for nonroad standards presented by the CAA.[30] The proposed

[28] Section 203 specifies prohibited acts and excluded motor vehicles; section 204 provides for federal court injunctions of violations of section 203(a); section 205 provides for the assessment of civil penalties for violations of section 203; and section 208 provides the Agency with information collection authority. The general enforcement language of section 213(d) provides the Agency's authority for applying sections 203, 204, 205, and 208 of the Act to nonroad engines and vehicles.

[29] EPA is reviewing California's request for authorization to implement these regulations.

[30] Section 213(a)(3) provides that nonroad emission standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying

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NO_X standard represents approximately a 37% reduction in NO_X emission from baseline unregulated large nonroad CI engines.[31] As discussed in detail in Chapter 2 of the Regulatory Support Document for this rulemaking, a 6.9 g/bhp-hr (9.2 g/kw-hr) standard is feasible using current technology and without affecting equipment designs. The technologies that will be necessary to meet this standard are currently available and in use for on-highway applications and can be implemented with a relatively short amount of leadtime. The proposed standards can be met without significantly impacting fuel economy or engine power. (See Section VII.F.)

While EPA did not identify any noise or safety considerations for engines designed to meet the proposed NO_X and smoke standards, EPA requests comment on such considerations.

However, as discussed later in this proposal (Section VII.G.), EPA analysis has determined that a NO_X standard below 6.9 g/bhp-hr (9.2 g/kw-hr) is not feasible for the proposed effective dates given the leadtime required for implementation of a more stringent standard. Several years would likely be necessary to evaluate and/or develop test procedure capability to accurately measure HC, CO and PM emissions. The capability to measure HC, CO, and PM emissions is critical because these three emittants will increase at a significantly faster rate as the NO_X standard becomes lower than proposed. Further, a lower NO_X standard would require additional time for manufacturers to redesign engines and equipment to accommodate the more sophisticated technologies required.

EPA estimates that proposing a lower NO_X emission standard would delay implementation of nonroad standards by at least four years. Furthermore, EPA has decided that it would be inappropriate for EPA to forego the benefit of a 37% reduction in NO_X emission afforded by the proposed 6.9 g/bhp-hr (9.2 gr/kw-hr) standard for several years while exploring the ability of existing and new test procedures to measure even greater reductions in emissions. This proposal results in significant NO_X emission reductions in the near term while work is going on to develop test procedures for more stringent standards and while manufacturers work to design engines and equipment capable of meeting a lower standard at a later date.

EPA is also proposing smoke standards in this notice. As discussed further in section X., "Environmental Benefit Assessment," smoke can cause visibility loss due to the dispersion of sunlight by suspended particles. Further, smoke particles produce expensive soiling to buildings and property and human skin. Section 213(a)(4) authorizes EPA to regulate emissions from new nonroad engines or vehicles that were not included in the nonroad study, such as smoke, if EPA finds that such emissions significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.

The proposed smoke standards (opacity of 20% on acceleration mode, 15% on lug mode, and 50% peak opacity in either the acceleration or lug mode) would bring the large nonroad CI engines under the same regulatory framework that has governed on-highway smoke emissions for two decades. An emission standard for smoke from on-highway engines was established in 1970 as part of the initial emission regulations for these engines. As a consequence, substantial work has been done to develop cost-effective technologies to control smoke. The technologies are designed to cause fuel flow restriction or recirculation through the use of pressure diaphragms and valves or throttle restrictors. These are straightforward technologies that are readily transferable to nonroad engines as demonstrated by the on-highway regulated versions of nonroad engines used in the EPA/Industry test program.[32] Using the on-highway technologies on nonroad engines, EPA believes the proposed smoke standards are feasible and can be achieved at reasonable cost (see section "IX. Cost Analysis").

The proposed smoke standards are also consistent with those set by California for heavy-duty off-road engines greater than or equal to 175 hp (131 kw).

Standards for HC, CO, and PM emissions are not being proposed in this notice. Investigations to date are inconclusive regarding the ability of EPA's proposed test procedure for nonroad engines (the 8 mode procedure, discussed below) to accurately determine emission levels for emittants. Based on this uncertainty, EPA is not proposing HC, CO, and/or PM emission standards, but requests comment on the appropriateness of adopting standards for these other pollutants. (See further discussion in Section VII.B, "Lack of Standards for HC, CO and PM Emissions.")

4. Model Year Designation

Section 202(b)(3)(A)(i) of the Clean Air Act defines the term "model year" with reference to any specific calendar year as "the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of the calendar year. If the manufacturer has no annual production period, the term 'model year' means the calendar year."

In connection with the certification of on-highway engines, this definition has been supplemented by an explanation that the model year must end no later than December 31 of such calendar year (since only one January 1 can be included) and cannot begin earlier than January 2 of the previous calendar year.[33] EPA believes that this is an appropriate definition of model year for large nonroad CI engines because it gives manufacturers the flexibility to introduce models at different times of the year. EPA is including this more detailed model year definition in the proposed regulations (see proposed 40 CFR 89.2).

5. Engine Family Categorization

For the purpose of demonstrating emission compliance, manufacturers of on-highway motor vehicles and engines currently divide their product line into groups of engines called engine families. Engine families are composed of engines which have similar emission characteristics. EPA is proposing that large nonroad CI engine families be determined by using the same criteria (type of fuel, method of air aspiration, number of cylinders, and so forth) currently used to define on-highway engine families. However, a large nonroad CI engine manufacturer could choose not to use the criteria to separate engines by number of cylinders and cylinder arrangement (as described in § 89.116–96 of the proposed regulations).

The criteria for number of cylinders and cylinder arrangement is not needed for large nonroad CI engines because two operational characteristics of these

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such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 7521 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time.

[31] Chapter 1.1, draft Regulatory Support Document for this rulemaking, available in Air Docket No. A–91–24.

[32] Chapter 2.2.2, draft Regulatory Support Document.

[33] Bertelsen, Bruce I. Memo to Eric O. Stork, March 3, 1978.

engines result in engines with similar emission characteristics even though the number of cylinders and cylinder configuration in the engines are not the same. First, since fuel is injected directly into the combustion chamber at the time of combustion, compression-ignition engines do not suffer the range of air/fuel distribution problems associated with engines that have central fuel distribution (that is, remote from the cylinder, such as a carbureted fuel system). Second, large compression-ignition engines generally do not throttle air delivery to the cylinders, which helps to minimize any charge air differences between cylinders.

Another practical reason to broaden the engine family definition is the large number of families that would result from using the existing on-highway engine definition. It is common for manufacturers of large nonroad CI engines, unlike on-highway engines, to market a variety of cylinder configurations in the same engine model or series, for which each cylinder in the series has identical bore, stroke, and combustion chamber design. It is estimated that use of the on-highway criteria in place of the proposed broadened criteria would double the number of engine families expected to certify under this rule. The flexibility afforded by the proposed engine family definition would substantially reduce the burden on manufacturers and EPA of certifying large nonroad CI engines without reducing the benefits of the certification program.[34]

However, the more restrictive on-highway definition would be required when a manufacturer employs an aftertreatment device on its engines. This is necessary because the performance of an aftertreatment device can vary with the space velocity through the device. The space velocity will vary as the number of cylinders and cylinder arrangement vary. However, manufacturers have indicated aftertreatment devices will not be needed to meet the requirements in this proposal.[35]

Further, while EPA is not proposing standards for HC, CO, and PM, the optional definition would not necessarily be appropriate if such standards were proposed. EPA is uncertain as to whether the deterioration of HC, CO, and PM emissions over time in-use varies with the number of cylinders or cylinder arrangement, all other factors being equal. For this reason, EPA has not allowed on-highway certification by a similar optional definition. EPA has a research program underway to investigate this issue, among other issues, for the purpose of requiring large nonroad CI engines to meet stricter emission standards in the long term. This research program is further discussed in the section "VII.B. Lack of Standards for HC, CO, and PM Emissions."

6. Engine Family Certification

An emission compliance certificate would be issued by EPA for each engine family. The engine manufacturer must submit an application to EPA requesting a certificate of conformity for each engine family every model year, as required by the CAA.[36] Applications must be submitted every model year even when the engine family does not change from the previous certificate, although representative test data could be reused in the succeeding year's application.

The application would give EPA sufficient information to determine the appropriate test results and emission characteristics of the engine family. The application would allow EPA to determine compliance with the applicable emission standards in a timely manner. It is important that the engine manufacturer succinctly, fully, and accurately submit all pertinent information to EPA and maintain internal records which can be easily accessed if such access is determined necessary by EPA.

If changes to an engine family configuration occurred that caused the changed version to be the engine family's worst case emitter, then emission testing of the changed version would be required. Manufacturers would be expected to conduct emission testing if proposed changes could cause an increase in emissions. Additionally, the Administrator could require a manufacturer to conduct testing to demonstrate compliance.

7. Certification Testing

EPA is proposing that the emission level used to certify an engine family be equal to the highest emission test level reported for any engine configuration in that family. EPA proposes that the engine manufacturer be responsible for selecting and testing that engine configuration from each engine family which it has determined, with sound technical justification, represents the configuration most likely to have the highest emissions in the engine family (worst case emitter). EPA could verify the test results by confirmatory testing on this engine. EPA would also have the option to test any available test engine representing other configurations in the engine family and review a manufacturer's technical justification to verify worst case selection.

EPA is proposing that before emission testing is carried out, the manufacturer would perform service accumulation on each test engine over the dynamometer cycle of its choice based on good engineering practices (for example, a cycle representative of typical "break-in" operation of a new production engine in actual use). For each engine family, the manufacturer would determine the number of hours required to stabilize the emissions of the test engine. However, the number of hours which the manufacturer chooses may not exceed 125 hours.[37] This limitation is necessary because on-highway experience has demonstrated that NO_X will decrease with hourly use for some engine family designs covered by this proposal.[38] When this occurs, the full useful life predicted NO_X emission level would be underestimated. The manufacturer should maintain, and provide in its application to the Administrator, a record of the rationale used in making the dynamometer cycle selection and the rationale used in making the service accumulation hours determination.

The manufacturer would be required to emission test its selected engine using the proposed nonroad engine 8-mode test procedure discussed herein. To decrease the testing burden on those manufacturers that already certify on-highway engines, EPA is also proposing to allow the manufacturer to use alternatively the on-highway Federal Test Procedure (FTP) described in 40 CFR part 86, subpart N. EPA verified through testing that at the NO_X emission control level proposed in this notice the proposed nonroad engine 8-mode test procedure and the on-highway FTP produce comparable results for NO_X emission.[39] When confirmatory testing

[34] See analysis in Appendix D, draft Regulatory Support Document.

[35] Chapter 2.2.6, draft Regulatory Support Document.

[36] Section 206 of the Clean Air Act requires certification on a yearly basis. This has been interpreted to mean certification for each model year, as defined in section 202(b)(3)(A)(i) of the CAA and in section 89.1 of the proposed regulations.

[37] The 125 hours maximum service accumulation policy is the same as the on-highway policy. 40 CFR 86.092-26.

[38] EPA internal memorandum from John McCarthy to Mike Sabourin dated December 20, 1991.

[39] Chapter 2.1.1, draft Regulatory Support Document. Please note that the 8-mode test procedure proposed here differs from the 8-mode

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an engine family, EPA would use the same test procedure used by the manufacturer to certify the engine family. For SEA testing, a manufacturer would be permitted to use either the nonroad engine 8-mode test procedure or the on-highway FTP.

The proposed smoke opacity standards would be measured over the Federal Smoke Test described in 40 CFR part 86, subpart I. EPA proposes to allow manufacturers the flexibility to submit emission test data used to certify engine families in previous years in lieu of actual testing for current model year certification. This can be done to certify engine families similar to the previously certified engine family, provided these data show that the test engine would comply with the applicable regulations. This allows manufacturers the ability to "carry across" test data between similar engine families or to "carry over" test data from the same engine family from one year to another.

To facilitate nonroad use of proven on-highway engines, EPA is also proposing to allow manufacturers to carry across test data generated to certify an on-highway engine family with similar emission characteristics for use in certifying a nonroad engine family. A manufacturer of an on-highway engine family that has previously been tested and certified to have full useful life emissions at or below the standards proposed in this rule could petition to carry across certification test data to an application for nonroad certification for a nonroad engine family having similar emission characteristics to the on-highway engine family. EPA would approve carryacross or carryover of test data if it finds that the engine families are substantially similar by the same process currently used for similar on-highway engines.[40]

EPA is proposing this carryacross provision to provide manufacturers an expedited means of certification and, thus, encourage the use of proven, certified on-highway engine designs in nonroad engine families. In most cases, the on-highway engine designs that would be eligible for carryacross would be 1990 model year and newer. Since these on-highway engines were certified to a NO_X emission standard of 6.0 g/bhp-hr (8.0 g/kw-hr) or lower, these same engines in nonroad applications would result in an additional emission benefit at minimum additional compliance demonstration cost to EPA or the industry.

These certification options are intended to give manufacturers maximum flexibility in using their engine design and testing resources to achieve reductions in emissions from nonroad engines. Carryacross of on-highway certification data represents a reduction in the cost burden for some manufacturers. EPA welcomes additional suggestions for sharing test data between on-highway and nonroad engines that would further reduce the burden to manufacturers of complying with nonroad emission standards.

As in the case for on-highway vehicles and engines, the proposed regulations make it illegal for any person to use a device on a nonroad engine which senses operation outside normal emission test conditions and reduces the ability of the emission control system to control the engine's emissions. Such "defeat" devices will render the proposed test procedures inadequate to predict in-use emissions. To guard against use of these devices, EPA reserves the right to audit test a certification test engine over a modified test procedure if EPA suspects a defeat device is being used by an engine manufacturer on a particular engine.

Engines equipped with adjustable operating parameters would have to comply with all the regulations with the parameters adjusted to any setting in the full range of adjustment. For example, a maximum fuel system pressure screw that is readily adjustable with a screwdriver or wrench could be adjusted by EPA to any setting within its adjustable range for emission testing. This ensures that changes to the adjustable operating parameters that can readily occur in-use will not cause the engine to fail to comply with these regulations.

8. Durability Demonstration Requirements

EPA is proposing no requirements for the submission of durability demonstration test data or use of a deterioration factor (DF) when certifying engine families that do not employ aftertreatment. In on-highway certification EPA has found that NO_X emissions from large nonroad CI engines experience very little, if any, increase over time.[41] Therefore, EPA believes that requiring durability demonstration test data and deterioration factor requirements during certification would impose an unnecessary upfront cost burden on manufacturers.

Should aftertreatment be required by an engine family, deterioration factors would have to be determined and applied in the same manner as is currently done for an on-highway engine durability demonstration. However, no durability demonstration or deterioration factors are required when an engine that was certified without aftertreatment is later retrofitted with an aftertreatment device or package. Retrofits are used to improve the engine-out emissions of engines used in specific applications, such as indoors. These retrofits are not designed to interfere with the original design and, therefore, should not result in worse emissions than the original design. Since the engine has already been demonstrated to be in compliance without the aftertreatment device, demonstration of the durability of a retrofitted aftertreatment device is not necessary.

9. Certification Test Procedure for NO_X

EPA is proposing an 8-mode steady state test procedure for measuring NO_X emissions (see subpart E of proposed regulations). The test consists of seven power modes and one idle mode in a prescribed sequence while operating the test engine on an engine dynamometer. The eight modes represent loads and speeds which span the full operating range of large nonroad CI engines, including no load, and rated speed and load. Each mode is fully stabilized before emission measurement begins. The raw exhaust gases generated are sampled continuously but recorded only after stabilization. The concentration of each pollutant, exhaust volume, the fuel flow, and the power output during each mode is determined. The measured values are weighted and used to calculate the grams of each pollutant emitted per brakehorsepower hour (or kilowatt-hour).

EPA's primary concerns in proposing this test procedure are that the procedure accurately predict the actual in-use emissions of the engine being tested and that the emission control technologies applied to the test engine to meet the proposed standard result in comparable emission reduction when applied to production engines in actual use.

Analysis of EPA/Industry test data has shown that, for engine designs that EPA expects manufacturers to use to meet the proposed NO_X standard, NO_X emission levels remain relatively constant over a range of steady state to transient operation likely to encompass the normal operation of engines covered

test procedure adopted by California for NO_X, HC, CO, and PM; EPA is proposing modifications that include tightening of testing and measuring equipment specifications and calibration requirements, and the inclusion of raw exhaust and full dilution exhaust sampling options. See discussion in Section VI.D.9.

[40] See Advisory Circular No. 20/B (AC 20/B), available in Air Docket No. A-91-24.

[41] Chapter 2.1.3, draft Regulatory Support Document.

in this notice.[42] NO_x emission reductions were comparable over the more steady state nonroad engine 8-mode test procedure and the more transient on-highway FTP. This indicates that the formation of NO_x would not likely be significantly affected by the transient operation experienced by current technology nonroad and on-highway engines and can be predicted using the proposed nonroad engine 8-mode test procedure.

The proposed nonroad engine 8-mode test procedure is a modified version of the International Standards Organization (ISO) draft ISO 8178 Revision N21 recommended practice. The ISO 8178 recommended practice is the engine emission test procedure most accepted and used by nonroad engine manufacturers. Engine manufacturers have requested that EPA use this existing engine test procedure to meet EPA's proposed large nonroad CI engine emission standards in lieu of developing a new procedure.

Although EPA generally accepts the ISO 8178 test as reasonable, EPA has made some modifications to the ISO 8178 procedure in this proposal. These modifications include tightening of testing and measuring equipment specifications and calibration requirements[43] and the inclusion of raw exhaust and full dilution exhaust sampling options.

The modifications to ISO 8178 are intended to ensure greater uniformity in practices and results among manufacturers for gaseous emission measurement. A recommended testing procedure, such as ISO 8178, by definition allows sufficient flexibility for individual manufacturers to develop unique features in their test procedures while still being within the allowable guidance. This flexibility is not a desirable feature in a regulatory program where both manufacturers and EPA want to ensure uniformity between test labs, since conformity and compliance testing decisions are binding on the parties involved.

EPA understands the importance of compatibility between the EPA proposed test procedures and those used to demonstrate emission compliance for other regulatory agencies within the U.S. and throughout the world. Compatibility allows a manufacturer to exercise the cost efficiencies of using one engine configuration to demonstrate emission compliance in more than one market. EPA has made every effort to establish test procedures that are compatible with ISO 8178 and to coordinate with U.S. representatives to the ISO 8178 test procedure committee. As a result, a manufacturer using the resultant EPA procedure would also meet ISO requirements, provided that the ISO inlet air conditions were used. EPA does not specify inlet air conditions, since all calculations are on a mass flow basis. However, since the ISO procedure is a recommended practice and does not have stringent test parameter tolerances, a manufacturer using the ISO procedure may or may not meet EPA requirements.[44]

EPA is proposing to allow engine manufacturers to use the on-highway FTP as an alternative test procedure for certifying nonroad engines. Analysis of EPA/Industry test data showed that, for the engine designs that EPA expects manufacturers to use to meet the proposed standards, the onhighway FTP will give comparable NO_x emission results to the proposed nonroad engine 8-mode test procedure.[45] Thus, the on-highway FTP could accurately predict in-use NO_x emission reductions for large nonroad CI engines at the level proposed in this notice.

The Agency does not propose to require nonroad manufacturers to certify using the on-highway FTP because a large percentage of nonroad engine manufacturers currently develop engines using the 8-mode test procedure. Proposing the 8-mode test procedure minimizes the immediate burden on manufacturers associated with acquiring and becoming familiar with new equipment.

EPA is proposing to allow manufacturers to use the on-highway engine test option for two reasons. First, it allows EPA to accept carryacross emission data of certified on-highway engine configurations. This will encourage use of proven on-highway emission control system designs and reduce the overall cost of this program to the industry. Second, manufacturers that currently build on-highway engines already have facilities and trained personnel to run the on-highway FTP. Therefore, it may be more costeffective for these manufacturers to use the on-highway FTP for their nonroad engine certification than to establish or modify facilities to run the new nonroad engine 8-mode test procedure.

10. Certification Test Procedure for Smoke

EPA is proposing to adopt the current on-highway heavy-duty engine smoke test procedure described in 40 CFR part 86, subpart I to demonstrate large nonroad CI engine compliance with the proposed smoke standards.

The subpart I smoke test procedure cycle consists of an idle mode followed by an acceleration and deceleration, followed by another acceleration and an engine loading mode down to peak torque. This simulates a truck starting from rest, performing a gear shift, and then pulling a heavy load up a reasonably steep grade.

EPA believes that subpart I procedures are reasonable for large nonroad CI engine smoke control within the proposed timeline. While nonroad applications experience some differences in operation over on-highway applications, EPA has determined that the same technologies will be used to control smoke in nonroad applications as are used in on-highway applications.[46] EPA has determined that the subpart I procedures will provide the smoke reduction desired from certified large nonroad CI engines. Therefore, the differences in nonroad and on-highway operation with respect to smoke generation are not large enough to hold up this proposal for the significant time period required to make changes.

EPA proposes this procedure for large nonroad CI engines for two additional reasons. First, it brings these engines under the same regulatory framework that governed on-highway smoke emissions prior to the application of stringent PM emission standards. Second, the subpart I smoke test procedures are consistent with those introduced in California for heavy-duty off-road equipment engines greater than or equal to 175 hp (131 kw). This ensures compatibility between the California and federal regulatory programs. EPA requests comments on the appropriateness of applying this procedure to nonroad engines.

11. Certification Test Fuel Requirements

EPA is proposing a range of test fuel properties that will ensure that fuel used for emission testing is representative of commercially available fuel. The manufacturer would be required to ensure that the properties of the test fuel used for all certification and compliance testing be within the ranges specified in § 89.331–96 of the proposed regulations.

[42] Chapter 2.1.1, draft Regulatory Support Document.

[43] Chapter 2.1.2, draft Regulatory Support Document.

[44] Chapter 2.1.2, draft Regulatory Support Document.

[45] Chapter 2.1.1, draft Regulatory Support Document.

[46] Chapter 2.2.2 of the draft Regulatory Support Document.

A manufacturer may use any commercially available fuel that stays within the proposed regulatory specifications for its certification tests. However, the engine family must be able to comply with the proposed emission standards when any commercially available fuel within these specifications is used. Therefore, EPA reserves the right to choose any commercially available fuel within the regulated specifications for certification, SEA, or in-use compliance testing.

Manufacturers have requested that EPA allow use of low sulfur on-highway heavy-duty engine certification fuel for all large nonroad CI engine emission testing. However, the petroleum industry has projected that adequate supplies of high-sulfur fuel would be available to cover nonroad needs in actual use. Low sulfur fuel undergoes an additional refining process called hydrotreating, which increases the processing time and the cost of the fuel. The petroleum industry has the facilities available to provide 20 percent more low sulfur fuel than is required to meet on-highway demand, but it is also capable of providing all the high sulfur fuel that the nonroad market requires. Sources predict a two or three cent per gallon cost increase for low sulfur fuel over current commercially available nonroad engine fuel.

Should EPA be asked to consider use of low sulfur fuel for emission testing performed to satisfy requirements proposed in this notice, it would also be necessary for commenters to demonstrate that low sulfur on-highway certification fuel will be the predominant fuel available to large nonroad CI engines throughout the country by the implementation years proposed in this notice. If an adequate demonstration can be made, EPA reserves the right to include low sulfur fuel in the range of fuels allowable for emission testing.

12. Labeling Requirements

EPA is proposing that manufacturers label each engine and that the label meet the same requirements with respect to durability, visibility, and information as required in the current on-highway heavy-duty engine certification label requirements.[47] In addition, EPA is proposing that each engine must have a unique engine identification number which may be part of the engine label or engraved on the engine. Such identification is necessary for tracking engines for the Selective Enforcement Auditing, imports, and recall programs. EPA requests comment on this proposal as well as on current engine identification practices within the industry.

13. Averaging, Banking, and Trading Program

EPA is proposing an averaging, banking, and trading program for large nonroad CI engines. This market-based incentive program is designed to provide manufacturers flexibility in meeting the proposed NO_X standard without reducing environmental benefits. Implementation of the program should reduce the cost of controlling NO_X emission from large nonroad CI engines. An averaging, banking, and trading program also reduces the burden on small manufacturers by providing them flexibility.

EPA believes that this averaging, banking, and trading program is consistent with the statutory requirements of section 213. Though the language of section 213(a)(3) is silent on the issue of averaging, it allows EPA considerable discretion in determining what regulations are most appropriate for implementing section 213. The statute does not specify that a specific standard or technology must be implemented, and it requires EPA to consider costs, leadtime, and other factors in making its determination of "the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available." Moreover, the emission standards under section 213(a)(3) are "applicable to emissions from * * * *classes or categories*" of new nonroad engines or vehicles, rather than to "any," "each," or "every" nonroad engine or vehicle (emphasis added). This indicates that EPA's regulations may apply to nonroad engine classes in the aggregate, and need not apply to each nonroad engine individually.

At the same time, EPA believes that any averaging program must be consistent with the statutory requirement that standards reflect the greatest degree of emission reduction achievable through the application of available technology. EPA believes that this averaging, banking, and trading program is fully consistent with this requirement. The proposed NO_X emission standard of 6.9 g/bhp-hr (9.2 g/kw-hr) was determined with the assumption that an averaging, banking, and trading program would take effect at the same time as the NO_X standard. In fact, as discussed elsewhere in this proposal, the conclusion that the 6.9 (9.2) standard is feasible for all affected nonroad engines, within the period of time available to nonroad manufacturers, was based in part on the availability of the proposed averaging program. With such a program, certain smaller engines would be able to meet the NO_X standard without requiring significant modifications to be made to equipment that might be infeasible in the proposed leadtime. Averaging would also ensure that the 6.9 (9.2) standard does not force any manufacturers to abandon certain equipment applications.

The proposed averaging program would allow certification of one or more engine families within a given manufacturer's product line at levels above the emission standard, provided the increased emissions are offset by one or more families certified below the emission standard, such that the average of all considered emissions (weighted by horsepower and production) is at or below the level of the emission standard.

The proposed banking program would allow manufacturers to generate emission "credits" and bank them for future use in averaging or trading. Provisions to allow manufacturers to certify and bank credits one calendar year early provide an incentive to reduce emissions before the time required under the proposed regulations. The earned credits can then be applied to other engines which have more difficulty in meeting the new requirements. The proposed emission trading program would allow credit transactions between manufacturers.

When a manufacturer uses averaging, banking, and trading, each participating engine family certifies to a family emission limit, or FEL, which is set by the manufacturer and verified during certification testing. An FEL represents an emission limit for an entire engine family in the same way the federal standard represents an emission limit for engine families not participating in this program. To ensure emission reduction of engine families considered to be gross emitters, an FEL may not exceed an FEL ceiling (that is, upper limit). EPA is proposing an FEL ceiling of 10.9 g/bhp-hr (14.6 g/kw-hr). Test data generated by EPA and industry indicate that the average nonroad engine covered by this rule can meet the 10.9 g/bhp-hr NO_X (14.6 g/kw-hr) standard with minimal or no modification from current design.[48]

[47] See 34 FR 12633 (August 2, 1969) where labelling requirements for new motor vehicles and new motor vehicle engines were originally proposed.

[48] See the Nonroad Engine and Vehicle Emission Study and the letter from Jed R. Mandel of the Engine Manufacturers Association to Gay

The Agency is proposing that engines covered by this regulation that are subject to California emission standards be excluded from the proposed averaging, banking, and trading program. This exclusion is necessary because California would require that all engines sold in California meet the NO_X standard. If California engines were not excluded, then the offsetting credits would allow more dirty engines in the states not adopting California standards. Further, EPA has precedent for this exclusion—California engines have been excluded from the Agency's on-highway averaging, banking, and trading programs. (See 40 CFR part 86, subpart A). However, to reduce the burden of tracking for credit-using engine families, manufacturers may use total production or total U.S. production for calculating the number of credits used, since this amount would always be either the same as or greater than the number of engines actually using credits. Engines sold outside of the U.S. would also be excluded from the proposed averaging, banking, and trading program.

EPA is proposing no "averaging set" restrictions (that is, engine categories that limit transactions according to horsepower range, and so forth) for the nonroad averaging, banking, and trading program. EPA considered the need for establishing averaging sets based on the expected full useful life of an engine family, or the likelihood of engines in an engine family being rebuilt. If some engines were to last longer than other engines, averaging sets might be needed, in order to prevent engines with high FELs and longer lives from being averaged against engines with low FELs and shorter lives (since such averaging could result in high FEL engines polluting longer than expected and pollution being higher than predicted). However, EPA believes that most large nonroad CI engine families have a similar expected full useful life of approximately 10 years or 8,000 hours (see section VI.D.15." In-Use Enforcement"). In addition, all engines covered by this proposal can be rebuilt.[49] Thus, EPA believes that every engine covered by this proposal has an equal probability of lasting as long as any other covered engine. EPA requests comment on the need for averaging set restrictions in the nonroad averaging, banking, and trading program.

EPA is proposing to allow manufacturers to begin banking credits for engines with a 1996 effective date as early as the 1995 calendar year (and for other engines, one calendar year before the applicable effective date of the standards). This proposal provides manufacturers the incentive to reduce emissions before compliance with the emission standard is required, and it provides the possibility for early environmental benefits from emission reductions. Manufacturers can apply earned credits to other engine families in later years that have more difficulty meeting new requirements. Engine families which manufacturers choose to certify for early banking prior to the effective date of the standards would be subject to the full range of compliance and enforcement procedures included in these regulations, including certification, Selective Enforcement Auditing, records reviews, and in-use testing.

EPA is proposing that, for early banking, manufacturers receive NO_X emission credits for engines certified to FELs at or below the 6.9 g/bhp-hr (9.2 g/kw-hr) standard and that the NO_X credits would be calculated based on the difference between the FEL and the 6.9 g/bhp-hr (9.2 g/kw-hr) NO_X standard. In most cases, EPA believes that manufacturers would have to apply some level of additional emission control technology to meet the proposed standard. EPA estimates that 98% of engines would need some level of additional emission control technology to meet the proposed standard. EPA analyzed the magnitude of early banking credits available from the 2% of the engine fleet that would not require modification to meet the proposed standard, and determined that such credits do not represent a windfall. A detailed discussion is included in Appendix D of the draft Regulatory Support Document.

The Engine Manufacturers Association (EMA) has requested that EPA allow early banking if engines are at or below the standard before engines are subject to the first effective year of regulation.[50] However, EMA has proposed 8.9 g/bhp-hr (11.9 g/kw-hr) as an appropriate level for calculating credits for early banking. Under the manufacturers' proposal, credits would be calculated using the difference between the FEL and 8.9 g/bhp-hr (11.9 g/kw-hr), rather than the difference between the FEL and the 6.9 g/bhp-hr (9.2 g/kw-hr) standard, as proposed in today's action.

EPA considered proposing a higher level for calculating early banking credits. An emission level higher than 6.9 g/bhp-hr (9.2 g/kw-hr) could be appropriate if the emission credits granted to the industry, which are calculated using the higher level, are overall less than or equal to the environmental benefits gained by the early banking program. In order for EPA to consider EMA's request, EMA must demonstrate that 8.9 g/bhp-hr (11.9 g/kw-hr) is an appropriate emission level according to this criterion. EPA is not aware of the existence of data which would demonstrate that 8.9 g/bhp-hr (11.9 g/kw-hr) meets this criterion. EPA is proposing 6.9 g/bhp-hr (9.2 g/kw-hr) for calculating early banking credits primarily because EPA is unable to ascertain an emission level higher than 6.9 g/bhp-hr (9.2 g/kw-hr) which meets this criterion. EPA requests comment to support or refute a higher level, including a rationale addressing the stated criterion.

The Agency is proposing a three-year "rolling" banking program whereby credits generated in any given model year could only be withdrawn in the three succeeding model years. Credits that are not used within three model years would expire. This provision would preclude the accumulation of large numbers of credits over a long period of time.

Since engines sold to locations in California and other countries, including Canada and Mexico, are excluded from this program, manufacturers are required to obtain data pertaining to engine sales to demonstrate accurate credit generation and usage. However, to ease the burden on manufacturers of tracking engines to the end user, manufacturers only need to track engines to the location where the completed nonroad vehicle or nonroad equipment is purchased, otherwise known as a point of first retail sale. In cases where the end user purchases the completed nonroad vehicle or equipment directly from the manufacturer, the end user is the point of first retail sale. Engine sales data pertaining to engines that have already been shipped to a point of first retail sale is also known as first delivery information.

EPA will allow manufacturers to use the same limited projection scheme as in the on-highway averaging, banking, and trading program. Therefore, if a manufacturer obtains actual first delivery information on 90% of its engines, the manufacturer may project the first delivery information of its untracked engines based on the actual sales data already obtained.

Engine family credits would be calculated by taking the difference

MacGregor dated March 13, 1992 in the docket for this proposal.

[49] Chapter 2.2.5, draft Regulatory Support Document.

[50] The EMA request is available in Air Docket No. A-91-24.

between the emission standard and the FEL and multiplying it times the volume of engines produced within the engine family eligible to participate in the program, then multiplying by the power rating. Many engine families contain a number of configurations, and different configurations within an engine family could have different horsepower ratings. For families with more than one configuration, EPA proposes using, for credit calculation, the configuration with the highest horsepower rating for families using credits, and the configuration with the lowest horsepower rating for families generating credits. This method ensures that the configuration selected maximizes the emission benefit of the program. EPA would not allow multi-configuration engine families to be arbitrarily desegregated into multiple engine families to maximize credit generation or minimize credit usage.

Participation in the proposed nonroad averaging, banking, and trading program would be voluntary. For those manufacturers who choose to utilize the program, compliance for participating engine families would be evaluated in two ways. First, compliance of individual engine families with their FELs would be determined and enforced in the same manner as compliance with the emission standards in the absence of an averaging, banking, and trading program. Each engine family must certify to the FEL, and the FEL would be treated as the emission limit for certification, Selective Enforcement Auditing, and in-use testing. Second, the final number of credits available to the manufacturer at the end of a model year after considering the manufacturer's use of credits from averaging, banking, and trading must be greater than or equal to zero.

The proposed nonroad averaging, banking, and trading program would be implemented and enforced through the certificate of conformity which the manufacturer must obtain under § 89.122–96 of the proposed regulations for the engine family prior to its introduction into commerce. The certificate for each participating engine family would be conditioned on each engine family either meeting the federal emission standard or the manufacturer obtaining sufficient credits to bring the engine family into compliance with the federal emission standard.

A manufacturer who participates in the averaging, banking, and trading program would have to prepare an overall compliance strategy and submit an initial credit report along with the application for certification for each participating engine family. The initial certification of an engine family would be based on projected credits from the initial credit report. The final compliance determination would be based on actual credits reported by the manufacturer at the end of the production year. To demonstrate compliance with the standards, the manufacturer would have to submit an end-of-year report within 90 days of the end of the model year for each family involved in averaging, banking, or trading. The manufacturer would be allowed an additional 180 days after the end-of-year reports are due to submit a final report for credit counting and calculation revisions. Certificates awarded to an engine family based on production estimates could be rendered void *ab initio* if the engine family exceeds the emission standard as a result of a credit shortfall.

When credits are generated and traded in the same model year, EPA proposes to make both buyers and sellers of credits potentially liable for any credit shortfalls, except in cases where fraud is involved. The certificates of both parties issued for engines involved in the violating trading transaction could be void *ab initio* if the engine families exceed emission standards as a result of a credit shortfall. This policy would provide additional incentive for buyers and sellers to take the steps necessary to ensure the integrity of the transactions, and to place contractual liability on the appropriate party.

The integrity of the proposed nonroad averaging, banking, and trading program depends on accurate recordkeeping and reporting by manufacturers and effective tracking and auditing by EPA. Failure of a manufacturer to maintain the required records would result in the certificates for the affected engine families being void *ab initio*. Violations of reporting requirements could result in a manufacturer being subject to section 205 penalties of up to $25,000 per day as authorized by section 205 of the Clean Air Act.

14. Selective Enforcement Auditing Program

EPA is proposing to conduct a Selective Enforcement Auditing (SEA) program of nonroad engines as authorized by section 213 of the Clean Air Act as amended. The nonroad engine SEA program is an emission compliance program for new production nonroad engines in which manufacturers are required to test engines as they leave the assembly line, with EPA oversight. Through SEA testing, EPA can determine with reasonable statistical certainty whether or not tested engine families are in compliance with the Clean Air Act. SEAs have been conducted on motor vehicles since the late 1970s and heavy-duty motor vehicle engines since 1986. The proposed nonroad SEA program is designed in a very similar manner to the existing on-highway program for heavy-duty motor vehicle engines, with some modifications to accommodate differences between the two industries.

EPA believes that an SEA program is necessary to verify that production engines comply with applicable regulations. Since certification is based on preproduction prototype engines which often contain specially built and installed components, production engines could still fail to meet emission standards if quality control is inadequate. SEA provides a means to test actual production engines as they come off the assembly line, while the in-use compliance program is designed to detect nonconformities after engines have been in service for some years.

EPA would assign an annual limit to the number of SEAs each manufacturer could receive during a model year. As in the on-highway SEA program, this annual limit is used to provide reassurance to manufacturers that EPA will not significantly overburden a manufacturer with an unreasonable number of audits during the model year.

Each SEA is an audit of one engine family, and each passing audit would count toward the manufacturer's annual limit. This annual limit would be determined for each manufacturer by first calculating two annual limit factors, the production factor and the family factor. These factors respectively represent the maximum number of audits based on yearly annual sales and on the number of engine families produced in that model year.

The production factor is derived from the annual limits currently used in the on-highway SEA program and the relative contributions of emissions from on-highway and nonroad sources. From the on-highway SEA program, EPA used the estimated total 1992 production of light-duty on-highway vehicles and heavy-duty engines, 10,721,644 and 877,493 respectively, and the light-duty vehicle and heavy-duty engine annual limit divisors, 300,000 and 30,000 respectively, to calculate the total number of possible audits for all on-highway light-duty vehicles and heavy-duty engines, 36 and 29 respectively. From the nonroad study, EPA compared the relative contributions to pollution, 35.83% from both on-highway light-duty vehicles and on-highway heavy-duty engines and 17.50% from large nonroad CI engines. As total

contribution to pollution from large nonroad CI engines is slightly less than half that of total contribution from on-highway vehicles and engines, EPA determined that the total number of possible audits for large nonroad CI engines should be roughly half the total number of audits for on-highway vehicles and engines. EPA calculated, based on the relative contributions to pollution and the total on-highway audits, the total number of audits for large nonroad CI engines to be 31. Based on a projected 1992 total U.S. consumption of large nonroad CI engines of 294,856 engines, EPA determined that the appropriate annual limit divisor must be 294,856 divided by 31, which EPA rounded to 9,500.[51] Therefore, the production factor is the projected annual nonroad engine sales of each manufacturer divided by 9,500 and rounded to the nearest whole number. If the calculated production factor is less than one, the figure is set at one for that manufacturer.

EPA recognizes that, due to the nature of the nonroad industry, some manufacturers may have a relatively low annual production volume but a multitude of engine families. Therefore, in order to design a program specific to the relationships between the production volumes and engine families in this market, EPA is proposing an alternative formula for calculating a manufacturer's SEA annual limit, a manufacturer's "family factor." EPA proposes to assign to each manufacturer a family factor which would be calculated by dividing the number of engine families certified by the manufacturer in a given model year by five and rounding to the nearest whole number.

EPA proposes to use whichever value is higher of either the production factor or the family factor as the annual limit of SEAs for a manufacturer. For example, a manufacturer with a projected annual U.S. sales of 39,000 nonroad engines for 10 certified engine families would have a production factor of four (39,000/9,500=4.1, rounded to 4), family factor of two (10/5=2), and annual limit of four. Similarly, a manufacturer with projected annual U.S. sales of 10,000 for 20 certified engine families would have a production factor of one, family factor of four, and annual limit of four. Annual limits are caps and will not necessarily be the actual number of audits a manufacturer will receive. EPA would not exceed a manufacturer's annual limit unless the Agency received an indication of noncompliance. EPA requests comments related to this proposal for the calculation of annual limits.

The Selective Enforcement Audit program strives to encourage manufacturers to perform self-auditing. Therefore, EPA would consider reducing the number of audits conducted by the Agency, minimizing audits of engine families which are unusually burdensome to test, or both options, if the manufacturer provides substantial data to demonstrate conformity of actual production engines with the applicable emission standards or family emission limits. EPA suggests that manufacturers unfamiliar with self-auditing review existing on-highway programs, such as the California Air Resources Board's Quality Audit Program or the manufacturers' Assembly Line Test Data for guidance in implementing an in-house auditing program.[52] To allow manufacturers to tailor their programs for optimum efficiency and effectiveness, EPA will not provide specific guidelines at this time as to how the manufacturer should conduct the internal auditing programs.

EPA would review the self-audit data and procedures used in acquiring the data to assess the validity and representativeness of each manufacturer's self-audit program. The primary criteria EPA would use in evaluating the in-house programs would be the sample size, randomness within the family of the audit engine selection, frequency of testing, and resemblance between the manufacturers' test procedures and the applicable required test procedure. EPA would discount the value of any self-audit data if the Agency receives indications of noncompliance or concludes that the data are invalid, incomplete, unrepresentative, or insufficient. In addition, manufacturers with a comprehensive self-audit program would be subject to spot checks with EPA oversight to provide EPA assurance of compliance. EPA requests comments on this issue.

Manufacturers would be notified of an SEA by means of a test order. This test order would specify the engine family to be audited. EPA could specify an engine configuration or range of configurations from a family to be audited. However, EPA would reserve the option to select all configurations within an engine family for an SEA. To minimize the burden on manufacturers, EPA would consider requests by manufacturers to exclude particular engines or engine configurations from a test sample. Reasons for such requests could be to avoid a delay in shipment of urgent customer-ordered engines or to minimize test cell set-up time by selecting engines of similar physical configurations.

Test orders would also include information relevant to the SEA. The test order would indicate any specific procedures, such as the time to begin selecting engines, to be followed during the course of the audit. Additionally, the test order authorizes EPA enforcement officers, upon presentation of enforcement credentials, to inspect engine production, test facilities, storage facilities, and records necessary to establish compliance with nonroad regulations.

Due to differences between the nonroad industry and the on-highway engine industry, EPA is proposing that some aspects of the on-highway SEA program be modified for nonroad engines. Historically, on-highway engine SEAs have been conducted on engine configurations: a specific engine family, an engine code, a rated speed and an emission control system. However, due to the low production of many nonroad engine configurations, an audit of specific engine configurations could be impractical, since the length of time required to accumulate a statistical sample could be unreasonably long and strain both the manufacturer's and EPA's resources. Also, this proposal greatly expands the coverage of the term "engine family." EPA believes that making an entire engine family subject to an audit will lead manufacturers to use extra care when grouping engines in a family. Consequently, EPA is proposing that nonroad SEAs be conducted by sampling engines from within an engine family. EPA requests comments on this aspect of the program.

SEA engines are typically selected from a point of final engine assembly or from a storage or shipping facility. Most often, this selection point is at the end of the engine assembly line, where no further quality control or parts are installed on the engines. Selection of imported engines could occur at a port of entry. SEA engines may not receive any additional inspections or quality control other than that of normal production engines and pre-test safety checks. As in the on-highway SEA program, EPA is proposing a sequential sampling plan for nonroad engine SEAs. Engines shall be tested in the same order as they were selected.

EPA proposes to include ports of entry or storage locations in the U.S. as

[51] A more detailed summary of this calculation is available in "SEA Annual Limits Divisor for Nonroad Production Factor Calculation" in Air Docket No. A-91-24.

[52] Examples of audit programs are available in Air Docket No. A-91-24.

a location for EPA selection of foreign-produced nonroad engines for SEA emission testing at laboratories in the U.S. The location of these selections could be designated by the manufacturer to minimize disruption and shipping costs. The manufacturer would be responsible for ensuring that a test facility in the U.S. would be available to use in performing the SEA. EPA requests comments on this aspect of the proposal.[53]

Prior to testing SEA engines, manufacturers could operate engines to break-in engine components. This break-in or service accumulation of an SEA engine family shall follow the same procedures and be up to 125 hours or the same number of break-in hours accumulated for that family's emission data engines during certification (see section VI.D.7. "Certification Testing"). Service accumulation must be performed expeditiously and in a manner using good engineering judgment.

Audit engines would be tested using either the nonroad engine 8-mode test procedure or the on-highway FTP. Deviations allowed in certification from the full test procedures as described in either 40 CFR part 86 or part 89 would not be permitted in SEAs. Manufacturers would not be allowed to use different test procedures for different test engines during an SEA.

EPA is proposing that nonroad engines would be selected for SEA testing at a rate of at least four engines per day, unless production is less than four engines per day. To minimize delays in shipment of engines to customers, manufacturers could test the first engines selected for an audit while additional engines are produced. However, since manufacturers could be liable to recall engines shipped after the beginning of an audit if the audit failed, manufacturers might not desire to ship audit engines to customers until a pass decision was reached.

The total number of engines tested in an SEA would be dictated by the number of engines required to reach the statistically acceptable pass/fail decision within the sampling plan applied. As in the on-highway program, these sampling plans were designed to meet a 40% Acceptable Quality Level (AQL) and to ensure low statistical risks of incorrect pass/fail determinations. The maximum percentage of failing engines to be considered satisfactory for passing an SEA is 40%. EPA is proposing a 40% AQL for the nonroad SEA program to be consistent with the on-highway SEA program. EPA has used this AQL since the 1970s for the on-highway program, and EPA currently has no reason to propose a different AQL for a nonroad program.

EPA is proposing that the nonroad SEA program would use the same sampling plans used for the on-highway heavy-duty engine SEA program with two revisions. These revisions are proposed to accommodate a request by EMA to have a sampling plan for lower production engines that permits audit pass/fail decisions with fewer tests. Sampling Plan A would be used for engine families with projected annual production between 20 and 99 engines. This is different from the on-highway program where this plan is used for families with sales between 50 and 99 engines. This change makes it possible for EPA to audit nonroad engine families with very low annual production. Additionally, EPA is proposing a new alternative sampling plan for engine families which have very low annual production (between 20 and 50 engines). This alternative sampling plan, Plan AA, permits a pass decision in as few as three tests in comparison to Plan A which requires a minimum of four tests.[54] Manufacturers would have the option for applicable families to use either Plan AA or Plan A during audits to determine audit pass/fail decisions. The purpose of the new sampling plan would be to require fewer tests during an audit and to maintain approximately the same low level of risk that a nonconforming family might pass associated with the current sampling plans. EPA requests comments and suggestions on the sampling plans for use during SEAs.

EPA proposes that engine manufacturers with projected U.S. annual sales of 7,500 or greater would complete a minimum of two engine tests per day during an SEA. Engine manufacturers with projected U.S. annual sales of less than 7,500 would complete a minimum of one engine test per day during an SEA. A valid emission test, a valid smoke test, or a voided test would each count as one test toward meeting the requirement. EPA requests comments on this aspect of the proposal.

Passing or failing of test engines would be determined by comparing final test results to the applicable federal emission standard or family emission limit. Within five working days of the conclusion of an audit, manufacturers would be required to submit a report to EPA summarizing engine test results, test procedures, and audit events such as the date, time, and location of each test, repairs to engines, and the reason for the repair.

Failure of an SEA may result in suspension or revocation of the certificate of conformity for that family. To have the certificate reinstated subsequent to a suspension, or reissued subsequent to a revocation, the manufacturer must demonstrate, by showing passing data that improvements, modifications, or replacement have brought the family into compliance. The regulations include hearing provisions which allow the manufacturer to challenge EPA's suspension or revocation decision based on application of the sampling plans or the manner in which tests were conducted.

15. In-Use Enforcement

EPA believes that a critical element in the success of its nonroad program is assuring that manufacturers build engines that continue to meet emission standards beyond certification and production stages. EPA's authority to recall engines which do not comply with emission standards in-use provides an important incentive to manufacturers to design and build durable engines and vehicles. EPA is thus proposing regulations under section 213(d) of the CAA subjecting nonroad engine manufacturers to the requirements of section 207(c) of the CAA.[55]

EPA is proposing that engines covered by this proposal have an expected full useful life period of 10 years or 8,000

[53] "Port selection" would assist the Agency in reducing its travel costs, as well as the cost of audits for manufacturers with substantial U.S. facilities. In addition, port selection would enable EPA to respond more quickly to reports of nonconformity. In the on-highway program, EPA currently does not have regulations to specify port selections, even though most foreign manufacturers now own and operate laboratory facilities in the U.S. During each model year, overseas audits are conducted together during a roughly one month-long trip. Should EPA receive indications of nonconformance in a foreign-made model, and the foreign audit trip for that model year has already been made, SEA may not have the flexibility to immediately designate a configuration for testing and may have to wait an entire year to audit the suspect family.

Recently, in the on-highway program, EPA has had requests from light-duty vehicle manufacturers to conduct port selection during SEAs. These audits were performed and ran smoothly. EPA may permit reasonable maintenance and inspections of port-selected engines to address problems that may result from long-term storage, ocean shipping, or repeated handling.

[54] The statistical analysis of this plan is available in the docket for this rulemaking.

[55] Section 207(c) of the Act authorizes EPA to enforce compliance by vehicles and engines to applicable standards in actual use. Manufacturers are subject to recall requirements "[i]f the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations * * * when in actual use * * *.".

hours. This value is estimated from a range of useful lives dictated by engine design and by severity of application.[56] Available information indicates to EPA that engines covered by this rule would have a useful life range from 6,000 to 10,000 hours. However, the expected full useful life in years is 10 years in all cases, since severe applications tend to be operated seasonally and thus accumulate lower hours per year.[57]

EPA has authority to subject manufacturers to in-use testing and recall for the expected full useful life of an engine. However, the current in-use liability period for on-highway heavy-duty engines holds an engine manufacturer subject to recall testing for approximately 75 percent of an engine's full useful life.[58]

EPA is proposing an in-use testing and recall program under which EPA may test nonroad engines for a period of seven years or 6,000 hours. This represents 70 percent to 75 percent of the nonroad engine average expected useful life of 10 years or 8,000 hours, consistent with the in-use testing period for on-highway heavy-duty engines. EPA believes it is reasonable to maintain consistent nonroad and on-highway enforcement programs.

In-use compliance with emission standards would be determined based on test results using the same test procedure as that used in certification. Manufacturers would be subject to recall testing up to seven years or 6,000 hours, whichever comes first. Actual repair, however, would not be limited by actual years or hours. For example, EPA testing of an engine family might be limited to seven years and 6,000 hours; however, any resulting recall repair would be required to be applied to all engines of that family, regardless of the years or hours on an individual engine. This is consistent with EPA's recall repair policy for on-highway vehicles and engines.[59] EPA requests comment on this liability proposal.

Under section 207 of the CAA the Administrator shall require manufacturers to recall applicable engines if a substantial number of properly maintained and used engines are found to be out of conformity with the regulations issued under section 207 of the CAA. Recall regulations for large nonroad CI engines proposed in today's action provide procedures and requirements for manufacturers of engines for which a determination of nonconformity has been made. Such requirements include notification to be sent to engine owners, the manufacturer's remedial plan and EPA approval of the plan, and procedures to be followed in the event that the manufacturer requests a public hearing to contest the Administrator's finding of nonconformity. EPA requests comment as to the most effective way(s) to get adequate owner response for a recall.

EPA believes that today's proposed in-use testing and recall program is an appropriate way to enforce in-use compliance. However, as this is EPA's first regulation of nonroad engines, EPA requests comment on additional or alternative ways of enforcing in-use compliance or remedying noncompliance. EPA also requests comments on the legal authority for any suggested alternatives.

16. Emission Defect Warranty Requirements

EPA is proposing that nonroad engines be covered by emission defect warranty policies developed by EPA under section 207(a) of the CAAA. An advisory parts list issued by EPA on July 15, 1991 gives manufacturers notice of EPA's current view concerning the emission-related parts that must be covered by warranty under section 207(a). A copy of this list is in the docket for this rulemaking. This list will also cover nonroad engines. EPA is currently developing more detailed regulations that will further clarify manufacturers' responsibilities under section 207(a) for both on-highway and nonroad engines. EPA will rely on the existing 207(a) practices until those regulations are finalized. Once section 207(a) regulations are finalized, nonroad engine manufacturers would specifically be subject to appropriate sections of the final regulations. EPA is proposing a warranty period under authority of section 207(a) for large nonroad CI engine emission-related parts of five years or 3,000 hours.

Warranty periods in this market are currently six months with unlimited hours. Currently insufficient pressure exists in this market to force engine manufacturers to increase this warranty period. Manufacturers argue that most of the applications utilizing these engines are for commercial purposes that make maximum use of equipment and thus are capable of accumulating a large number of hours within six months.

While six month periods may be adequate to ensure gross failures to performance systems and components do not occur, longer warranty periods are necessary for emission control system failures. The warranty period must be of sufficient length to give the manufacturer proper incentive to provide durable emission control equipment. The five year or 3,000 hour warranty period ensures the engine manufacturer has sufficient incentive to build emission-related systems that work and last. Further, it gives the engine owner/operator the incentive to get emission-related system failures repaired, since failures to the emission control system do not always affect the ability of an engine to continue to work. Should the warranty period be too short, a large number of noncomplying engines could continue to operate.

California has also adopted a warranty requirement of five years or 3,000 hours. Proposing the same warranty requirements in this notice should reduce the burden on manufacturers of administering two different warranty programs.

17. Tampering Enforcement

As required under sections 213(d) and 203 of the CAA, it will be illegal for any person to tamper with any engine emission-related component or system installed on or in a nonroad engine in compliance with this proposal. EPA is proposing that existing on-highway tampering provisions apply to nonroad engines covered by this rule.[60]

EPA is aware that original nonroad equipment manufacturers often supply the engine accessories designed for their specific applications. At the same time, it is required that the engine tested to certify an engine family represent the worst-case configuration of that family. EPA requests comment on how to establish specific criteria or parameters under which a manufacturer would be allowed to continue to modify an engine without (1) jeopardizing the integrity of this proposed emission control program, and (2) causing the equipment manufacturer to have to recertify or risk being in violation of the tampering

[56] One nonroad engine model can be used in a large number of equipment applications. Since different types of equipment are exposed to different working environments, it is likely that the same engine will work harder and/or be exposed to more damaging environmental conditions when used in one engine application than in another. Because of this difference in "severity of application," the same engine will last longer in some equipment applications than in others.

[57] Chapter 2.2.5, draft Regulatory Support Document.

[58] 48 FR 52170, 52173, November 16, 1983.

[59] See 40 CFR 85, subpart S, appendix A. See also *GM* v. *Ruckelshaus*, 742 F.2d 1561, 1567–72 (D.C. Cir. 1984) (en banc) (applicability of recall requirements to vehicles in nonconforming class that have exceeded useful lives), *cert. denied*, 471 U.S. 1074 (1985).

[60] Office of Enforcement and General Counsel; Mobile Source Enforcement Memorandum No. 1A, June 25, 1974.

provisions of EPA's tampering guidance in Memorandum 1–A.[61]

18. Importation of Nonconforming Nonroad Engines

EPA is proposing certain restrictions on the importation of nonconforming nonroad engines. Such restrictions are based on the existing regulations for the importation of nonconforming motor vehicles and motor vehicle engines. Today's action permits independent commercial importers (ICIs) who hold valid certificates of conformity issued by EPA to import nonconforming nonroad engines. Under this program, the ICI must certify the engine to applicable U.S. regulations via the certification process before an engine is imported. ICIs would be responsible for assuring that, subsequent to importation, the nonroad engines are properly modified and/or tested to comply with EPA's emission and other requirements over their useful lives. The ICIs would also be responsible for recalls, maintenance instructions, emission warranties, engine emission labeling, and maintaining adequate records in the same manner as an engine manufacturer. Individuals, as well as ICIs, are eligible to import nonconforming nonroad engines under today's proposal, with requirements similar to existing regulations.

Today's proposal also provides certain exceptions to the restrictions on importing nonconforming nonroad engines. These exceptions are similar to the existing regulations on importing nonconforming motor vehicles and motor vehicle engines and include exemptions for repairs and alterations, testing, precertification, display, national security, hardship, nonroad engines greater than 20 original production years old, and certain nonroad engines proven to be identical, in all material respects, to their corresponding United States versions. These exceptions also include the exclusion of nonconforming engines used in competition.[62]

VII. Discussion of Issues

This section contains further discussion on a number of issues raised during the development of this notice.

[61] Mobile Source Enforcement Memorandum No. 1A.

[62] Import regulations governing these products will be promulgated by the U.S. Department of Treasury. The citation for U.S. Customs Service, Department of Treasury regulations governing import requirements is reserved. The citation will be inserted upon promulgation by the U.S. Customs Service of applicable regulations.

A. Competitive Effects of Excluding Spark-Ignition Engines from Regulation

In determining whether or not to propose regulation of spark-ignition (SI) engines in this rulemaking, EPA considered whether failure to regulate SI engines would afford these engines an unfair cost advantage over comparably sized CI engines that incurred a cost increase due to regulation. EPA believes that unregulated SI engines generally cannot compete in the short term market as a substitute for regulated large nonroad CI engines for two reasons. First, the cost to equipment manufacturers to redesign their large nonroad CI engine-powered equipment to accommodate an SI engine would in most cases be greater than the cost increase anticipated to large nonroad CI engines due to this proposal. This is due to the high cost of design changes to the equipment package or powertrain that accompany major engine changes. Second, the lead time required to carry out such an engine changeover would be prohibitive. To accommodate such time delays, an equipment manufacturer would have to coordinate such an engine type change with its scheduled redesign cycle for the piece of equipment in question. The typical redesign cycle is five years and new model introduction schedule is approximately 10 years. For these reasons it is expected that only in rare cases would a manufacturer choose to convert to an SI engine due to the cost increases imposed by this proposal.

B. Lack of Standards for HC, CO, and PM Emissions

EPA believes that emission standards for HC, CO, and PM are not appropriate at this time because available test procedures have not been demonstrated capable of predicting emissions of these pollutants from nonroad engines, as discussed below. Also, standards for these pollutants would require more leadtime for both product planning and regulatory development, and would increase fuel consumption. Given EPA's uncertainty regarding the validity of current procedures for testing of emissions of these pollutants, EPA believes that these delays would not be justified. Moreover, EPA believes that the lack of standards for HC, CO, and PM would not cause significant emissions increases in these pollutants (see section VII.F. of this preamble).

EPA recognizes the importance of reducing HC, CO, and PM emissions. However, EPA believes that substantial additional investigation is required to develop a test cycle that can ensure that emissions from nonroad engines detected during a test cycle are comparable to actual or expected inuse emissions from such engines. EPA believes that EPA/Industry test program data are inconclusive as to whether the proposed nonroad engine 8-mode test procedure could properly monitor emission of HC, CO, and PM and predict in-use emission of HC, CO, and PM for either CI or SI engines. Data analyses to date only give assurance that the proposed nonroad engine procedures would allow meaningful numerical standards to be set for NO_x emission and smoke.[63]

More lead time for product planning is also necessary if HC, CO, and PM are to be reduced, particularly for engines below 175 hp (131 kw). More lead time would be necessary in order to accommodate packaging changes due to the addition of turbochargers, aftercoolers, and high pressure fuel injection. A higher percentage of the fleet would require these technologies if such standards are promulgated. This would increase the cost and development time of these regulations with little provable emissions benefit at this time.

It may be technically infeasible or impractical to apply some on-highway technology to nonroad applications for the reduction of HC, CO, and PM. For example, air-to-air aftercoolers do not operate as efficiently on nonroad applications. Since nonroad equipment generally operates at much lower vehicle speeds than on-highway vehicles, the high level of air-flow provided by on-highway head winds must be generated by mechanical means (fans and dust scrapers) for nonroad applications.

Many of the technologies that will be applied to engines to restore losses to power and/or fuel economy caused by NO_x emission control strategies also limit any increases in HC, CO, and PM emission caused by NO_x emission control.[64] EPA expects that manufacturers will apply these additional technologies in those cases where the loss in power and/or fuel economy due to NO_x control is great enough to affect the engine's ability to meet customer needs adequately. Therefore, even though EPA is not proposing HC, CO, or PM emission standards, the application of technologies to restore power and/or fuel economy will result in no more than small increases in HC, CO, or PM

[63] Chapter 2.1.1, draft Regulatory Support Document.

[64] Chapter 2.5, draft Regulatory Support Document.

emissions due to today's NO_X and smoke proposals.[65]

EPA is undertaking a long-term research and development initiative to address and resolve issues with achieving greater reduction of HC, CO, PM, NO_X, and smoke. The highest priority in this initiative is to determine the appropriate test cycle which, when engines are designed to that cycle, will predict in-use emission levels. Once this cycle is identified, appropriate evaluation of technology and reductions for HC, CO, and PM and further reduction of NO_X and smoke can be undertaken.

Some nonroad engine manufacturers have requested that EPA add to this proposed rule emission standards for HC, CO, and PM at the same level adopted by California for 1996 model year heavy-duty off-road engines at or above 175 hp (131 kw).[66] They assert that the proposed "NO_X and smoke only" standards might be appropriate if they were adopted federally and accepted by all 50 states. However, some manufacturers feel that the proposal must be viewed in light of existing California requirements. Concern exists that the differences between the proposed federal program and the recently approved California program could be more of a burden than a relief to manufacturers. A manufacturer could be forced to build two or more engine configurations or engine families to compete in the diverse regulated areas. This situation could become even more complex should other states decide to opt-in to the California program. Manufacturers have indicated that uniformity throughout the United States is important to avoid substantial new cost burdens that could be imposed by market pressures to customize to multiple regulated areas. They suggest that these costs would far surpass any additional cost incurred due to adding standards for HC, CO, and PM to the EPA proposal.

Manufacturers have not quantified their projection of cost savings due to national standardization. Generally, a comparison of the cost estimates for EPA's proposed regulations and California's regulations indicates that, due to the added standards for HC, CO, and PM, the cost to manufacturers of meeting the California regulation would be higher than the costs of meeting EPA's proposal.[67] This reflects the increase in variable hardware cost and the increase in fuel consumption for California's regulations compared to the regulations proposed today by EPA. Costs to individual manufacturers may or may not be lower as a result of having to meet additional standards. However, at the very least, as EPA's emission control requirements are not stricter than California's, manufacturers apparently could avoid any additional costs by selling nonroad engines that meet California's standards in all 50 states.

EPA requests further analysis demonstrating how standardization to the more costly California program would reduce the overall consumer cost of this proposal. While EPA is requesting comment as to whether it should adopt 1996 model year California standards for HC, CO, and PM emissions in addition to the proposed NO_X and smoke standards in the final rule, it should be noted that HC, CO, and PM standards would not be adopted on the basis of cost alone because, as has been discussed in this section, EPA does not believe that available test procedures have been demonstrated capable of predicting emissions of these pollutants from nonroad engines.

C. Standards for Engines with Gross Maximum Power Less Than 100 Horsepower

Today's proposed NO_X and smoke standards are proposed to be applicable to all engines covered by this notice.

All large nonroad CI engines could be designed to meet the proposed standards. However, manufacturers have expressed concern as to whether some limited number of nonroad engines covered by this proposal could be designed to meet this standard without significant modification of equipment that may be infeasible given leadtime.[68] Specifically, manufacturers are concerned that certain naturally-aspirated engines (that is, engines whose flow of air into the intake system is caused by atmospheric pressure) may have to be significantly modified. Most naturally-aspirated engines covered by this notice are less than 100 hp (74.6 kw).

Manufacturers have argued that, in order to maintain power, torque, and fuel economy while reducing NO_X emissions, some small naturally-aspirated engines that are currently operating near their power limit may require the application of turbocharging. Since some equipment applications using smaller engines have more severe packaging constraints than larger equipment (for example, skid-steer loaders), manufacturers argue that use of turbochargers in these applications could require some redesign of the engine compartment.

EPA has proposed two features in this notice to minimize the likelihood that engines certified in the early years of this program would require technology that would necessitate substantial redesign of the engine package of affected equipment applications. First, the averaging, banking, and trading program allows engine manufacturers to avoid changing the smaller, harder to control engines, by certifying larger, potentially easier to control engines at low enough emission levels to offset the higher emission levels of the small uncontrolled engines. It is EPA's opinion that this feature would virtually eliminate the need to add turbochargers to smaller engines, as they would be capable of using alternative technologies that do not impact equipment design. Second, the staggered implementation dates proposed in this notice would defer regulation of engines at or under 100 hp (74.6 kw) until the 1998 model year. Since minor equipment redesign cycles occur approximately every five years and new model introductions occur approximately every 10 years, this proposal for staggered implementation dates gives manufacturers sufficient time to plan normal equipment redesign around the changes required to meet the proposed standards. Additional discussion of this issue is in section VIII.B. "Impact of Proposal on Equipment."

EPA evaluated a stricter NO_X standard for this category of engines. The conclusions were the same as those discussed in section VI.D.4. "Emission Standards: Oxides of Nitrogen and Smoke."

EPA will take comment on whether the proposed standards and other features in this notice provide sufficient flexibility to promulgate the same standards for all engines covered by this notice and whether a stricter NO_X standard is feasible, given leadtime, costs, and other relevant factors.

D. Representativeness of the On-Highway Smoke Procedure

Several nonroad manufacturers have stated that revisions need to be made to the on-highway smoke procedure when applied to nonroad engines to make the cycle more representative of nonroad

[65] Chapter 2.5.1, draft Regulatory Support Document.

[66] This request is available in Air Docket No. A-91-24.

[67] See California Air Resources Board, Notice of Public Hearing to Consider the Adoption of Regulations Regarding the California Exhaust Emission Standards and Test Procedures for New 1996 and Later Heavy-Duty Off-Road Diesel Cycle Engines and Equipment Engines. Mail-Out #91-51. El Monte, CA: State of California, November 12, 1991.

[68] Chapter 2.3.1, draft Regulatory Support Document.

applications. They believe that the initial acceleration portion of the cycle may be similar to nonroad equipment engines, but the second acceleration is not representative of the operating modes of most nonroad equipment engines, especially those that operate at fixed throttle settings.

EPA requests comment on this issue and suggestions of potential alternative smoke test procedures and standards that are believed to be more appropriate for large nonroad CI engines. EPA will consider alternative smoke test procedures and corresponding standards that manufacturers can demonstrate will correlate with or prove more representative of nonroad smoke emission than the procedure in 40 CFR part 86, subpart I.

E. Nonconformance Penalties for Nonroad Engines

Pursuant to section 206(g)(1) of the CAA, the on-highway heavy-duty engine emission compliance program provides that, in certain cases, engine manufacturers whose engines cannot meet emission standards may continue to receive a certificate of conformity and continue to sell their engines provided they pay a nonconformance penalty (NCP). EPA believes that it has the authority, pursuant to section 213 of the CAA, to permit such a program for nonroad engines. However, EPA believes that the use of NCPs is not warranted given the regulations proposed in today's action and EPA is not proposing NCPs for the engines included in this proposal. The Agency believes the proposed averaging, banking, and trading program should provide manufacturers sufficient flexibility to meet the proposed NO_x and smoke standards and should alleviate any concerns that manufacturers may have regarding their inability to bring some engines into compliance with the proposed standards. Experience with the on-highway program shows that manufacturers prefer to use averaging, banking, and trading rather than to pay NCPs. Moreover, EPA believes that the use of NCPs could lead to an unwarranted increase in the level of emissions from the nonroad engines regulated in this proposed rulemaking.

F. Feasible Emission Standards

EPA has determined that the proposed NO_x emission and smoke standards are technologically feasible and can be achieved through the application of technologies that will be available within the alotted leadtime for reasonable cost. There are a broad range of technologies currently available for on-highway engine use that are capable of ensuring reductions well below the proposed standards as demonstrated by the range and average of NO_x emission and smoke levels for on-highway heavy-duty diesel engine families certified for the 1990 model year as shown in Table 3. EPA has determined that a subset of these technologies (discussed below) can be effectively used to meet the requirements of this proposal and are compatible with nonroad applications. EPA believes that these standards can be met without substantial engine redesign, and thus can be implemented by the proposed model years.

TABLE 3.—FLEET NO_x Emission and Smoke Statistics for 1990 MODEL YEAR ON-HIGHWAY HEAVY-DUTY DIESEL ENGINE FAMILY EMISSION DATA ENGINES

	NO_x (g/bhp-hr)	ACC (percent)	LUG (percent)	Peak (percent)
Average	5.2	12	6	20
Std. Dev.	.5	4	3	8
Max.	6	20	14	45
Min.	3.5	2	1	3
Standard	6	20	15	50

1. Effect of Available Technologies on Emissions and Performance

Chapter 2.2.1 of the draft Regulatory Support Document describes the technologies that EPA and industry have determined will be used and will be capable of meeting the proposed standards. These technologies include fuel injection base timing changes, fuel injection pump improvements such as variable injection timing and increased injection pressures, fuel injection nozzle modifications, combustion chamber modifications, air to water aftercooler improvements and additions, turbocharger improvements, and increased application and optimization of smoke limiters. These technologies will allow all engines covered by this proposal to meet the proposed standards while substantially maintaining fuel economy and power. Additionally, these technologies are not impeded by certain constraints specific to nonroad engines that may affect other technologies, as will be discussed in section VII.G.

An EPA test program of a number of production nonroad engines demonstrated that the average large nonroad CI engine can be brought into compliance with the proposed NO_x emission standard by retarding injection timing alone. For the NO_x levels required by this proposal, EPA observed that retarding injection timing causes small increases in HC and PM emissions and small increases in brake specific fuel consumption (BSFC) and losses in brake horsepower (BHP). However, EPA believes these impacts are manageable because they can be offset by use of various combinations of the technologies listed above. For example, variable fuel injection timing and increased fuel injection pressure improve atomization and timing optimization, thus providing more fuel injection base timing flexibility to recover fuel efficiency and power losses without losing the NO_x reduction benefit.[66] Data from this test program are summarized in Table 4.

[66] Chapter 2.2.1, draft Regulatory Support Document.

TABLE 4.—EFFECTS OF FUEL INJECTION TIMING RETARDATION ON EMISSIONS FROM CURRENT PRODUCTION LARGE NONROAD CI ENGINES

Eng. #	NO_X at degrees retard (g/bhp-hr)				Emission change per degree retard (g/bhp-hr)			Percent change	
	0° ret.	4° ret.	7° ret.	9° ret.	NO_X 8–Mde	HC Ftp	PM Ftp	Bsfc	Bhp
JD #1	11.8	.....	6.3	.....	−.8	.1	.08	+6	−5
JD #2	11.8	.....	6.8	.....	−.7	0	.06	+3	+3
JD #3	11.8	.....	.....	6.1	−.6	−.01	−.01	−2	+8
DDI #1	12.1	.....	7.0	.....	−.7	0	.02	+3	.....
DDI #1	12.1	.....	.....	5.8	−.7	0	.03	+5	.....
FNH #1	9.3	5.9	.....	.....	−.8	.4	.1	−1	+1
CUM #1	11.1	5.6	.....	.....	−1.4	.07	0	+9	+5
Avg. of all data	11.4	5.8	6.7	6.0	−.8	.05	.04	+3.3	+2.5
Avg. of >6.0 NO_X engines	11.9	.....	6.7	6.1	−.7	.02	.04	+2.5	+2.0

The test program results demonstrate that the amount of NO_X emission reduction per degree of fuel injection timing retard as tabulated in the column titled "Emission Change per Degree Retard—NO_X 8–Mde," was consistent for most of the current production nonroad engines tested in this program. These were engines with base NO_X emission levels around 9 to 12 g/bhp-hr. At least one manufacturer indicated that this observation is consistent with its observations as well.[70] NO_X emission is reduced by approximately 0.8 g/bhp-hr (1.0g/kw-hr) for each degree the fuel injection timing is retarded.

Generally, a manufacturer would be capable of calibrating the fuel injection timing to meet its NO_X emission target level while minimizing BSFC increase and BHP loss. If only those engines that were reduced to just above 6.0 g/bhp-hr (8.0 g/kw-hr) NO_X are considered as a set of data reasonably representative of what can be expected under this rule, the average fuel consumption increase would be approximately 2.5% and the average horsepower change would be an increase of approximately 2%. This does not vary substantially from the average of all data collected. These losses in efficiency can be substantially offset using the technologies listed previously.

As discussed in chapter 2.2.1 of the draft Regulatory Support Document, EPA believes these technologies will be adequate to offset any fuel consumption increases or power losses caused by this rule. Design modifications to fuel pumps and nozzles to increase pressure, introduce variable timing, and affect spray pattern and atomization all act to not only reduce NO_X emission at lower levels of injection timing retard, but also act to encourage more complete combustion, thus increasing engine efficiency (i.e., reducing fuel consumption and increasing horsepower) while also reducing HC and PM emissions. Modifications to combustion chamber design that increase displacement, which allows derating, or that change the shape of the combustion chamber, which impacts complete combustion, can also be optimized to improve complete combustion and increase engine efficiency. Additional modifications are also available to those engines that are currently turbocharged. Modifications that increase intake air density such as increased turbocharger boost or new or more efficient air to water aftercooling can increase efficiency.

Increases in HC and/or PM emissions are also common as fuel injection timing is retarded on any particular large nonroad CI engine. However, Table 4 shows that PM and HC emission increases between 4 and 9 degrees of retard are still small enough to be restored using the technologies described above. For example, since the fuel injection system modifications expected would improve atomization, the time needed to complete combustion would be shortened, thus reducing HC and PM emissions.[71] This is consistent with the technical literature showing that NO_X to HC and NO_X to PM emission trade-off is reasonably flat down to approximately a 6 to 7 g/bhp-hr (8 to 9.3 g/kw-hr) NO_X level of control, below which the trade-off emissions increase exponentially.[72]

One manufacturer provided EPA with one early prototype engine and one current nonroad production engine from each of two engine models.[73] While these prototypes were not yet optimized, they do use technologies from the list of feasible approaches discussed above. For each of the two engine sets, Table 5 shows changes in emissions, fuel consumption, and maximum horsepower due to modifications made to the prototype engine compared to the comparable production engine.

[70] Meeting with Engine Manufacturer Association members on October 28, 1992.

[71] Chapter 2.2.1, draft Regulatory Support Document.

[72] "Development of Detroit Diesel Allison 6V–92TA Methanol Fueled Coach Engine," SAE#831744, R.Toepel, et al., October, 1983, International Fuel and Lubricants Meeting and Exposition, San Francisco, CA.

"Fuel Injection Equipment for Heavy-Duty Diesel Engines for U.S. 1991/1994 Emission Limits," SAE#890851, G. Stumpp, et al., March, 1989, International Congress and Exposition, Detroit, MI.

"Design Choices for 1990's Low Emission Diesel Engines", SAE#880350, A. Gill, February, 1988, International Congress and Exposition, Detroit, MI.

[73] Chapter 2.5, draft Regulatory Support Document.

TABLE 5.—IMPACT OF PROTOTYPE MODIFICATION ON HC, PM, BSFC AND BHP

Engine sets	HP	Baseline and proto. NO_X		Prototype smoke results			Percent increase (percent)				
		BASE	PRO	ACC (percent)	LUG (percent)	PEAK (percent)	NO_X 8–MD	HC FTP	PM FTP	BSFC	BHP
Mod set ±1	140	11.8	6.1	.....	.....	.....	−48	−15	−17	−2	+13
Mod set ±2	75	7.2	6.1	3	4	4	−15	+20	−5	−.5	+1

Results of Table 5 show that the proposed NO_X and smoke standards can be reasonably achieved without causing significant increases in other pollutants or significant losses in fuel efficiency or power. The prototypes met all the standards proposed in this notice while showing improvements in HC and PM emissions, fuel consumption, and horsepower. In only one case did HC emissions increase. Further optimization could reduce or eliminate this HC emission trade-off. These prototype results show NO_X levels of 6.1 g/bhp-hr (8.1 g/kw-hr), well below the 6.9 g/bhp-hr (9.2 g/kw-hr) standard, and smoke levels of 3% opacity during acceleration mode, 4% during lug mode, and 4% during peaks in either mode, all well below the 20% acceleration, 15% lug, and 50% peak mode standards proposed. This prototype, as well as the information in the draft Regulatory Support Document, demonstrates that the proposed standards can be achieved with technologies that are feasible within the constraints of this rule and without causing significant negative impacts on HC, PM, BSFC, or BHP.

2. Leadtime and Cost

The technologies that EPA expects to be used to meet the proposed standards are available technologies that can be applied within the proposed timeline and at low cost. Engines at or above 175 hp (131 kw) require the shortest leadtime. These engines are comparable to current on-highway designs and will require the least additional redesign work. Further, manufacturers have already started developing these larger engine designs to meet standards proposed in California for the 1996 model year. EPA's proposed implementation date of the 1996 model year is thus reasonable and feasible for the engine at or above 175 hp (131 kw). As discussed below, Table 5 demonstrates that the same range of technologies that allow engines with horsepower at or above 175 (131 kw) to meet the proposed NO_X standard will also allow smaller engines to meet that standard. Therefore, in order to ensure that smaller engines meet the proposed NO_X standard, manufacturers must apply the available technologies to specific engine families with horsepower less than 175 (131 kw). EPA believes that additional leadtime of one year (implementation in the 1997 model year) for engines with horsepower from 100 to 175 (74.3 to 131 kw), and additional leadtime of two years (implementation in the 1998 model year) for engines less than 100 hp (74.3 kw) is appropriate in order for manufacturers to make design changes to these smaller engines to incorporate the necessary technology.

3. Effect on Engines Below 175 Horsepower

Manufacturers have expressed concern that engines covered by this proposal that are less than 175 hp (131 kw) would not be capable of meeting the proposed standards. Manufacturers have not presented data to support this concern because their research resources are focused on 175 hp (131 kw) and above engines to meet requirements of the California regulations for off-road farm and construction engines greater than or equal to 175 hp (131 kw) that go into effect in the 1996 model year. As expressed earlier, EPA is proposing to allow additional leadtime to engines covered by this proposal that are less than 175 hp (131 kw). This additional leadtime should provide time to develop these smaller engines to meet the same standards the industry is prepared to meet with larger engines.

EPA studies indicate that the NO_X emission and smoke levels of current production nonroad engines less than 175 hp (131 kw) are comparable to those for the engines at or above 175 hp (131 kw).[74] The same level of fuel injection timing retard will generally bring these smaller engines into compliance. The same technologies used for the larger engines can be used on these smaller engines to effectively restore efficiency loss. This was demonstrated by the results presented in Table 5 that show engines less than 175 hp (131 kw) are capable of meeting the proposed standards using the technologies listed in this discussion. The prototype engines listed in Table 5 are both less than 175 hp (131 kw). The technologies used on these engines are within those feasible technologies listed earlier in this discussion. While some increase in HC occurred in one of the not yet optimized prototype engines, HC and PM emissions were reduced and fuel consumption and horsepower remained relatively unaffected. Further optimization of the one engine would likely minimize the trade-off seen to HC emission as well.

Based on the information discussed above, and elsewhere in this docket, EPA finds that the proposed standards are feasible for the affected engines, considering the cost of implementing the necessary technology within the available leadtime.

As discussed at length in Section IX "Cost Analysis," and Section XI "Cost-Effectiveness," the technologies determined by EPA to be feasible to meet the proposed standards will be available for reasonably low cost, at approximately $110 per engine, and will have high costeffectiveness, at approximately $86 per ton of NO_X reduction.

G. Lowest Feasible Emission Standard

In setting emission standards for large nonroad CI engines, EPA's goal is to realize the greatest degree of emission reduction achievable through the application of technologies which will be available to these engines considering the cost of such technologies within the period of time available as well as noise, energy and safety factors.[75] Consideration of these criteria has resulted in EPA's decision to propose a NO_X emission standard at 6.9 g/bhp-hr (9.2 g/kw-hr), smoke standards at the current on-highway certification level, and no standards at this time for HC, CO and PM emissions. EPA's proposal to set standards at these levels was affected in particular by the following goals: (1) EPA's intent to implement emission standards that could feasibly be met at the earliest practicable date, given leadtime constraints; and (2) EPA's concern that its methods of testing emissions

[74] Chapter 2.5., draft Regulatory Support Document.

[75] See CAA, Section 213(a)(3).

accurately represent in-use emissions from nonroad engines.

It is EPA's assessment that the significant test procedure and timeline constraints that must be overcome to meet emission reductions greater than those proposed are not achievable given the timeline constraints required for implementation.

1. Lowest Feasible NO_X Emission Standard

Under Section 213(a)(3), the emission standards proposed in this rulemaking shall achieve the greatest emission reduction available, given the constraints mentioned above. Moreover, in determining what degree of reduction is available, EPA shall first consider standards equivalent in stringency to standards for comparable motor vehicles; taking into account technological feasibility, costs, safety, noise and energy factors.

It will not be feasible in the near future for nonroad engines to attain as low a NO_X emission standard as is currently required for on-highway engines. This is because nonroad engines operate in a very different environment than on-highway engines. These differences in operation and function create unique constraints that a nonroad engine manufacturer must consider even when designing engines that are very similar to on-highway engines.

This proposed rule represents EPA's first regulation of nonroad sources. There has previously been no incentive for nonroad engine manufacturers to use emission performance as a design constraint. Thus, the engines currently produced for the nonroad market do not incorporate the range of emission control technologies typically used in current on-highway engines.

Nonroad operational characteristics are substantially different from on-highway characteristics. Thus, the process of setting standards for engines installed in nonroad equipment is influenced by some unique constraints that EPA has not faced when regulating on-highway engines. For example, while on-highway trucks generally haul merchandise as their only function, nonroad equipment perform a large number of functions, among them hauling, digging and loading. These functional differences limit the ability of existing test procedures to adequately represent nonroad emission reductions for all pollutants, and limit the flexibility of nonroad equipment to easily accommodate on-highway emission control systems that cause physical changes in engine performance and packaging.

EPA has determined that 6.9 g/bhp-hr (9.2 g/kw-hr) represents the lowest feasible NO_X standard achievable in the near future. This determination was made based on the analysis discussed in the following sections, which include:

- An assessment of the range of technology that EPA expects will be available to meet a lower NO_X standard than proposed,
- An assessment of the ability of nonroad engine and equipment manufacturers to meet a NO_X standard lower than that proposed given the timeline constraints, and
- An assessment of the ability of existing test procedures to characterize NO_X emissions at levels lower than the proposed standard.

a. *Technology Required for Lower than Proposed NO_X Standard.* EPA has determined that a 6.9 g/bhp-hr (9.2 g/kw-hr) NO_X standard represents the limit for most engine families of what can be achieved with fuel injection system and combustion chamber design changes without causing significant and irretrievable losses in performance (e.g., fuel economy, power).[76] The next step in emission reduction would require the application of more sophisticated technologies that can achieve even lower NO_X emission levels without significantly sacrificing performance. EPA analyzed the technologies that would have to be used to maintain engine performance while meeting a NO_X standard lower than proposed. Turbochargers, air to air aftercoolers, and/or electronic fuel injection systems were commonly used in on-highway engines in the 1990 model year to meet a 6.0 g/bhp-hr (8.0 g/kw-hr) NO_X standard. EPA believes that nonroad engine manufacturers would generally be capable of meeting a 6.0 g/bhp-hr (8.0 g/kw-hr) standard if each of these three technologies were readily applicable to nonroad engines. This makes 6.0 g/bhp-hr (8.0 g/kw-hr) the next logical tighter NO_X emission standard should a standard below 6.9 g/bhp-hr (9.2 g/kw-hr) be considered.

EPA tabulated in Table 6 the range of emission control technology required to achieve the proposed NO_X standard of 6.9 g/bhp-hr (9.2 g/kw-hr) based on data collected on engines tested by EPA and industry, and the range required to achieve the next logical lower NO_X standard of 6.0 g/bhp-hr (8.0 g/kw-hr) based on EPA's 1990 model year certification on-highway heavy-duty engine database. Using these data EPA estimated the change in technology mix that would occur should EPA require a tighter NO_X standard than that proposed.

Table 6 shows a shift from the more conventional technologies projected to be needed to meet the 6.9 g/bhp-hr (9.2 g/kw-hr) NO_X standard to the more sophisticated systems to meet the next logically lower (i.e., 6.0 g/bhp-hr (8.0 g/kw-hr)) NO_X standard. The most significant shifts to meet a standard below that proposed involve a substantial increase in engine families using turbochargers, air to air aftercoolers, and electronic fuel injection systems. Table 6 shows an increase in turbocharged engine families of 23 percentage points. This represents those engines that would be converted from naturally-aspirated engines to turbocharged engines. Table 6 also shows an increase of 51 percentage points in families using air to air aftercooler technology, and an increase of 13 percentage points in families using electronic fuel control technology.

[76] See Chapter 2.4 of the draft Regulatory Support Document. Beyond a reasonable level, reduction of fuel economy and power are particular problems for nonroad engines because a percentage of equipment manufacturers could have to redesign fuel tank sizes to meet customer demands for full day operation between refuelings and/or redesign of powertrain component as necessary to minimize the impact of engine power and torque changes on equipment.

TABLE 6.—ESTIMATED TECHNOLOGY CHANGE DUE TO TIGHTER NO_X STANDARD

	6.9 G/HP–HR standard	6.0 G/HP–HR standard	Technology change
	Percentage of engine families	Percentage of engine families	Percentage of total families
Naturally aspirated	30	7	−23
Turbocharged	[1] 70	93	+23
Air-water aftercooler	25	13	−12
Air-air aftercooler	[1] 5	56	+51
Elect. fuel inject	0	13	+13

[1] This represents the current market share. We expect no increase due to the proposed rule.

For a number of reasons discussed in the following sections, increased use of these three technologies would not be feasible for nonroad use within the proposed timeline.

b. *Timeline Constraints of a Lower NO_X Standard.* A NO_X standard lower than proposed would require increased leadtime to allow engine manufacturers to make engine design changes needed to incorporate more advanced emission control systems, and to allow equipment manufacturers to make equipment design changes necessary to accommodate turbochargers and air to air aftercoolers. EPA believes that the setting of a lower NO_X standard would thus delay the implementation of standards by at least four years. Such a delay is not justified given the significant benefits available from implementing a 6.9 g/bhp-hr (9.2 g/kw-hr) NO_X standard.

i. *Time for Engine and Equipment Redesign.* EPA has determined that the proposed NO_X emission standard can be met with a range of engine emission control technologies that will have minimal impact on engine and equipment design [77] and thus can be reasonably developed on the current proposed timeline. However, EPA has also determined that a more stringent NO_X standard would directly impact a large percentage of engine and equipment manufacturers that would have to design engines and equipment to accommodate turbocharger systems, or air to air aftercooler systems.

EPA believes that such a large design effort to accommodate more advanced technologies would require additional leadtime. First, engine manufacturers would need more leadtime to implement more stringent standards because the aggressive timelines proposed in this notice are based on the timetable used in California's nonroad regulations, which mandate a NO_X emission standard of 6.9 g/bhp-hr (9.2 g/kw-hr) for similar engines. Under EPA's current proposal, manufacturers would be able to use the same engine designs to meet both California and EPA standards. Manufacturers began developing systems to meet California requirements two years ago. To begin now to develop more advanced systems for EPA would require more leadtime and a later implementation date. EPA estimates that lower standards than proposed in this notice would require a delay of two to four years for implementation because manufacturers would lose the two year headstart they currently have developed for designs to meet a 6.9 g/bhp-hr (9.2 g/kw-hr) NO_X standard, and manufacturers would require an additional two years to design the more advanced technologies required to meet a lower standard than 6.9 (9.2).

Moreover, to meet lower standards than those proposed, significant design changes would be required for the nonroad equipment which such engines would operate. Turbochargers would have to be used on a percentage of low horsepower engines (i.e., less than 100 hp (74.3 kw)) that were previously naturally aspirated designs. These are engines that are more likely to be used in equipment applications with the tightest powertrain and packaging design constraints.[78] Thus, there is increased risk that a percentage of equipment applications that would need to convert from naturally aspirated to turbocharged engines could require substantial redesign to accommodate the resulting packaging and performance changes.

Air to air aftercoolers would have to be used on higher horsepower engine designs (i.e., greater than 100 hp (74.3 kw)) that are currently at the efficiency limit of the engine designs' aspiration systems. Use of air to air aftercoolers would require substantial space for the large heater core assemblies required to make these nonroad systems efficient on any application. Moreover, there are technical limitations that cause air-to-air aftercoolers to perform less effectively on nonroad applications than on-highway applications. Nonroad engine applications generally operate at lower speeds and in dirtier environments than on-highway applications. As a result, additional hardware, such as high volume fans and dust scrapers would be necessary to maintain the high air flow around the aftercooler core that is needed for effective use of air-to-air aftercooling. Even large equipment cannot accommodate this level of packaging alteration without substantial redesign. Therefore, equipment impacts are highly likely when either of these technologies is employed.

Coping with such substantial equipment impacts within the proposed regulatory implementation schedule would be extremely difficult. An equipment manufacturer's assessment of the impact cannot begin until the engine manufacturer has determined which control strategy it will employ and shares that decision with its customers. It is estimated that making the necessary design changes to the equipment powertrain or packaging would require an effort of similar magnitude to that required to design the engine changes. EPA estimates that two to four years of additional leadtime over the time needed by engine manufacturers would be required by equipment manufacturers to redesign their products to meet a lower NO_X emission standard.

Therefore, EPA concludes that a lower NO_X emission standard would require a delay of the initial implementation of standards by at least four years.

c. *Ability of Proposed Test Procedures to Measure Emissions From Nonroad Engines Built to Meet a Lower NO_X Standard.* When setting a standard, EPA

[77] See Chapter 2.3.2 of the draft Regulatory Support Document.

[78] To accommodate turbocharged engines, some equipment designs might have to design changes that could cause clearance problem with the working implements such as hydraulic shovels, drills, backhoes, etc. In addition, changes to hood configurations could cause visibility concerns for the operator.

must consider not only the ability of manufacturers to meet that standard in the available leadtime, but must also consider its ability to test compliance with that standard. As discussed below, EPA believes that the test procedures currently available have only been adequately shown to measure NO_X emission and smoke from nonroad engines at the proposed levels. EPA is working on an aggressive schedule to develop test procedures that adequately characterize the in-use emission performance of the range of technologies that could be used to reduce nonroad engine emissions beyond the proposed 6.9 g/bhp-hr (9.2 g/kw-hr) standard.

Current data and research indicate the proposed 8-mode steady state test procedure is capable of measuring NO_X reductions when the standard is set at 6.9 g/bhp-hr (9.2 g/kw-hr) or above.[79] However, information is not available to support the suitability of these test procedures for more stringent NO_X standards. The proposed test procedure may not be capable of measuring NO_X emission from the most advanced electronic fuel injection technology which some manufacturers could be forced to use should the NO_X standard be lower than proposed. Moreover, a lower NO_X emission standard could significantly increase HC and PM emissions, but the proposed 8-mode test procedures have not yet been demonstrated to accurately measure these emittants.

i. The Proposed Test Procedures Lack of Demonstrated Ability to Properly Characterize NO_X Emissions from Electronic Fuel Injected Engines. EPA has determined that it is feasible for the proposed 8-mode steady-state test procedure to accurately measure NO_X emission reductions on engines using conventional analog (mechanical) fuel control systems. These systems have been shown through data collected by industry and EPA[80] to generate comparable NO_X emission levels on both the more transient on-highway FTP and the steady-state 8-mode test procedure. These data suggest that a lower percentage of the composite NO_X emission was generated during transient portions of the test cycle as compared to steady-state portions, and therefore NO_X emission generated by engines using analog fuel system designs is less sensitive to test procedure variances that involve transient operation. Since engines using analog fuel system designs are insensitive to transient operation with respect to NO_X emission, EPA can propose use of the 8-mode steady-state test without concern. This is consistent with the science of NO_X control since analog systems have no ability to make instantaneous step changes in critical operating parameters such as fuel delivery and timing.

On the other hand, the more sophisticated electronic fuel control systems are digital in nature. Such systems can be customized to actually generate higher levels of NO_X during transient operation, thus compromising EPA's ability to predict that emission test results generated on the 8-mode steady state test procedure are representative of any possible in-use operation. For example, should a manufacturer decide to use its electronic control system to reduce engine smoke by advancing fuel injection timing during heavy accelerations, smoke would decrease, but NO_X emission would increase. Such a strategy would increase NO_X in-use in a manner that could not be accounted for in an 8-mode steady state emission test.

Electronic fuel control systems would not be necessary to meet the proposed NO_X emission standard. In addition, engine manufacturers have indicated they would not use electronic fuel control to meet the proposed standards, due to development timelines and significantly higher cost. As shown in Table 1, should EPA require the next lower feasible NO_X standard of 6.0 g/bhp−hr (8.0 g/kw−hr), engines with electronically controlled fuel control systems would be needed on 13% of certified engine families. EPA could not be sure that the in-use performance of these engines would be properly characterized by the proposed steady-state test procedures. By proposing a 6.9 g/bhp−hr (9.2 g/kw−hr) NO_X standard today, EPA is forcing only those technologies the emission effects of which are within the range that the proposed test procedure is able to measure. As discussed in the next section, EPA is aggressively working with industry to determine appropriate test procedures to ensure that the emissions impact of all technologies that become available in the future, including electronic fuel control systems, will be properly characterized.

ii. The Proposed Test Procedures Lack of Demonstrated Ability to Measure HC and PM Emissions. Some technologies that reduce NO_X emissions also have a tendency to increase HC and PM emissions. This phenomenon is known as "emission tradeoff" and is based on the chemistry by which these pollutants are formed.[81] Technical literature published by EPA and industry[82] demonstrate that the rate of HC and PM emissions trade-off tends to increase exponentially as the NO_X emission standard gets lower. For example, Figure 1, taken from one of these publications, shows the NO_X and PM emission relationship. The "current technology average" line represents on-highway heavy-duty engines produced between the 1988 and 1990 model years. Observing this line, as a manufacturer reduces NO_X emission levels from current nonroad baseline levels (11 g/bhp−hr (14.7 g/kw−hr)) down to levels necessary to comply with the proposed NO_X emission standard, or a reduction of about 5 g/bhp−hr, the amount of PM emission tradeoff is small. To reduce NO_X emission levels even further below the 6.9 g/bhp−hr (9.2 g/kw−hr) proposed standard, the rate of PM tradeoff begins to increase rapidly as characterized by the increasing slope of the NO_X versus PM curve.

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[79] See Chapter 2.1.1 of the draft Regulatory Support Document.

[80] See Chapter 2.1.1 of the draft Regulatory Support Document.

[81] Appendix B of the draft Regulatory Support Document.

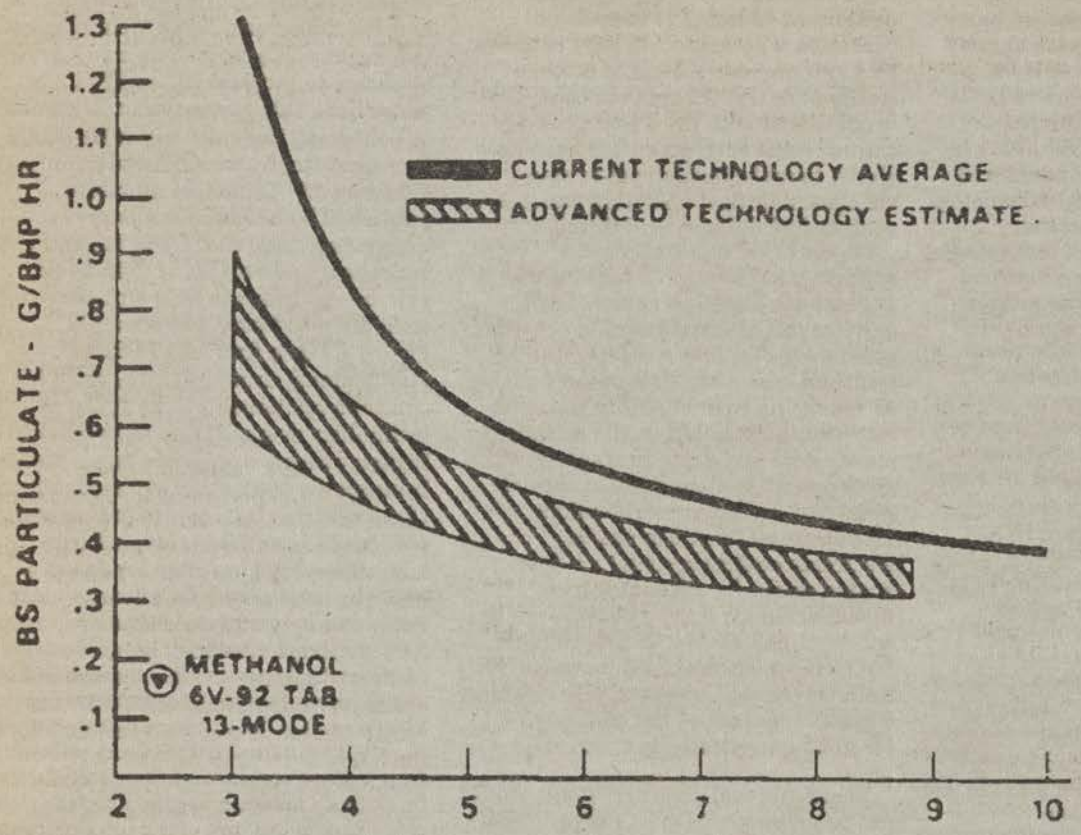
[82] "Development of Detroit Diesel Allison 6V-92TA Methanol Fueled Coach Engine," SAE#831744, R. Toepel, et al., October, 1983, International Fuel and Lubricants Meeting and Exposition, San Francisco, CA.

"Fuel Injuection Equipment for Heavy-Duty Diesel Engines for U.S. 1991/1994 Emission Limits," SEA#890851, G. Stumpp, et al., March, 1989, International Congress and Exposition, Detroit, MI.

"Design Choices for 1990's Low Emission Diesel Engines," SAE#880350, A. Gill, February, 1988, International Congress and Exposition, Detroit, MI.

Regulatory Impact Analysis, Oxides of Nitrogen Pollutant Specific Study and Summary and Analysis of Comments: Control of Air Pollution from New Motor Vehicles Engines: Gaseous Emission Regulations for 1987 and Later Model Year Light-Duty Vehicles, and for 1988 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines; Particulate Emission Regulations for 1988 and Later Model Year Heavy-Duty Diesel Engines, March 1985, Environmental Protection Agency Office of Air and Radiation, Office of Mobile Sources.

Figure 1: Particulate - NOx Trade-Off
Transient Emission Data



BS NOx - G/BHP-HR

Source SAE#831744.

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Figure 1 suggests that, should EPA propose a NO_X standard lower than proposed, it would also be necessary to, at the very least, set upper emission limits for HC and PM emissions to preclude significant increases in these emittants. However, since data collected using the proposed 8-mode steady-state test procedure are inconclusive as to whether increases to HC and PM emissions can be accurately measured,[83] EPA currently would have no way to enforce HC and PM emission limits. It would be inappropriate to promulgate a lower NO_X standard when no means are currently available to measure accurately and verify that no significant increases in HC and PM emissions result from a lower NO_X standard. EPA is proposing the NO_X standard at 6.9 g/bhp-hr (9.2 g/kw-hr) because it not only provides a substantial NO_X emission reduction, but also minimizes the risk of causing a large HC and PM emission tradeoff.

iii. Time for Test Procedure Evaluation and Validation. EPA is currently involved in an aggressive program, in partnership with the Engine Manufacturers Association (EMA), to determine what a realistic test procedure should be in order to predict even greater emission reductions than those proposed in this rule. This test procedure would be capable of predicting emissions of NO_X from the full range of advanced technologies, such as electronic fuel control, that are expected to result should tighter standards be promulgated at a later date. This test procedure would also be capable of predicting HC, CO and PM emissions. It will take at least two to three years to develop such a procedure for reasons explained as follows. The operating characteristics of a representative range of equipment must first be evaluated. Evaluation of existing emission test procedure options must then be evaluated against prototype test procedures based on real in-use operation data. Should it be determined that new test procedures must be developed, additional time would be required to develop the new test procedures, and to collect sufficient data with the new test procedures to determine effective emission standards.

Given the aggressive timeline for implementation of NO_X standards, EPA does not believe that it can complete its development of new test procedures and propose and finalize such procedures in time to implement these procedures in testing the engines subject to these regulations. Moreover, manufacturers will not be able to design their engines to comply with new test procedures until those procedures are promulgated.

d. *Conclusion*. EPA estimates that proposing a lower NO_X emission standard would delay implementation of nonroad standards by at least four years. Furthermore, EPA has determined that delaying the implementation of any NO_X standard would unnecessarily delay significant pollution reductions by several years. It would be inappropriate for EPA to forego the benefit of a 37% reduction in NO_X emission afforded by the proposed 6.9 g/bhp-hr (9.2 g/kw-hr) standard for several years while exploring the ability of existing and new test procedures to measure even greater reductions in emissions. The proposed rule would realize substantial NO_X emission reduction in the near future because the proposed NO_X standard is within the measurement capability of the proposed test procedures. The proposal thus results in significant NO_X emission reductions in the near term while work is going on to develop test procedures for more stringent standards and while manufacturers work to design engines and equipment capable of meeting a lower standard at a later date.

H. Availability of Windfall Credits Under Proposed Averaging, Banking and Trading Program

1. Benefits of an Averaging, Banking and Trading Program

EPA is proposing an averaging, banking, and trading program to provide the flexibility required to accommodate a number of small engine applications that could be excluded from the market by the proposed 6.9 g/bhp-hr (9.2 g/kw-hr) NO_X emission standard. EPA expects that perhaps 5% of engine families may need turbochargers to meet the proposed standard if averaging, banking and trading is not available. These are currently naturally-aspirated engines of less than 100 hp (74.3 kw) that are used in small equipment applications (e.g., small loaders and backhoes). These small equipment applications are less able to accommodate the engine package dimension changes caused by a turbocharger without customized engine design work or equipment redesign. Engine manufacturers are less likely to make the necessary modifications to meet the packaging needs for these small equipment applications because they represent such a small segment of the nonroad market. Therefore, it is possible that manufacturers would have to discontinue or delay sales on a number of these small equipment applications.

The proposed averaging, banking, and trading program provides a convenient means to accommodate this small segment of the market without compromising air quality. Engine manufacturers have indicated they would use averaging, banking, and trading to help their customers avoid equipment redesign. This program provides the flexibility to accommodate this small segment of the market, thus avoiding disruptions to small equipment customers.

2. Use of Emission Safety Margins to Ensure Emission Compliance

Typically, manufacturers design prototype engines to perform at an emission level below the emission standard to help ensure that the engines remain in compliance with the standard for their entire useful life. A manufacturer's "emission safety margin" is the percent that the emission target for an engine family is below the actual emission standard. Manufacturers have generally indicated a desire to design engines with a safety margin of approximately 20% for NO_X.

EPA does not believe that manufacturers would use the emission safety margin to generate credits. To obtain credits for a particular engine family, the manufacturer must set a family emission limit that it is liable for its engines meeting in-use. Credits would be calculated using the difference between the emission standard and the family emission limit. To ensure compliance with this family emission limit, the manufacturer would still produce an engine design that can meet an emission target that produces the necessary safety margin below the family emission limit. Since the emission safety margin is always considered necessary to avoid noncompliance in-use, the safety margin should not impact credit calculation. A manufacturer would only be willing to take credits against any additional emission reduction beyond the emission safety margin that an engine family is able to produce.

3. Windfall Emission Credits

Ideally, the averaging, banking and trading program will encourage production of cleaner engines and the net effect on the environment is neutral or emission beneficial. However, if credits were given for low-emitting engine designs that would necessarily have been produced even if there had been no averaging, banking and trading program, there could be "windfalls" to the manufacturers of those designs that would have a negative impact on air quality.

[83] Chapter 2.1.1 of the draft Regulatory Support Document.

Windfall credits can come from two sources. One source is those engine designs that, when modified to meet the standard, inherently produce very low emissions even if averaging, banking and trading were not proposed. The other source is those currently unregulated engine designs that produce very low emissions with no modification. Either of these sources provide emission benefits that would have resulted even if averaging, banking and trading were not proposed.

EPA is opposed to allowing any windfall credits that would erode the emission benefits of this proposal. The following two sections present EPA's analysis as to whether windfall credits would result from this proposed rule.

i. Windfall Credits from Low Emission Designs that Do Not Result from Averaging, Banking and Trading Incentives. Separate from any incentives to build cleaner engines provided by the proposed averaging, banking and trading program, EPA does not expect any engine families modified to meet only the proposed NO_X emission standard to achieve a NO_X emission level low enough to earn credits. EPA analysis has determined that the emission control technologies that can and will be used to meet the proposed 6.9 g/bhp-hr (9.2 g/kw-hr) NO_X standard will result in emission levels that cluster relatively close to the standard. Table 7 demonstrates that the average safety margin for the on-highway engine fleet has gone from 36% in the 1989 model year when the NO_X standard was 10.7 g/bhp-hr (14.3 g/kw-hr), to just 10% in the 1991 model year when the NO_X emission standard was much more stringent (i.e., 5.0 g/bhp-hr).

TABLE 7.—NO_X EMISSION SAFETY MARGIN VS. MODEL YEAR

Model year	NO_X standard	Average EDE NO_X level	Safety margin (percent)
1989	10.9	6.9	36
1990	6.0	5.2	13
1991	5.0	4.5	10

As demonstrated in Table 7, it is clear that manufacturers, on average, were not maintaining a 20% safety margin below the 1990 model year on-highway NO_X standard. For the majority of engine families, the emission data engines are producing emissions close to the standard. For these families, the manufacturers would not risk setting family emission limits lower than the proposed standard. To do so would risk flagging themselves for an EPA in-use surveillance audit and possible in-use compliance failure.

If a manufacturer wanted to build exceptionally clean technology to earn legitimate credits, that manufacturer would incur additional burden over that required to meet this proposal. This would be an appropriate use of the averaging, banking and trading program, providing incentive for manufacturers to develop and introduce technologies that would not otherwise be introduced.

ii. Windfall Credits That Result From Unregulated Engines with Inherently Low Emissions. As part of its technology assessment, EPA estimated the percentage of current production nonroad engine designs capable of meeting the 6.9 g/bhp-hr (9.2 g/kw-hr) NO_X emission standard with no modification. As its criterion, the Agency assumed that engines that did not fall at or below the emission standard minus the safety margin would have to be modified. For this analysis, the 13% average available safety margin observed in the 1990 model year onhighway program (Table 7) was used because it is the closest approximation to what EPA expects to see for this proposal. Therefore, all current production designs producing above a 6.0 g/bhp-hr NO_X emission level would be modified.

Table 8 shows the data summary of the current nonroad production engines that were emission tested by EPA and EMA.[84] Based on these data, only the indirect-injected naturally-aspirated (IDI/NA) technology engine design was well below the standard. Without further information, EPA is assuming that only this technology will generally escape some level of NO_X emission control. Therefore, approximately 2% of yearly engine sales would not require modification under this regulation. All other engines (98%) will require varying levels of modifications to comply with the proposed NO_X standard.

TABLE 8.—PERCENT OF CURRENT NONROAD ENGINES THAT REQUIRE NO MODIFICATIONS TO CERTIFY

	Emission rate (g/hp-hr)	Percent of market	Average hp
Technologies requiring no MODS:			
IDI/NA Engine	5.4	2	66
Total		2	
Technologies requiring MODS:			
TA Engine—Category 1	6.6	10	283
DI/NA Engine—Category 1	6.9	5	56
DI/NA Engine—Category 2	8.5	28	74

[84] Chapter 2.2.1, draft Regulatory Support Document.

TABLE 8.—PERCENT OF CURRENT NONROAD ENGINES THAT REQUIRE NO MODIFICATIONS TO CERTIFY—Continued

	Emission rate (g/hp-hr)	Percent of market	Average hp
T Engine	11.1	35	100
TA Engine—Category 2	11.9	20	296
Total		98	

DI = Direct Injection.
IDI= Indirect Injection.
NA = Naturally Aspirated.
TA = Turbocharged & Aftercooled.
T = Turbocharged but not aftercooled.

EPA analyzed the magnitude of the credits available from this 2% of the current engine fleet, and what these credits would be worth. Tables 9 and 10 summarize the quantity of NO_X emission that would be available as credits from the current fleet and the quantity of NO_X emission that must be reduced or averaged against to meet the proposed standards.

TABLE 9.—NO_X EMISSION AVAILABLE FOR CREDIT

Technology category	Emission rate g/bhp-hr	Percent of market	Total kg/hr
IDI/NA Engine	5.4	2	−250
Total g/bhp-hr across fleet below the standard			−250

At current emission levels, the total engine market covered by this proposal would generate a NO_X emission credit of approximately 250 Kilograms per hour (Kg/hr) to be banked in the 1997 model year. The credit will not occur until the 1997 model year because the naturally aspirated engines fit in the 50 to 100 hp engine category, which is proposed for certification for the 1998 model year. Therefore, banking would be allowed one year prior to implementation, or the 1997 model year.

The amount of NO_X emission generated above the emission target level of 6.0 g/bhp-hr (8.0 g/kw-hr) is calculated in the Table 10. There are approximately 185,000 Kg/hr of NO_X emission to be reduced from this fleet to allow the engines needing modification to comply with the 6.0 g/bhp-hr (8.0 g/kw-hr) NO_X emission target.

Comparing the emission credits (approximately 250 Kg/hr) to the amount of emissions that need to be reduced (approximately 185,000 Kg/hr) shows that the credits represent less than one fifth of one percent of the reduction expected from this rule beginning in the 1997 model year.

While one fifth of one percent is arguably small, EPA does not wish to propose an averaging, banking and trading program that allows any net loss in program benefits. EPA has explored the prospect of not allowing IDI/NA engine models to participate in the averaging, banking and trading program, because IDI/NA engines in the program would be able to obtain credits for emission levels that they would have attained regardless of EPA regulation.

TABLE 10.—NO_X EMISSION TO BE REDUCED

Technology category	Emission rate g/bhp-hr	Percent of market	Total kg/hr
DI/NA Engine (category 1)	6.9	4	640
DI/NA Engine (category 2)	8.5	29	17,000
TA Engine (category 1)	6.6	10	20
TA Engine (category 2)	11.9	20	110,000
T Engine	11.1	35	57,000
Total g/bhp-hr across fleet above the standard			185,500

EPA is not in favor of excluding IDI/NA engine designs from the averaging, banking and trading program. EPA does not wish to discourage the continued and increased use of IDI/NA technology through continuing improvements to existing models, and introduction of new models because IDI/NA engines represent one of the lowest NO_X emission producing control technologies available. In the absence of emission regulation, the industry trend has increasingly been to convert from existing IDI/NA engine designs to DI/NA engine designs due to the lower manufacturing costs associated with DI engine component construction. Absent EPA regulation, the NO_X inventory could go up as the last IDI/NA engine designs are converted to DI/NA systems.

EPA expects that manufacturers will stop converting low-emitting IDI/NA engine designs to higher-emitting DI/NA engine designs as a result of the regulations proposed herein. Moreover, manufacturers may increase use of IDI/NA engines as a result of these

regulations. Increased use of low-emitting IDI/NA technology beyond current unregulated use would carry out one of the legitimate purposes of the averaging, banking and trading program: encouraging use of cleaner technologies. However, EPA and the industry have concurred that it is unlikely that any manufacturer would change over to IDI/NA technology from DI/NA technology to meet the standards in this notice.[85] Based on manufacturers' assertions, EPA believes conversion from DI to IDI designs would only occur if credit incentives are available. Manufacturers may believe that the high cost of improving existing IDI/NA models and introducing new IDI/NA models is justified only if they can earn emission credits. Thus, exclusion of all IDI/NA engines from the averaging, banking and trading program may result in reduced use of this engine type. EPA believes that this result would not be beneficial to the environment.

There are a number of complications that arise when EPA considers excluding only those IDI/NA production engine models existing before regulation. Any program that would exclude only a subset of the IDI/NA engine models produced would have to be able to discriminate between engine models that were in the market before regulation and those engine models that were introduced as new models legitimately to benefit from averaging, banking and trading credits. These new models could be actual new engine designs or they could be modifications of existing engine designs. EPA's ability to audit such engine models to determine which are pre-existing and which are new engine designs is contingent on information available to EPA on existing models and the criteria available from which EPA would make determinations. The criteria available to identify differences in engine models are embodied in the engine family determinants in the proposed regulations. These criteria are necessarily broad to allow groupings of similar engine models to minimize testing and certification burden on manufacturers. Therefore, new IDI/NA engine models could be grouped in the same engine families as the pre-existing engine models EPA would wish to exclude from averaging, banking and trading. The information available to EPA on pre-existing engine models will not always be sufficient to distinguish pre-existing engine models that should be excluded from modified and new engine models that should not.

Another complication to excluding existing IDI/NA engine models arises from the industry's accepted engineering practice of introducing new engine designs to market before the required implementation date. It will be a number of years between the publication of this notice and the full implementation of the regulations. Manufacturers are beginning now to use the available time to optimize engine designs to meet the anticipated standards. It is common for engine manufacturers to introduce early models of the engines they expect to use to meet regulations to monitor durability and in-use performance. By the 1998 model year when the majority of IDI/NA engines will first be required to certify,[86] it will be difficult to impossible for EPA to differentiate between pre-existing engine models and those designed to legitimately meet the emission standards. Because a particular engine configuration has a sales life of about 10 years, it is possible that no current IDI/NA engine model will exist in the same configuration by the 1998 model year. It is conceivable that all new IDI/NA engine models will have been modified in consideration of the regulations proposed in this notice. EPA also believes that, should a small number of pre-existing IDI/NA engine models still be in production in the 1998 model year, within a very few years thereafter the remaining engines will phase out as they reach the end of their production life cycle, and thus the small remaining windfall will disappear with these engines.

Moreover, if EPA attempted to exclude existing or "successor" models from the averaging, banking and trading program, there is reason to believe that IDI/NA engines will continue to be phased out of existence because the benefits of continuing to use such engines will be reduced. Thus, exclusion of existing or "successor" engines from the program may result in a reduction in the use of IDI/NA engines, which is not beneficial to the environment.

Weighing the potential uncertainties and complications of attempting to administer and enforce a program that excludes current IDI/NA engine models from participation in the averaging, banking and trading program, considering the short lifetime over which this exclusion would be necessary and considering the possible loss of such engines if they are excluded, EPA has decided to propose not to exclude pre-existing IDI/NA engine models but to allow all engine families eligible for certification to participate in the averaging, banking and trading program as proposed.

EPA is taking comment on whether and how to disallow IDI/NA engine families from participating in the proposed averaging, banking and trading program or other methods by which to include IDI/NA engines but disallow credits for those IDI/NA engine families that predate this notice.

VIII. Technology Assessment

EPA examined the impact of these proposals on the technology used in manufacturing current nonroad engines and equipment. Information from this assessment discussed in this section was then used in developing the cost analysis.

A. Impact of Proposal on Engines

EPA, with input from engine manufacturers, analyzed the likely changes in engine technology that would be driven by the proposed level of standards in this notice. This task was complicated by the diversity of engines and equipment potentially impacted by this rule. The task was also complicated by a lack of available information about specific engine sales and the percentage of sales used in each equipment type. While some manufacturers provided this information to EPA, most manufacturers were unwilling to do so, citing concerns that, despite EPA assurances of confidentiality, potential leakage of this information to the public would provide their competitors an unfair advantage over them in the marketplace. Therefore, EPA has supplemented the available industry information with information collected from contractors, state agencies, marketing brochures and reports, information from test programs, and EPA's analysis of its own historical on-highway heavy-duty engine database. EPA analyzed the information gathered from these diverse sources and developed a list of projections concerning the types of technology that would be needed to meet the standards proposed in this notice and the percent impact on market mix.

The general technical projections were shared with a representative cross-section of engine manufacturers.[87] The projections were adjusted after consideration of engine manufacturers' comments. The revised general technical projections are discussed at

[85] Chapter 2.2.1.4 and 2.2.6.1, draft Regulatory Support Document.

[86] Almost all IDI/NA engine models are between 50 to 100 horsepower (37.3 to 74.6 kw).

[87] Chapter 2.2.6, draft Regulatory Support Document.

length in Chapter 2.2.6. of the six draft Regulatory Support Document.

The revised general technical projections were then combined with estimates of what the technology sales mix would be in the first year that regulations are proposed to be applicable (that is, the 1996 model year) if no regulations were implemented. Combining this information, EPA has predicted the likely percentage of additional penetration of specific technologies due to the proposed emission standards (see Table 11). The percent of increased technology usage reported in Table 11 does not reflect the impact of the proposed averaging, banking, and trading program. This program would be used by an engine manufacturer to organize its technology mix such that it could forego usage of certain technologies that cause equipment impacts. For example, EPA estimates that averaging, banking, and trading provides sufficient flexibility to allow engine manufacturers to avoid use of turbochargers. EPA's methodology is discussed at further length in Chapter 2.2.5. of the draft Regulatory Support Document.

TABLE 11.—SUMMARY OF TECHNICAL MARKET MIX PENETRATION ESTIMATES BEFORE ADJUSTMENT FOR AVERAGING, BANKING, AND TRADING

[Percent of Market]

Technology	No stds.	With stds.	Percent due to stds.
Retarded timing	.....	98	98
Indirect injection	2	2	0
Direct injection	98	98	0
Naturally-aspirated	35	35	[1] 5
Low sac fuel injectors	10	10	0
Improvements to rotary pumps and nozzles	.....	20	20
In-line pumps or unit injectors	.....	.....	0
Turbochargers	65	65	[1] 5
Air-to-water aftercoolers	15	25	10
Smoke limiter	30	70	40

[1] This percentage becomes 0% if the averaging, banking, and trading program is considered.

B. Impact of Proposal on Equipment

EPA also considered the effects of any required engine changes on equipment. EPA is concerned with equipment impacts mainly due to statutory language concerning lead time. The effects of the proposed standards on equipment are not only caused by the level of proposed standards, but also by an engine manufacturer's ability to use such flexibilities as the averaging, banking, and trading program (discussed in section VI.D.13. "Averaging, Banking, and Trading Program") and the staggering of effective dates (discussed in section VI.A. "Overview"). Engine manufacturers have indicated they would use proposed program flexibilities to minimize the burden on their customers.[88]

To compile information on the likely effect of the proposal in this notice on equipment manufacturers, EPA accepted input from manufacturers of both engines and equipment, as well as manufacturers of equipment only. Manufacturers were asked to consult with their engine suppliers to assess the design impact of the proposed rules on their equipment in the areas of powertrain design, package design, and operation/maintenance requirement changes.

Based on input from equipment manufacturers, EPA's technical projections discussed previously, and EPA's own experience with on-highway engines, the Agency has determined that, even without the proposed averaging, banking, and trading program, the proposed emission standards in this notice would not impact the design of equipment using engines greater than 100 hp (74.6 kw). Most of these engines are either already turbocharged or would not require turbocharging, and most are installed in larger equipment with looser packaging constraints than smaller equipment. As a general rule for these larger engines, engine manufacturers would be capable of meeting or exceeding power and fuel economy requirements, as well as complying with these proposed emission standards, without impacting the equipment design.

If EPA were not proposing an averaging, banking, and trading program, the size, performance, and fuel economy of a small percentage of equipment using engines between 50 and 100 hp (37.3 and 74.6 kw) could be impacted. The types of equipment that employ smaller engines are generally also under more severe packaging constraints than equipment employing larger engines. Without averaging, banking, and trading, most equipment modifications would be due to packaging redesign to accommodate a turbocharged version of a small naturally-aspirated engine that was near its power limit. Based on EPA's analysis of the range of technologies available to small engines to meet the standards, and based on EPA's experience with comparable on-highway engines, this was estimated to represent only 5% of all engines included in this rule or approximately 15% of the engines between 50 and 100 hp (37.3 and 74.6 kw).

Based on the flexibilities afforded by EPA's proposed averaging, banking, and trading program, the Agency has determined there will be no impact on equipment that uses the 50 to 100 hp (37.3 and 74.6 kw) engines. The small percentage of engines that both require substantial design changes and are used in equipment with severe packaging constraints can be averaged against a substantially larger population of higher horsepower engines that are technologically easier to control without equipment impact. The net result is a minimal impact on equipment due to the proposed regulations.

The late introduction date of the 1998 model year afforded by the proposed staggered effective dates for engines between 50 and 100 hp (37.3 and 74.6 kw) allows additional time to plan control strategies for these smaller engines that would minimize equipment impact. It also provides equipment manufacturers sufficient lead time to schedule any small packaging design changes such as bracket and hose relocations to correspond to the normal redesign cycle of those limited pieces of

[88] Chapter 2.2.6, draft Regulatory Support Document.

equipment. These equipment impacts are discussed at greater length in Chapter 2.3.1 of the draft Regulatory Support Document.

IX. Cost Analysis

EPA estimates the average annual cost of this rule to be $29 million. The cost analysis estimates the average annual cost and the price increase to consumers assuming that all manufacturers participate in the averaging, banking, and trading program. Carryacross of emission data from similar on-highway engine families will be allowed. EPA expects that this will decrease the amount of certification testing, thereby lowering compliance costs beyond the estimated cost.

EPA expects that manufacturers will maintain current power and fuel economy levels after designing engines to comply with the proposed regulations. Therefore, this cost analysis accounts for the cost of hardware and design changes needed to maintain current levels of power and fuel economy.

A complete analysis of these costs can be found in Chapter 3 of the draft Regulatory Support Document.

A. Average Annual Cost

EPA calculated manufacturers' costs on an annual average basis. These costs consider the aggregate cost to all engine manufacturers to design and certify all current engines to meet the NO_X and smoke standards proposed in this rule. This average annual cost estimate includes costs for hardware, research and development, test facilities, certification of engine families, emission defect reporting requirements, and selective enforcement auditing costs. The average annual cost is approximately $29 million.

B. Consumer Cost Summary

In assessing the cost to the consumer, three areas are analyzed: change to the cost of the engine, cost of fuel, and cost of maintenance.

1. Cost of Engine

As a conservative assumption, EPA assumes that increased costs to the manufacturers will be fully passed on to the consumer through an increase in the retail price of the engine. The increase in the retail price of the engine to the consumer is estimated using a percentage increase over the average amortized and discounted [89] per engine manufacturers' cost, weighted by the sales mix. This increase in retail price is referred to as a retail price equivalent (RPE) increase. Details on how RPE is calculated and the rationale behind this methodology can be found in Chapter 3 of the draft Regulatory Support Document. The estimated one-time present value RPE increase due to the proposed rule in 1996 is $110 per engine.

2. Fuel Cost

It is expected that most nonroad engine manufacturers will retard the fuel injection timing on large nonroad CI engines in order to reduce NO_X emissions. EPA testing suggests that retarding fuel injection timing to meet the 6.9 g/bhp-hr (9.2 g/kw-hr) NO_X standard will increase fuel consumption in the range of 3 to 5%.[90] Equipment manufacturers have indicated that nonroad equipments' large nonroad CI engine fuel systems are designed to allow a full day of work between refueling. The market demands that the equipment manufacturer design a fuel tank to exceed the daily work hours by approximately 10% (for example, 11–12 hours on a 10 hour shift). While fuel economy itself is not as important as power and durability, the ability to work a full shift without refueling is apparently critical to sales.

The magnitude of the fuel consumption penalty due to the proposed emission standards will dictate how the engine manufacturer proceeds. If the fuel consumption penalty is minimal, the manufacturer may avoid adding additional technology by optimizing existing designs to restore fuel economy. However, if the fuel consumption penalty is even 1 to 3%, the engine manufacturer will have to use that technology mix necessary to maintain the baseline fuel consumption rate in order to avoid passing the cost of fuel tank redesign on to its customers.

For this cost analysis, EPA assumed, when system optimization would not suffice, the engine manufacturer would add those technologies necessary to restore preregulation fuel consumption. Therefore, any costs normally attributed to higher fuel costs are reflected in higher variable hardware costs (for example, for additional aftercoolers and higher pressure rotary pumps) in section IX.B.1. "Cost of Engine." These higher costs are already included in the $110 per engine estimate. This is a reasonable costing approach since EPA experience with similar on-highway large CI engines demonstrated that the industry-wide fuel consumption decreased as regulations became increasingly stringent.[91]

3. Maintenance Cost

The only technology which EPA believes could likely increase maintenance cost is the addition of a turbocharger to a naturally-aspirated engine. However, EPA has determined that addition of turbocharger technology is not necessary to meet standards proposed in this notice.

To cover those rare cases when a manufacturer might have to incorporate a turbocharger (for example, the 1998 model year), EPA reviewed maintenance manuals for on-highway large CI engines which were certified in turbocharged and naturally-aspirated versions. The recommended maintenance schedules for oil changes appeared no different in the two versions. EPA could not identify an increase in any other turbocharger recommended maintenance over a similar naturally-aspirated engine. Therefore, EPA is not including any maintenance cost impact.

X. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for criteria pollutants which adversely affect human health, vegetation, materials, and visibility. Three criteria pollutants, nitrogen dioxide (NO_2), ozone (O_3), and particles smaller than 10 microns (PM_{10}), are impacted by NO_X emission. EPA has determined the standards set in this rule will reduce NO_X emission and help areas come into compliance with the NAAQS. The following provides a summary of the reduction expected and the health effects of NO_X emission. The underlying analysis is described in greater detail in the draft Regulatory Support Document.

A. Estimated NO_X Reduction

The Agency believes the proposed standards should reduce average per-unit NO_X emission from large nonroad CI engines by 27% before the year 2010, with a 37% reduction before either a complete fleet turnover or the year 2025. This will result in annual nationwide reductions of roughly 800,000 tons of

[89] Costs were amortized and discounted according to the Kolb-Scheraga Two-Step Discounting Procedure. This procedure uses two different discount rates. Costs which displace private investment are amortized and discounted at ten percent, the marginal rate of return on private investment. Costs which displace consumption are discounted at three percent, the approximate social rate of time preference. Refer to Chapter 3 of the draft Regulatory Support Document which outlines how costs were calculated. The methodology is explained in U.S. Environmental Protection Agency, "Supplemental Guidelines on Discounting in the Preparation of Regulatory Impact Analysis," Office of Policy, Planning and Evaluation, 1989.

[90] Chapter 2.4, draft Regulatory Support Document.

[91] Chapter 2.4, draft Regulatory Support Document.

NO_X by the year 2010 and over 1,200,000 tons of NO_X by the year 2025. Based on EPA projections of future emission levels, these reductions represent 4% of total nationwide annual NO_X emissions expected in 2010.[92]

These emission reduction estimates are based in part on information contained in the Agency's "Nonroad Engine and Vehicle Emission Study-Report."[93] In that study, two sets of nonroad emission inventories were developed. Inventory A relies primarily on data developed by the Agency. Inventory B incorporates equipment population and usage estimates provided to the Agency by manufacturers and manufacturer organizations. Because the aggregate nationwide results for the engines included in the current action are similar for both inventories, the analysis presented here is based on an average of data used to develop inventories A and B.

For the analysis summarized here, NO_X emission inventories were developed only for those pieces of equipment containing engines covered by this proposed regulation. The first step in this analysis was to calculate the average annual per-source NO_X emissions (that is, tons per year/unit) for uncontrolled and controlled engines. For uncontrolled engines, this was based on the ratio of the nonroad study results for the total annual emissions from these engines to the results for the number of engines in the in-use population. For controlled engines, this was based on the same ratio calculated after substituting the proposed standard of 6.9 g/bhp-hr (9.2 g/kw-hr) for the NO_X emission factors included in the nonroad study. These calculations yielded the results in Table 12, which indicate that the proposed standards represent a 37% reduction from current emission levels.

TABLE 12.—ESTIMATED ANNUAL PER-SOURCE NO_X EMISSIONS

[tons/year]

	Average per-source NO_X
Baseline (no control)	0.49
Controlled (6.9 g/bhp-hr) (9.2 g/kw-hr)	0.31

This result, applied to the estimates of current and future in-use engine populations, was used to estimate total annual emissions (that is, tons/year of NO_X) from these engines.

An estimate of the engine population in 1990 was available from the nonroad study. For future years, the population was projected based on estimates of annual engine consumption (that is, sales) and also engine attrition (that is, scrappage). EPA estimated annual engine consumption for years from 1960 through 2025. For most of the period from 1965 through 1990, these estimates were based on engine consumption data available from the Department of Commerce.[94] For years prior to 1965 and after 1990, it was assumed that sales did and will grow at 2% annually. Attrition rates (that is, likelihood, as a function of engine age, that an engine remains in service) for all engines included in this analysis were assumed to be the same as those reported by Energy and Environmental Analysis, Inc. in a report prepared for the California Air Resources Board (CARB).[95]

Using estimated engine consumption and attrition, EPA projected the total engine population for each year from 1991 through 2026. By applying the average annual per-source emissions calculated as described previously, EPA projected the total annual nationwide NO_X emission from engines included in the current proposal under the baseline (that is, no controls applied) and controlled scenarios. For the controlled scenario, EPA assumed that engines sold beginning in 1996 would meet the proposed standard of 6.9 g/bhp-hr (9.2 g/kw-hr) throughout their useful lives. The results of these calculations are summarized in Table 13.

TABLE 13.—PROJECTED ANNUAL NATIONWIDE NO_X EMISSIONS

[tons/year]

Year	Baseline	With proposed controls	Reduction from baseline	Percent of baseline
1990	2,120,000	2,120,000		
1996	2,190,000	2,180,000	10,000	0.5
2000	2,300,000	2,090,000	210,000	9
2005	2,490,000	1,980,000	510,000	20
2010	2,740,000	1,950,000	790,000	27
2015	3,030,000	2,010,000	1,020,000	34
2020	3,350,000	2,140,000	1,210,000	36
2025	3,690,000	2,330,000	1,360,000	37

The average annual per-source emission rates calculated in the preceding paragraph yield an average annual per-source benefit of 0.18 tons. Assuming this benefit would be realized each year for the entire useful life of an engine, EPA estimated the average total lifetime per-source emission reductions for engines included in the current proposal. In doing so, EPA applied the attrition rates discussed previously to weight the benefits accrued during each year of an engine's lifetime by the likelihood that the engine remains in service. As the benefits occur over time, the lifetime reductions were discounted to the year of sale to put them in present value (that is, year-of-sale) terms.

EPA guidance[96] provides a resolution to the dilemma of how to account for both displaced private investment and foregone consumption in evaluating the present value of environmental regulations. Benefits are discounted at

[92] U.S. Environmental Protection Agency, *National Air Pollutant Emission Estimates: 1940–1990*, EPA–450/4–91–026, November, 1991, p. 46.

[93] See footnote 2.

[94] U.S. Department of Commerce, Bureau of the Census, Current Industrial Report MA35L–1: Internal Combustion Engines, U.S. Government Printing Office, Washington, DC, 20402.

[95] Energy and Environmental Analysis, Feasibility of Controlling Emissions from Off-Road, Heavy-Duty Construction Equipment—Final Report, Arlington, VA, December 1988, p. 6–19.

[96] U.S. Environmental Protection Agency, "Supplemental Guidelines on Discounting in the Preparation of Regulatory Impact Analysis," Office of Policy, Planning and Evaluation, 1989.

the social rate of time preference which can be approximated by the consumption rate of interest. This after tax rate is estimated in the Supplemental Guidelines on Discounting to be, at most, three percent. The benefit analysis was calculated on the basis that a 3% rate is appropriate for discounting future emission reduction benefits for these engines. Table 14 compares the lifetime per-engine NO_X emission reductions discounted at 3% and undiscounted.

TABLE 14.—LIFETIME NO_X EMISSION REDUCTIONS PER ENGINE

Discount rate (percent)	Reduction (tons)
None	2.9
3	2.2

Averaging, banking, and trading is designed to provide manufacturers flexibility in meeting the proposed NO_X standard. The proposal contains a number of measures to protect against potential adverse environmental impacts and to ensure that the program provides an environmental benefit in reducing overall emissions.

Allowing manufacturers to bank credits one year in advance of the standards provides an incentive to reduce emissions before the time required, and means that environmental benefits from emission reductions could be achieved earlier than they would otherwise occur. Banked credits are usable for only three years to ensure credits are not used in a way to adversely impact the environment. Because of the marketable value of emission credits generated, banking can also promote the development and earlier introduction of advanced emission control technology, which would provide benefits to the environment sooner than would otherwise occur. Technological advances used on engine families with family emission levels that are below the standard can serve as the basis for future, more stringent emission standards. Finally, the possibility that some of the credits generated could go unused would create an environmental benefit.

B. Health and Welfare Effects of NO_X Emissions

NO_X is the general term used to denote oxides of nitrogen, primarily nitrogen oxide (NO) and nitrogen dioxide (NO_2). As stated previously, NO_2 is a criteria pollutant for which the EPA has established a NAAQS.

At elevated concentrations, NO_2 can adversely affect human health, vegetation, materials, and visibility. Although the NAAQS for NO_2 is currently violated only in Southern California, EPA is concerned with maintaining the standard in the rest of the nation and meeting Prevention of Significant Deterioration (PSD) requirements for NO_2 in areas that are currently in attainment.

NO_X emissions also react in the atmosphere to form particulate nitrates, some of which may be toxic, mutagenic or carcinogenic.[97] These secondary PM_{10} particles contribute greatly in some areas, especially parts of California, to nonattainment of the NAAQS for PM_{10}, which applies to particles under 10 microns in diameter.[98] Because these small particles are carried deep into the lung, they are known to cause potentially serious respiratory effects. Particulate nitrates also contribute to impaired visibility, which, although not a direct health problem, is perceived by the public as evidence of serious air pollution.

Recent findings from a report by the National Academy of Sciences (NAS)[99] on ozone provide support for electric utility NO_X emission controls within the acid rain program. NAS indicates that these controls would benefit many areas, particularly in the northeastern United States by reducing not only acidic deposition but also ozone levels.

Acidic deposition is composed of acidic aerosols—liquid droplets and solid particles suspended in the atmosphere. Acidic aerosols are generated when NO_X either reacts to form nitrates or contributes to the formation of sulfates from sulfur dioxide gas. Acidic aerosols can irritate the respiratory system and increase the incidence and severity of respiratory diseases. Acidic aerosols can also accumulate airborne heavy metals and toxic chemicals and thereby deposit them in the most vulnerable areas of the lung. Interactions of ozone with NO_X and sulfur oxides may also contribute to the formation of acidic vapors which might have a direct effect on health and welfare, as well as other indirect effects following their deposition on surfaces.

Further, the deposition of NO_X into the atmosphere can increase surface water nutrient loading and thereby damage important water ways such as the Chesapeake Bay by causing algae blooms and a decrease in oxygen levels. Although oxides of sulfur are the primary cause of long term surface water acidification, NO_X emissions also contribute to fish kills caused by highly acidic springtime runoff from melting snow.[100]

C. Health and Welfare Effects of Tropospheric Ozone

EPA's primary reason for controlling NO_X emissions from large nonroad CI engines is the role of NO_X in forming ozone (O_3). Of the major air pollutants for which NAAQS have been designated under the CAA, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant and an important component of smog. Ozone is a product of the atmospheric chemical reactions involving nitrogen oxides and other compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and nitrogen oxides from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of NO_X and VOC can result in urban and rural areas exceeding the national ambient ozone standard by a factor of three. The ozone NAAQS represents the maximum level considered protective of public health by the EPA.

Ozone is a powerful oxidant causing lung damage and reduced respiratory function after relatively short periods of exposure (approximately one hour). The oxidizing effect of ozone can irritate the nose, mouth, and throat causing coughing, choking, and eye irritation. In addition, ozone can also impair lung function and subsequently reduce the respiratory system's resistance to disease, including bronchial infections such as pneumonia.

Elevated ozone levels can also cause aggravation of pre-existing respiratory conditions such as asthma. Ozone can cause a reduction in performance during exercise even in healthy persons. In addition, ozone can also cause alterations in pulmonary and extrapulmonary (nervous system, blood, liver, endocrine) function.

The current NAAQS for ozone of 0.12 ppm is based primarily on the level at which human health effects begin to

[97] California Air Resources Board, *The Effects of Oxides of Nitrogen on California Air Quality*, Report Number TSD–85–01, March, 1986, p. iii.

[98] *CARB, The Effects of NO_X*, p. v.

[99] National Research Council, *Rethinking the Ozone Problem in Urban and Regional Air Pollution*, National Academy Press, Washington, DC, 1991.

[100] Fisher, D. and Oppenheimer, M., "Atmospheric Deposition and the Chesapeake Bay Estuary", Journal Ambio, Volume 20, pp. 102–108 (1991).

occur. However, ozone has also been shown to damage forests and crops, watershed areas, and marine life.[101] The NAAQS for ozone is frequently violated across large areas in the U.S., and even after 20 years of efforts aimed at reducing ozone-forming pollutants, the ozone standard has proven to be exceptionally difficult to achieve. High levels of ozone have been recorded even in relatively remote areas, since ozone and its precursors can travel hundreds of miles and persist for several days in the lower atmosphere.

Ozone damage to plants, including both natural forest ecosystems and crops, occurs at ozone levels between 0.06 and 0.12 ppm.[102] Repeated exposure to ozone levels as low as 0.04 ppm can cause reductions in the yields of some crops above 10%.[103] While some strains of corn and wheat are relatively resistant to ozone, many crops experience a loss in yield of 30% at ozone concentrations below the NAAQS.[104] The value of crops lost to ozone damage, while difficult to estimate precisely, is on the order of $2 billion per year in the U.S.[105] The effect of ozone on complex ecosystems such as forests is even more difficult to quantify. However, growth in many species of pine appears to be particularly sensitive to ozone. Specifically, in the San Bernadino Mountains of southern California, the high ozone concentrations are believed to be the predominant cause of the decline of the endangered ponderosa pine.[106]

Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface, thereby contributing to global warming (that is, the greenhouse effect).[107]

D. Roles of VOC and NO_X in Ozone Formation

Both volatile organic compounds (VOC) and NO_X contribute to the formation of tropospheric ozone through a complex series of reactions. EPA's understanding of the importance of NO_X in this process has been evolving along with improved emission inventories and modeling techniques. The role of NO_X has been controversial because, depending on local conditions, NO_X reductions can either promote or retard ozone formation near the emission source(s), while downwind ozone concentrations will eventually decline in response to NO_X reductions.

In general, the ratio between the ambient concentrations of VOC and NO_X in a localized area is an indicator of the likely effectiveness of VOC and/or NO_X reductions as ozone control measures. If the level of VOC is high relative to the level of NO_X (that is, in a ratio of 20 to 1), ozone formation is limited by the amount of NO_X present, making reduction of NO_X emission an effective strategy for reducing ozone levels. Alternatively, if the level of VOC is low relative to the level of NO_X (that is, in a ratio of 8 to 1), efforts to control VOC would be expected to be a more effective means of reducing ozone concentration.

For many years, it was believed that ozone formation was VOC-limited in most nonattainment areas. Consequently, although both NO_X and VOC emissions are regulated for certain source types, the primary focus of past ozone abatement strategies has been VOC. However, many areas have yet to attain the ozone standard. In recent years, state-of-the-art air quality models and improved knowledge of atmospheric chemistry have indicated that control of NO_X in addition to VOC is necessary for effective reduction of ozone in many parts of the United States.

Based upon recent scientific research, NAS has determined that in many parts of the country NO_X control is generally a very beneficial strategy for ozone reduction. However, under some circumstances, NO_X reductions without accompanying VOC control may actually increase ozone in a few urban cores such as downtown Los Angeles and New York City.[108] In the recent report, researchers emphasize that both VOC and NO_X controls are needed in most areas of the U.S.[109]

Data presented in EPA's ROMNET study[110] indicate that a combined VOC/NO_X strategy would be more effective for ozone reductions than a VOC-only strategy. Based on the results of the ROMNET study, increased emphasis on NO_X reduction is necessary to attain the ozone standard in the ROMNET modeling domain.[111] The ROMNET report also stresses that in an effort to bring nonattainment areas into compliance, controls must be applied both in urban areas and in the outlying rural areas.

In some areas, VOCs emitted by vegetation combined with NO_X emitted by human activity can contribute to summertime ozone levels significantly exceeding EPA standards. For example, in some cities such as Atlanta, more VOC may be emitted by vegetation than by human sources, thus increasing the importance of NO_X reductions. Ozone formation in many rural areas is almost certainly controlled by NO_X emission due to the large VOC inventories from biogenic sources such as crops and trees.

Although both the ROMNET and NAS studies stress the need for additional NO_X controls, the emphasis is not merely a NO_X-only strategy. Rather, the importance of both VOC and NO_X in air quality management is stressed.

E. Smoke

Smoke from compression-ignition engines has long been considered a significant nuisance that can cause considerable economic, visibility, and aesthetic damage. The large carbon particles remain suspended for long periods and refract light, thus causing the negative environmental effect of reduced visibility. Furthermore, these particles are often wet and cause costly damage through soiling of urban buildings, homes, cars and other property. Such particles also soil human skin and clothes and are associated with increased odor. While there is no concrete connection between visible smoke and direct health effects, there are indications that visible smoke may have an adverse effect on health. In any case, there are substantial costs to society in terms of living with a dirtier environment or alternatively, paying to clean it up. Further, the public is particularly aware of this highly visible pollutant that comes into contact with them and their property. Public support for effective environmental programs is hampered by the negative impression brought about by the substantial nuisance of a visible pollutant that is left uncontrolled, especially given that the health effects of such pollutant are uncertain. It undermines EPA emission control programs to allow a highly

[101] U.S. Environmental Protection Agency, Review of the National Ambient Air Quality Standards for Ozone—Assessment of Scientific and Technical Information: OAQPS Staff Paper, EPA-450/2-92-001, June 1989.

[102] U.S. EPA, *Review of NAAQS for Ozone.*

[103] U.S. EPA, *Review of NAAQS for Ozone*, p. X-10.

[104] U.S. EPA, *Review of NAAQS for Ozone*, p. X-10.

[105] U.S. EPA, *Review of NAAQS for Ozone*, p. X-22.

[106] U.S. EPA, *Review of NAAQS for Ozone*, p. X-25.

[107] NRC, *Rethinking the Ozone Problem*, p. 22.

[108] NRC, *Rethinking the Ozone Problem*, pp. 359-377.

[109] NRC, *Rethinking the Ozone Problem.*

[110] U.S. Environmental Protection Agency, Regional Ozone Modeling for Northeast Transport (ROMNET), Project Final Report, EPA-450/4-91-002a, Research Triangle Park, NC, June, 1991

[111] The ROMNET modeling domain includes Connecticut, Delaware, Massachusetts, Maryland, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia, Washington, D.C., Vermont, and Virginia, as well as portions of Canada, Kentucky, Indiana, Maine, Michigan, New Hampshire, North Carolina, and Tennessee.

visible pollutant that can have substantial cost to society to remain uncontrolled while tightly controlling sources that emit no visible pollutants.

XI. Cost-Effectiveness

In evaluating various pollution control options EPA considers the cost-effectiveness of the control. The cost-effectiveness of a pollution control measure is typically expressed as the cost per ton of pollutant emissions reduced. Other things being equal, the Agency prefers to target emission reductions that cost less per ton of emissions reduced.

A. Cost Per Ton of NO_X Reduction

The proposed NO_X standard for large nonroad CI engines is estimated to have a cost-effectiveness of $86 per ton of NO_X removed from the exhaust of the affected engines. This is based on the ratio of the present value of the stream of projected costs to the present value of the stream of projected benefits.

B. Comparison to Cost-Effectiveness of Other Emission Control Strategies

The cost-effectiveness of the proposed nonroad NO_X standards may be compared to other CAA measures that reduce NO_X emissions. Title I of the 1990 Clean Air Act Amendments requires certain areas to provide for reductions in volatile organic compounds and NO_X emissions as necessary to attain the NAAQS for ozone. Title I specifically outlines provisions for the application of reasonably available control technology (RACT) and new source review (NSR) for major NO_X emitters. In addition, EPA anticipates that more stringent reductions in NO_X emission will be necessary in certain areas. Such reductions will be identified through dispersion modeling analyses required under Title I. The cost-effectiveness of these measures is generally estimated to be in the range of $100 to $5,000 per ton of NO_X reduced.[112]

In addition to applying NO_X control technologies to meet requirements under Title I of the Clean Air Act, many point sources will also be required to meet NO_X emission rate limits set forth in other programs, including those established under Title IV of the Act, which addresses acid deposition (that is, acid rain). EPA anticipates that the cost of complying with regulations required under section 407 of the CAA (Nitrogen Oxides Emission Reduction Program), which proposes nationwide limits applicable to NO_X emission from coal-fired power plants, will be between $200 and $250 per ton.

The cost-effectiveness of controlling NO_X emission from on-highway mobile sources has also been estimated. The Tier I NO_X standard for light-duty vehicles, which will be phased in starting in 1994, is estimated to cost $3,490 per ton of NO_X reduced. The 1998 heavy-duty highway engine NO_X standard is estimated to cost between $210 and $260 per ton of NO_X reduced and the recently proposed on-board diagnostics regulation is estimated to cost $84 per ton of NO_X reduced from malfunctioning in-use light-duty vehicles.

The cost-effectiveness of the VOC and NO_X control measures discussed above are summarized in Table 15.

TABLE 15.—COST-EFFECTIVENESS OF SEVERAL NO_X CONTROL MEASURES

Control measure	Cost-effectiveness ($/ton)
Tier I NO_X standard (LDVs)	3,490
Title I stationary source control	100–5,000
Heavy duty diesel standard (1998 on-highway)	210–260
Title IV stationary source control	200–250
On board diagnostics (LDVs)	84
Large nonroad CI engine standards	86

In summary, the cost-effectiveness of the standard included in the current proposal is favorable relative to the cost-effectiveness of several other NO_X control measures required under the Clean Air Act. To the extent that cost-effective nationwide controls are applied to large nonroad CI engines, the need to apply in the future more expensive additional controls to mobile and stationary sources that also contribute to acid deposition, as well as ozone nonattainment, nutrient loading, visibility, and particulate matter and nitrogen dioxide nonattainment may be reduced.

Furthermore, the cost-effectiveness of the NO_X control program proposed here is also favorable relative to several mandated VOC control measures. Because many state air quality planners will need to develop a mix of programs to reduce both VOC and NO_X in their nonattainment areas, the overall cost of reducing ambient ozone will be dependent on the cost-effectiveness of both VOC and NO_X controls. Hence, cost-effective NO_X control programs, such as the one proposed here, should result in lower overall ozone control costs. However, direct comparisons of dollar per ton estimates for NO_X and VOC control measures are difficult because the relationship between NO_X, VOC, and ambient ozone levels varies from area to area.

XII. Public Participation

A. Comments and the Public Docket

EPA welcomes comments on all aspects of this proposed rulemaking. While EPA is not publishing the proposed regulatory language, EPA welcomes comments on it. EPA has sent copies of the language to those business, environmental, and governmental entities expressing interest in this proposal and invites others to request a copy immediately. See the "Obtaining Copies of the Regulatory Language" at the beginning of **SUPPLEMENTARY INFORMATION**. Commenters are especially encouraged to give suggestions for changing any aspects of the proposal that they find objectionable. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–91–24 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by 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 will be made available to the public without further notice to the commenter.

B. Public Hearing

Any person desiring to present testimony regarding this proposal at the public hearing (see **DATES**) must notify the contact person listed above of such intent at least ten days prior to the opening day of the hearing. The contact person should also be given an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment.

[112] U.S. Environmental Protection Agency, The Clean Air Act section 183(d) Guidance on Cost-Effectiveness, EPA–450/2–91–008, November 1991.

Testimony will be scheduled on a first come, first serve basis. A signup sheet also will be available at the registration table the morning of the hearing for scheduling testimony.

EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Advance copies should be submitted to the contact person listed.

The official records 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 Air Docket, Docket No. A-91-24 (see ADDRESSES).

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

XIII. Administrative Requirements

A. 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 (RIA) be prepared. EPA determines that a regulation is "major" if the annual average costs of the requirements exceed $100 million. EPA has estimated that the annual average cost of the requirements in this regulation does not exceed $100 million. Therefore, an RIA has not been prepared. However, a draft Regulatory Support Document that addresses the cost impact of the requirements of these regulations has been prepared and is available in the docket.

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 are in the public docket for this rulemaking.

B. 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. EPA has prepared seven Information Collection Request (ICR) documents for this proposal. Copies of the ICR documents 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.

The seven ICR documents that have been prepared are:

EPA Document No.	Type of information	OMB control No.
ICR No. 783	Certification	2060-0104
ICR No. 11	Selective Enforcement Auditing.	2060-0064
ICR No. 282	Emission Defect Reporting.	2060-0048
ICR No. 10	Importation of Nonconforming Vehicles.	2060-0095
ICR No. 783	Averaging, Banking, and Trading.	2060-0104
ICR No. 12	Exclusions	2060-0124
ICR No. 95	Exemptions	2060-0007

Each ICR document estimates the public reporting, recordkeeping, and testing burden for collecting the specified information, 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., S.W. (PM-223Y); Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 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.

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that this rule will not have a significant effect on a substantial number of small entities. This regulation will affect manufacturers of large nonroad CI engines, a group that does not contain a substantial number of small entities. Manufacturers will be able to take advantage of the flexibility afforded by the averaging, banking, and trading program.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., I certify that this regulation does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 89

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: April 26, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93-11321 Filed 5-14-93; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates two rulemaking actions relating to Standard No. 205 and glazing materials used in areas not requisite for driving visibility. The first action involves a petition for rulemaking submitted by LexaMar Corporation, requesting that Test No. 16, "Weathering," no longer be applied to plastic glazing (Items 4 and 5 glazing) installed in areas not requisite for driving visibility. The second rulemaking concerns an agency proposal to reexamine the need to apply Test 1, "Light Stability," to glass and glass plastic glazing (Items 3 and 16 glazing, respectively) installed in areas not requisite for driving visibility. After

reviewing the rulemaking records, the agency has decided to terminate both rulemakings. The tests at issue are appropriate for glazing in areas not requisite for driving visibility since they evaluate not only visibility, but also other properties such as glazing strength and durability.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Gill, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6651.

SUPPLEMENTARY INFORMATION:

I. Background

This notice concerns Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials*, which specifies performance requirements for glazing materials for use in motor vehicles. The purpose of the standard is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.

Standard No. 205 provides that, with certain exceptions, glazing materials for use in motor vehicles (which are referred to as "Items" of glazing) must conform with the American National Standard Institute's "Safety Code for Safety Glazing in Motor Vehicles Operating on Land Highways" Z26.1–1977, as supplemented by Z26.1A, July 3, 1980 (ANSI Standard Z26.1). ANSI Standard Z26.1 sets forth 31 separate tests to which various types of glazing materials can be subjected.

This notice addresses two rulemakings concerning the appropriateness of applying certain specific tests to glazing in areas not requisite for driving visibility. The first rulemaking involves a petition for rulemaking submitted by LexaMar Corporation, a supplier of plastic glazing for motor vehicles. As explained below, LexaMar requested that the agency delete or modify Test No. 16, "Weathering," with respect to its applicability to plastic glazing (Items 4 and 5 glazing) installed in areas not requisite for driving visibility. The second rulemaking concerns an agency initiative to reexamine the need to apply Test 1, "Light Stability," to glass and glass plastic glazing (Items 3 and 16 glazing, respectively) installed in areas not requisite for driving visibility.

Both Test 1 and Test 16 evaluate the effect on light transmittance before and after irradiation procedures. At issue in both rulemaking is whether subjecting the glazing to the irradiation procedures solely affects the visibility properties of the glazing or whether irradiation also affects the strength of the glazing. If the irradiation affects glazing strength, then the tests are appropriate for all glazing, including glazing used in areas not requisite for driving visibility.

II. Applicability of Test 16 Weathering Test to Plastic Glazing

As explained above, ANSI Standard Z26.1 sets forth a variety of tests to which glazing materials are subjected. Test Number 16, "Weathering," evaluates whether plastic glazing will successfully withstand exposure to simulated weather conditions over an extended period of time. The weathering test specifies that the glazing will be exposed to a carbon arc light source and intermittent water spray at elevated temperatures. After being exposed to these conditions for 1000 hours, the luminous transmittance of the glazing samples is then evaluated. Several different items of glazing, including item 4 and item 5 plastic glazing, are subject to the weathering test.

On November 11, 1991, Mr. Bruce Hudson submitted a petition on behalf of LexaMar, requesting that the agency amend Standard No. 205 with respect to the applicability of the weathering test to plastic glazing. The petitioner explained that LexaMar supplies rigid plastic panels used as T-top panels and sun and moon roof panels in passenger cars. The petitioner requested that the agency amend Standard No. 205 (1) to delete Test 16 from the list of tests that must be met by materials used in locations not requisite for driver visibility, and (2) to allow use of either a xenon arc or carbon arc as the light source for the weathering test and the luminous transmittance test.

In support of its request that NHTSA no longer apply Test No. 16 to rigid plastics, LexaMar contended that this test only addresses visibility issues and thus does not assess the safety of glazing not requisite for driver visibility. In particular, LexaMar contended that Test No. 16 only evaluates the darkening of glazing over time. LexaMar provided no information about whether the weathering test affected glazing strength.

In support of its request to allow the use of a xenon arc light source, LexaMar contended that the carbon arc light source is technologically outmoded and does not replicate the real world environment as well as the xenon arc. In particular, LexaMar contended that the carbon arc emits much higher levels of radiation than actual sunlight and produces wave lengths that are unrepresentative of the real world.

LexaMar also filed a petition of inconsequential noncompliance, claiming that the plastic panels at issue may present a noncompliance that would be inconsequential as it relates to motor vehicle safety. However, the agency returned the inconsequentiality petition to LexaMar because it did not submit a defect and noncompliance report pursuant to part 573, as the agency had requested.

On March 11, 1992, NHTSA granted the LexaMar rulemaking petition requesting that the agency amend Standard No. 205, with respect to plastic glazing (Items 4 and 5) used in areas not requisite for driving visibility. The agency also began gathering information about the merits of subjecting such glazing to the weathering test. To that end, the agency sent a letter to glazing manufacturers and testing laboratories requesting information about applying the light stability and weathering test to plastic glazing. The agency also requested information about the strength of plastic glazing after exposure to light and about the light source.

Four entities, i.e., Libby Owens Ford (LOF), the Flat Glass Association of Japan, Flachglas AG, and ETL Testing Laboratories (ETL), responded to this information request. LOF and ETL stated that they have observed that plastics undergo physical changes in strength properties after being exposed to accelerated weathering. These changes indicate degradation and strength loss. All four respondents stated that the xenon arc lamp more closely approximates natural sunshine, but that at certain wavelengths does not accelerate the weathering process as much as the carbon arc lamp. While they indicated that use of the xenon arc lamp has increased, the respondents stated that problems might result if the agency amended the Standard to allow its use.

After reviewing the available information, NHTSA has decided to terminate rulemaking concerning the LexaMar request that the weathering test no longer apply to plastic glazing. The agency disagrees with the petitioner's contention that Test No. 16 evaluates visibility only. If that were so, then Test No. 16 would have no safety relevance to plastic glazing in areas not requisite for visibility. In fact, the agency believes that along with evaluating visibility, Test No. 16 helps evaluate various weathering effects on plastic glazing, including its strength and durability. Therefore, the agency has concluded that Test No. 16 is relevant to evaluating

the safety of items of glazing not requisite for driver visibility.

NHTSA has also decided to terminate the rulemaking on LexaMar's request concerning light sources because there was insufficient information to justify amending the Standard to permit the use of the xenon arc test. The agency notes that compared to the xenon arc test, the carbon arc test accelerates the weathering process and thus may more fully evaluate the long term effects of the weathering of plastic glazing.

NHTSA notes that ANSI and the Society of Automotive Engineers (SAE) are currently evaluating the use of a xenon arc source. The agency will continue to monitor these activities and may conduct future rulemaking about the xenon arc source, depending on the outcome of SAE's and ANSI's research.

III. Applicability of Test 1, "Light Stability" to Laminated Glass and Glazing

Test Number 1, "Light Stability," evaluates the regular (parallel) luminous transmittance of glass and glass-plastic glazing (referred to as Item 3 and Item 16 glazing) after being exposed to simulated sunlight over an extended period of time. The light stability test requires that the glazing specimen retain at least 70 percent of the original transmittance and be free of defects, which are defined as bubbles or other noticeable decomposition other than slight discoloration.

On October 11, 1989, NHTSA proposed that Item 3 and Item 16 glazing need not be subject to the light stability test. (54 FR 41632). The notice stated the agency's tentative conclusion that there was no need to subject Item 3 and Item 16 glazing to any measurements of optical quality since these items of glazing are used only in areas not requisite for driving visibility.

As explained above, respondents to the agency's request for information about exposure to simulated sunlight stated that such exposure may cause plastic glazing to undergo physical changes in its strength properties. Accordingly, the agency's proposal not to subject Item 3 glazing to Test No. 1 appears to have been inappropriate, since that test also assesses glazing strength. The agency further concludes that Test No. 1 should not be applied to Item 16 glazing since Test No. 16, which is already required for this item, is comparable to Test No. 1.

Based on the above considerations, the agency is terminating the two rulemakings related to plastic glazing used in areas not requisite for driving visibility.

Authority: 15 U.S.C.; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 10, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–11543 Filed 5–14–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Review for a Petition to List the Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the bull trout (*Salvelinus confluentus*) under the Endangered Species Act of 1973, as amended (Act). The petition was found to present substantial information indicating the requested action may be warranted. Through issuance of this notice, the Service is commencing a formal review of the status of the bull trout. Information regarding the species is requested.

DATES: The finding in this notice was made on May 10, 1993. Comments and materials related to this notice may be submitted to the Field Supervisor, at the address below until further notice. All comments and materials should be submitted at the earliest possible date to ensure their use in the final decision.

ADDRESSES: Data, information, comments or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, Olympia Ecological Services Office, 3704 Griffin Lane SE., suite 102, Olympia, Washington 98501. The petition, 90-day finding, supporting data and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David C. Frederick, Field Supervisor, at the address above or 206/753–9440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533) (Act) requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating that the requested action may be warranted, then the Service initiates a status review on that species. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned action is warranted within one year of receipt of a petition that presents substantial information. With this **Federal Register** notice, the Service announces a positive 90-day finding on the petition to list the bull trout (*Salvelinus confluentus*) as endangered and initiates a review of the species' status.

This finding is based on various documents, including published and unpublished studies, agency files, field survey records, and consultations with Service and other Federal and State personnel. All documents are on file in the Fish and Wildlife Service Ecological Services Office in Olympia, Washington.

On October 30, 1992, the Service received a petition to list the bull trout as an endangered species throughout its range. The petitioners also requested the emergency listing of bull trout populations in a number of select "aquatic ecosystems" if biological information indicates the species is in imminent danger of extinction. The petition was submitted by the following non-profit conservation organizations in Montana: Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition. A letter acknowledging receipt of the petition was mailed to each of the petitioners on November 19, 1992. On January 7, 1993, the Service received an additional petition, submitted by the Oregon Chapter of the American Fisheries Society, requesting the listing of bull trout within the Upper Klamath River Basin. The Service will not evaluate the second petition separately because that request is already being evaluated in response to the first petition. Information submitted with the second petition would instead be considered as supporting information for the original range-wide petition.

The bull trout is a wide-ranging char with an historical distribution that included most drainages from the headwaters of the Yukon to northern California and Nevada, and from the

coast of British Columbia and Washington to headwater streams on the east side of the Continental Divide (Haas and McPhail 1991). The petitions and accompanying documentation indicate the bull trout has been and continues to be in serious decline throughout its historical range due to habitat degradation and loss, overharvest, genetic isolation, competition, and hybridization with introduced species.

Life History Information

Bull trout are a relatively large, native western char, similar in appearance to Dolly Varden (*Salvelinus malma*) and brook trout (*S. fontinalis*). The taxonomic classification of char has been fraught with difficulty. Bull trout are closely related to Dolly Varden and are sympatric with Dolly Varden over parts of their range, most notably in the Puget Sound region of Washington State. Characteristics distinguishing the two species, as well as a taxonomic description of bull trout, are presented by Cavender (1978). A principal component analysis using a series of morphologic measurements by both Dolly Varden and bull trout supported Cavender's designation separating the two species (Hass and McPhail 1991), and in areas where the two species occurred together, found no evidence of interbreeding. Of the two species, Dolly Varden are coastal and primarily anadromous, and bull trout are an inland species with resident or fluvial (i.e., migrating from larger rivers to spawn in smaller streams), adfluvial (i.e., migrating from lakes and reservoirs to spawn in streams), or anadromous migration patterns. However, Dolly Varden are more prone to anadromy than bull trout, perhaps due to their coastal distribution. Hybridization between brook trout and bull trout can be frequent when both species occur together, and the resulting hybrids are almost always sterile (Leary *et al.* 1991).

Bull trout are cold water salmonids, probably achieving their widest distribution during and immediately following the last glaciation (Bond 1992), and are rarely found in streams with a maximum temperature greater than 18°C. Optimal temperatures for embryo development are between 2° and 4°C (Pratt 1992). Sexual maturity is typically reached at age 5 or 6. Spawning occurs in the fall (September–October), in low gradient streams or stream reaches, with water temperatures below 9° to 10°C, over uncompacted gravel substrates, with water velocities from 0.2 to 0.6 meters per second (Pratt 1992; Fraley and Shepard 1989). Bull trout may prefer streams with groundwater inflow (springs) for spawning (Pratt 1992). Among other variables (e.g., cover elements, flow refugia), the presence and percent composition of fines (sediments less than 6.35 millimeters in diameter) within spawning substrates exerts a particularly direct affect on successful spawning, fry emergence, and juvenile survival (Weaver and Fraley 1991).

Juvenile and resident bull trout are primarily insectivorous, and benthic in distribution. Fluvial and adfluvial migrating bull trout tend toward piscivory with increasing size (Goetz 1989). Bull trout use of larger waters may be complex and include extensive spawning migrations.

Status Information

In recent years, Federal, State, and private organizations have become increasingly concerned about the status of bull trout. An interagency working group of Federal and State biologists has been established to coordinate State by State evaluations of population status, bull trout distribution maps, and development of management plans. Those efforts are ongoing, with final products expected during the upcoming year. The Montana Department of Fish, Wildlife, and Parks recently released a status review of the bull trout (Thomas 1992) and Washington's Department of Wildlife, which manages resident fish, recently released a draft management and recovery plan for bull trout and Dolly Varden (Washington Department of Wildlife (WDW) 1992). In 1990, the Nevada Department of Wildlife also released a draft bull trout management plan (Johnson 1990). Although population trend data have not been uniformly collected throughout the species' range, existing information indicates that the number and distribution of populations have been reduced in recent times. The following sections provide a general overview of population status by state and in Canada.

Montana

Historical information suggests bull trout were widely distributed throughout western Montana (Thomas 1992). The species' current distribution is known to be less than its historical range. Using information contained in the Interagency Database, Thomas (1992) estimates that bull trout are known to occur in no more than 42 percent of the river and lake reaches in western Montana, including tributaries and portions of the following river basins: Flathead, Swan, Clark Fork, Blackfoot, Bitterroot, Kootenai, and St. Mary's. Of these systems, the Flathead and Swan have been the most extensively studied. The Flathead River system alone contains 30 percent of the surveyed stream reaches that support bull trout. According to Thomas (1992), bull trout populations are declining throughout the majority of drainages in Montana. Status information obtained through personal interviews with Federal, state, and tribal biologists was summarized by Thomas (1992). Risk of extinction, based on fish abundance, habitat value, and risk of hybridization with brook trout, was subsequently determined for 831 stream reaches that were known to support bull trout. Ratings ranged from 3 (lowest risk) to 12 (highest risk). Only 32 reaches (4 percent) had a low risk of extinction (rating 3, 4, or 5), while 223 reaches (27 percent) had a high risk (rating 10, 11, or 12). The remaining 576 reaches (69 percent) were of moderate risk. The author noted that these ratings were to be used primarily as a measure of relative risk.

Redd (spawning nest) counts have been used frequently to evaluate population levels, stability, and distribution of bull trout (Graham *et al.* 1980; Pratt 1985). Recent redd counts within the upper Flathead River basin, long considered to be the species' stronghold, have led to an increased concern for the status of this population. The 1992 redd counts were 72 percent and 54 percent lower than the previous 13-year averages for the North Fork and Middle Fork Flathead, respectively (Weaver 1992). A decline in redd counts and/or low numbers of adults and juveniles have also been noted within the Clark Fork, Kootenai, and Blackfoot River systems (Peters 1990; Thomas 1992). Bull trout within the mainstem Bitterroot are believed to be extinct; remaining, isolated populations are restricted to the headwaters of pristine drainages. The Swan River drainage above Bigfork Dam appears to support a more stable population; redd counts in 1992 exceeded the previous 10-year average by 24 percent (Rumsey 1992).

Idaho

Published trend data are generally scant for bull trout populations in Idaho. The petitioners used information contained in various Idaho Department of Fish and Game reports to map the historic distribution of bull trout. According to this map, the species' historic distribution included the Snake and Bruneau River system in southwest Idaho, as well as the Salmon, Clearwater, St. Joe, Coeur D'Alene, Pend Oreille, Priest Lake, and Kootenai Rivers in central and north Idaho. Bull trout were also present in the Jarbidge River drainage in southern Idaho (Warren and

Partridge 1992). According to the petition, bull trout have been extirpated from the Snake and Bruneau Rivers. In 1992, Warren and Partridge (1992) were unable to detect bull trout in any of the 19 sampling points located along the mainstem and two forks of the Jarbidge River in Idaho. It was speculated that warmer water temperatures due to drought conditions may be responsible for the species' disappearance. Remaining population levels on the lower St. Joe and Kootenai Rivers may be insufficient to maintain viability of the bull trout populations in those systems (Ned Horner, Idaho Department of Fish and Game, pers. comm. 1993). Redd counts conducted in 1992 on the upper St. Joe River revealed only 58 confirmed redds in more than 70 miles surveyed (USDA 1992a). Redd counts in spawning tributaries to Pend Oreille Lake have been steadily declining over time (Horner, pers. comm., 1993). Bull trout have essentially been extirpated from the Coeur d'Alene system (Horner, pers. comm., 1993; Bill Horton, Idaho Department of Fish and Game, pers. comm., 1993; Dave Cross, U.S. Forest Service, pers. comm., 1993). Extinction risks were evaluated for bull trout populations in the Idaho Panhandle National Forests (USDA 1992b). Although population data were lacking, most populations were suspected to have a moderate to high risk of extinction.

According to Schill (1992), monitoring conducted on 43 Idaho streams utilized by anadromous fish species revealed a steady decline in mean densities of bull trout since 1985, from 0.132 to 0.048 fish per 100 square meters, although low water levels may have altered normal species distribution patterns. Further, bull trout were detected in only 24 percent of stream surveys conducted since 1985 and where present, densities were relatively low. Spawning escapement in the Rapid River has been variable in past years, but was relatively high in 1991 (Schill 1992).

Washington

The historic distribution of bull trout in Washington once included most major drainages east and west of the Cascade crest, except for the southwest corner of the State and the area south and east of the Columbia River and north of the Snake River (Goetz 1989; Mongillo 1992). Both abundance and distribution of bull trout in Washington has since declined particularly in eastern drainages (Goetz 1989; Mongillo 1992). The Okanogan, Lake Chelan, and lower Yakima populations are not extinct, and many others statewide have been fragmented or isolated. Bull trout numbers in the mainstem Columbia have been drastically reduced from historic levels; remaining individuals are usually associated with larger tributary populations (Brown 1992a; Mongillo 1992). According to Brown (1992b), bull trout in Washington are considered "vulnerable," with a portion of existing populations at risk of becoming threatened or endangered.

The Washington Department of Wildlife recently issued a draft management and recovery plan for both bull trout and Dolly Varden (WDW 1992). Both species were addressed due to their similar life histories and taxonomy. According to the draft plan, 77 distinct populations of bull trout/Dolly Varden currently exist in Washington. Only 35 populations had adequate information available to allow for an analysis of risk. Of these 35 populations, 43 percent (15 populations) are at moderate to high risk of extinction, 40 percent (14 populations) are at low risk, and 17 percent (6 populations) are at no immediate risk (Mongillo 1992). Brown (1992a) suggests that a wide zone of bull trout/Dolly Varden hybridization or introgression may exist where coastal populations are believed to be sympatric. A clearer understanding of the genetic distinctiveness of sympatric populations in western Washington would greatly assist in understanding and evaluating either species' status.

Oregon

As mapped by the petitioners, bull trout were historically found in most Willamette River streams west of the Cascades, most major tributaries of the Columbia and Snake Rivers east of the Cascades, and in streams of the Klamath basin. Presently, bull trout are confined primarily to headwater tributaries to the Columbia, Snake, and Klamath Rivers (Ratliff and Howell 1992). Additionally, a genetic analysis of bull trout from the Columbia and Klamath River systems determined that bull trout in the Klamath River are genetically distinct from Columbia River populations (Leary *et al.* 1991). Ratliff and Howell (1992) compiled statewide information on the location and status of bull trout populations in Oregon, classifying existing populations into five extinction risk categories. This classification was based on information obtained from various Federal, state, and private entities. Of the 65 identified populations, 9 have a low risk of extinction, 13 are of special concern, 19 are of moderate extinction risk, 12 are at high risk, and another 12 are probably extinct (Ratliff and Howell 1992). The petitioners state that within the Klamath River basin, bull trout have not been documented in the north or south fork of the Sprague River since 1962, and that remaining populations exist in only seven area streams. They further state that estimates of effective population size in these 7 streams range from 11 to 201 individuals; well below the range of 1,000 to 10,000 needed to maintain minimum population viability.

California and Nevada

Northern California and Nevada are on the southern fringe of the historical distribution of bull trout. Bull trout were once native to the lower McCloud River in northern California, but the last confirmed occurrence was from two angler-caught fish in 1975 (Rode 1990). Bull trout were designated an endangered species in 1980 by the State of California, and an attempt was made to reintroduce bull trout with progeny from the Klamath basin in Oregon (Howell and Buchanan 1992). It is not known whether this reintroduction was successful. Bull trout populations in Nevada are confined to the Jarbidge River basin, and persist in low densities near headwater areas (Johnson 1990). Historic occurrences of bull trout were only recorded in the Jarbidge system (Johnson 1990).

Canada

The historic distribution of bull trout in Canada is believed to have extended from the headwaters of the Yukon south through British Columbia and Alberta, reaching the coast in British Columbia only at the Fraser River (Haas and McPhail 1991). The petitioners reference personal communications with several Canadian biologists who state that the species is in a serious and steady decline throughout Alberta, with an associated reduction in the scope of its range. The status of British Columbia's bull trout populations is less clear.

Threats

Bull trout are particularly sensitive to environmental disturbances (Fraley *et al.* 1989; Howell and Buchanan 1992; and Thomas 1992). Information contained in both petitions and the Service's files indicate the bull trout may be threatened by a variety of factors including: Habitat degradation and loss; population fragmentation and genetic isolation; competition; hybridization with introduced species; and overharvest (Fraley *et al.* 1989; Rode 1990; Meehan and Bjornn 1991; Brown 1992b; Howell and Buchanan 1992; Thomas 1992; and WDW 1992). Other factors, such as inadequate regulatory

mechanisms and grazing, have had a variable effect on the species and its habitat. The cumulative effects of these various threats to bull trout should be evaluated.

The greatest risks facing the species are associated with habitat loss and degradation, and the isolation of populations. The loss of high quality spawning and juvenile rearing habitat has been implicated as the primary reason for bull trout population declines (Fraley *et al.* 1989; Goetz 1989; Brown 1992b; and Ratliff and Howell 1992). Land use activities that increase sedimentation, reduce water quality, and alter stream morphology have seriously degraded bull trout habitat and reduced bull trout reproductive success across the species' range (Shepard *et al.* 1984; Fraley *et al.* 1989; Brown 1992b; Ratliff and Howell 1992; and Thomas 1992). Higher water temperatures as a result of low flows or lack of stream cover are also suspected of reducing bull trout populations (Ratliff and Howell 1992) and altering movement or distribution of fish within a system (Warren and Partridge 1992).

The construction of dams has threatened bull trout by blocking migration patterns and increasing the risks associated with genetic isolation (Bond 1992; Ratliff and Howell 1992; Thomas 1992). Construction of the McCloud Dam is primarily responsible for the extirpation of bull trout from the McCloud River in California (Rode 1990). Dams along the length of the Columbia River have significantly altered habitat characteristics important to bull trout and reduced trout access to historic spawning tributaries (Brown 1992). The construction of Hungry Horse, Bigfork, and Kerr Dams in Montana has blocked or eliminated bull trout migration to historic spawning areas and reduced or nearly eliminated genetic exchange between the Flathead, Swan, and Clark Fork systems (Fraley *et al.* 1989; and Thomas 1992). Barriers to passage have also been implicated in changing bull trout life history patterns from fluvial to adfluvial (Goetz 1989); the ramifications of these changes are not well understood. Fragmentation of drainage networks can exacerbate the difficulties facing declining populations (Ratliff and Howell 1992) and may lead to the extinction of certain fishes (Sheldon 1988).

Bull trout are susceptible to fishing pressure due to their aggressive nature and relatively large size. Overfishing, illegal harvest, and even historic bounties have been identified as risks to bull trout populations in Oregon (Ratliff and Howell 1992), Washington, (Brown 1992b; and WDW 1992), Nevada (Johnson 1990), Montana (Thomas 1992), and California (Rode 1990). Recent changes in state fishing regulations have reduced this threat in many States, but specific improvements or remaining risks have yet to be evaluated rangewide.

Hybridization and competition with introduced brook trout may also threaten bull trout populations. Hybridization with brook trout, and the production of often sterile hybrids, may be responsible for population declines and could pose a serious threat to some populations (Goetz 1989; Rode 1990; Leary *et al.* 1991; Brown 1992b; Dambacher *et al.* 1992; Markle 1992; and Thomas 1992). In western Montana, Leary *et al.* (1991) determined that hybridization with brook trout resulted in displacement of bull trout from an area where the species was previously the predominant fish sampled.

After reviewing the petition and information contained in our files, the Service determines that substantial information has been presented indicating that listing may be warranted, and a status review of the species is hereby initiated. As a part of this review, the Service will evaluate the status of distinct population segments and determine whether listing is warranted for either the species rangewide or certain distinct population segments.

The Service would appreciate any additional data, comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of the bull trout, *Salvelinus confluentus*. The following is of particular interest to the Service:

(1) Genetic variation within and between populations of bull trout, as well as between sympatric populations of bull trout and Dolly Varden;

(2) The extent of genetic exchange between resident, fluvial, adfluvial, and anadromous forms;

(3) Historic and current population data, which may assist in determining long-term population trends; and

(4) The existence and status of distinct population segments.

References Cited

A complete list of all references cited herein, as well as others, is available upon request (see ADDRESSES section).

Authors

The authors of this notice are Carolyn Scafidi of the Olympia, Washington Ecological Services Office, and Ron Rhew of the Portland, Oregon Ecological Services Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

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

Authority: The authority for this action is the Endangered Species Act of 1973, as amended; 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

Dated: May 10, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–11577 Filed 5–14–93; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 58, No. 93
Monday, May 17, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Amended Final Notice of VISTA Guidelines

AGENCY: ACTION.

ACTION: Amended final notice of VISTA Guidelines.

SUMMARY: Certain revisions have been made to the Final Notice of VISTA Guidelines as published (**Federal Register**, Vol. 50, No. 147, Wednesday, July 31, 1985). This Notice returns certain project approval authority to ACTION Regional Directors for second and third-year project renewals, as well as project expansions.

DATES: The Amendment to the VISTA Guidelines shall take effect on May 17, 1993.

FOR FURTHER INFORMATION CONTACT: Diana London, Acting Assistant Director for VISTA and Student Community Service Programs, at (202) 606–4845.

SUPPLEMENTARY INFORMATION: The following changes are being made in the VISTA Guidelines:

Under—Part III. Section B. Project Approval Process for Existing VISTA Sponsors.

Delete from subsection 1. the words "for a second or third year."

Delete from subsection 1.a the words "for a second or third year of operation."

Delete from subsection 2. the entire provisions of a. and b., to read: "2. The project approval process outlined below is to be followed for all existing sponsors seeking to change the programmatic emphasis(es) of the VISTA project and/or substantially change the scope of the activities and duties performed by the volunteers (e.g. from literacy to job development, or from agricultural production activities to development of food buying clubs)."

Renumber current subsection "2.c.(1)" to "2.a.".

Renumber current subsection "2.c.(2)" to "2.b.". Delete from the revised subsection "2.b."—"beyond a third year, or a", and insert "and a" before the word "recommendation"

Renumber current subsection "2.c.(3)" to "2.c."

Renumber current subsection "2.c.(4)" to "3".

Renumber current subsection "2.c.(5)" to "4".

Renumber current subsection "2.c.(6)" to "5".

Dated: May 11, 1993.

Gary Kowalczyk,

Acting Director, ACTION.

[FR Doc. 93–11634 Filed 5–14–93; 8:45 am]

BILLING CODE 6050–23–M

DEPARTMENT OF AGRICULTURE

Intent To Award a Grant to CARE

AGENCY: Office of International Cooperation and Development (OICD)

ACTION: Notice of intent.

ACTIVITY: OICD intends to award a Grant to CARE for a revision to the book, "Agroforestry Extension Training Sourcebook and Support Materials."

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1993 (FY93) to support expenses for Spanish translation distribution of an existing book, "Agroforestry Extension Training Sourcebook and Support Materials." Distribution for the Spanish version of the Sourcebook will target agroforestry and natural resource management activities in Latin America.

Based on the above, this is not a formal request for application. An estimated $26,176 will be available in FY93 as partial funding support.

Information on proposed Grant #59–319R–3–035 may be obtained from: USDA/QICD/Administrative Services, 0324—South Bldg, Washington, DC 20250–4300.

Dated: May 11, 1993.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 93–11536 Filed 5–14–93; 8:45 am]

BILLING CODE 3410–DP–M

Soil Conservation Service

Intent To Prepare an Environmental Impact Statement; UpCountry Maui Watershed, County of Maui, HI

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, Department of Agriculture, gives notice than an environmental impact statement is being prepared for the UpCountry Maui Watershed, County of Maui, Hawaii.

FOR FURTHER INFORMATION CONTACT: Nathaniel R. Conner, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii 96850, telephone (808) 541–2600 .

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Nathaniel R. Conner, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The local sponsoring agencies for the project are the Olinda-Kula Soil and Water Conservation District, the County of Maui Department of Water Supply, and the State of Hawaii Department of Agriculture.

The project concerns a plan for agricultural water management. Unreliable water supply in the Upper Kula area has hampered agricultural production and has caused crop losses during the dry season and frequent droughts. The objective of the plan will be to provide adequate agricultural water supply to farmers in the service area of the Upper Kula Water System. Alternatives under consideration to reach these objectives include improvements to the Upper Kula Water System collection, storage and distribution elements.

A draft environmental impact statement will be prepared and

circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting to determine the scope of the evaluation of the proposed action will be held on June 9, 1993, 7:30 p.m., at the Eddie Tam Memorial Center, Makawao, Maui. Further information on the proposed action or scoping meeting may be obtained from Nathaniel R. Conner, State Conservationist, at the above address.

Dated: May 4, 1993.

Nathaniel R. Conner,

State Conservationist.

[FR Doc. 93-11546 Filed 5-14-93; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Bruce E. Mattson, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, Building 221, room B256, Gaithersburg, Maryland 20899; Fax: 301-869-2751. Any request for information should include the NIST Docket No. for the relevant invention(s) as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 90-032

Title: Intermetallic Ti-Al-Nb Alloys Based on Strengthening of the Orthorhombic Phase by Mega-type Phase

Description: High strength, low density titanium-aluminum-niobium alloys and the microstructure of such alloys. This alloy has a superior combination of fracture toughness and high yield strength up to 1500 F. Superior combination means that the alloy has at least as high or higher combined fracture toughness and yield strength than conventional aluminum alloys. Such superior alloys are particularly well-suited for aerospace applications.

NIST Docket No. 90-035

Title: High Speed, Amplitude Variable Thrust Control

Description: A device for high speed, amplitude variable thrust control. This invention may be useful in: precision attitude control and/or pointing and stabilizing of spacecraft and satellites; precision process control such as a reagent addition system for semiconductor processing where corrosive and/or doping gases must be metered precisely to achieve desired deposition or substrate removal thicknesses on the order of a micron; structural research, automotive and/or aerospace fatigue testing; or even active control of buildings during earthquakes or high wind conditions to provide real time damping of lateral forces on the building.

NIST Docket No. 92-004

Title: Automated Recognition of Characters Using Optical Filtering with Positive and Negative Functions Encoding Pattern and Relevance Information

Description: A method and apparatus for recognition of hand printed characters using pairs of positive and negative correlative functions (PNCFs), the PNCFs including both pattern and relevance information, implemented by optical elements. A set of optical elements having varying optical density corresponding to a set of two-dimensional PNCFs is generated. A pattern of illumination responsive to the image of the character to be identified is simultaneously transmitted through each of the optical elements implementing the PNCFs. The amount of light transmitted through each of the elements is measured, providing a transmission coefficient. The transmission coefficients are the inputs to a neural network, such that the inputs to the neural network are a set of transmission coefficients resulting from transmission of light corresponding to a character to be identified through a complete set of optical elements implementing a set of PHCFs. The neural network calculates weighted sums of the transmission coefficients. The neural network may be implemented as a network of resistors connected between input nodes, intermediate nodes, and output nodes. The output node having the highest voltage identifies the character to be identified.

NIST Docket No. 92-005

Title: Automated Recognition of Characters Using Optical Filtering with Maximum Uncertainty—Minimum Variance (MUMV) Functions

Description: A method and apparatus for recognition of hand printed characters using maximum uncertainty—minimum variance (MUMV) functions, such as Gabor functions, implemented by optical elements. A set of optical elements having varying optical density corresponding to a set of two-dimensional MUMV functions is generated. A pattern of illumination responsive to the image of the character to be identified is simultaneously transmitted through each of the optical elements implementing the MUMV functions. The amount of light transmitted through each of the elements is measured, providing a transmission coefficient. Such transmission coefficients are used as a set of inputs to a neural network, such that the inputs to the neural network are a set of transmission coefficients resulting from transmission of light corresponding to a character to be identified through a complete set of optical elements implementing a set of two-dimensional MUMV functions. The neural network calculates weighted sums of the transmission coefficients. The neural network may be implemented as a network of resistors connected between input nodes, intermediate nodes, and output nodes. The output node having the highest voltage identifies the character to be identified.

NIST Docket No. 92-010

Title: Synthetic Perturbation Tuning of Computer Programs

Description: A method and a system for tuning computer programs that run on parallel computer systems by using synthetic perturbations. This invention involves placing synthetic perturbations, e.g., time delays, into selected locations of the code of a computer program to be tuned. The impact of these time delays on the overall performance of the computer program, as quantified by its run time, is then determined. By running different trials with different values selected for the time delays, a set of resulting run times is generated. Statistical analysis is then performed on these results to

identify the segments of program code that are most critical in terms of affecting the performance of the program. The user can then optimize those code segments.

NIST Docket No. 92–011

Title: Method and Materials for the Assay of Several Classes of Enzymes by Light-Scattering Techniques Using Substrate Coated Colloidal Particles

Description: A method for performing an enzyme assay using light-scattering techniques in which substrate coated colloidal particles are prepared, the coated particles are diluted in an enzyme to be assayed therewith causing a change in the particles, and the particles are monitored using light-scattering techniques. The substrate is preferably polymeric. The particles are, for example, ferrofluid. A test kit for performing such assays can also be prepared.

NIST Docket No. 92–028

Title: A Procedure for Digital Image Restoration

Description: A new procedure in digital image restoration based on the use of a new type of a-priori constraint. The procedure reduces the effects of noise in the restoration process better than the current art. Use of this procedure allows greater identification of fine detail where blurring occurs due to noise.

NIST Docket No. 92–045

Title: Micro-Hotplate Devices and Methods for Their Fabrication

Description: A design and fabrication methodology, for silicon micromachined micro-hotplate which are manufactured using commercial CMOS foundries techniques with additional post-fabrication processing. The micro-hotplates are adaptable for a host of applications. The methodology for the fabrication of the micro-hotplates is based on commercial CMOS compatible micromachining techniques. The novel aspects of the micro-hotplates are in the design, choice and layout of the materials layers, and the applications for the devices. The micro-hotplates have advantages over other similar devices in the manufacture by a standard CMOS process which include low-cost and easy integration of VLSI circuits for drive, communication, and control. The micro-hotplates can be easily incorporated into arrays of micro-hotplates each with individualized circuits for control and sensing for independent operation.

NIST Docket No. 92–046

Title: Temperature-Controlled, Micromachined Arrays for Chemical Sensor Fabrication and Operation

Description: Planar forms of chemically-sensitive materials have been combined, under temperature control, with the pixels of a specially-designed micro-hotplate array to produce a miniature device capable of analyzing chemical mixtures. The device uses integrated multiple elements having different adsorption properties and temperatures to collectively achieve chemical selectivity in sensing. The method of making and using the device of the present invention can be readily adapted for commercial production to manufacture a range of devices with improved sensing performance.

NIST Docket No. 92–047

Title: Application of Microsubstrates for Materials Processing

Description: Arrays of microfabricated hotplates have been used as substrate arrays for materials processing on a microscopic scale. Properties of individual elements (pixels) of the array, such as temperature and voltage bias, are controlled by addressing a given pixel with appropriate signals. Materials are deposited into pixels with individually controlled deposition conditions (pixel temperature, bias). Pixels are also addressed to control properties during post-deposition processing steps such as heating in vacuum or various gases to alter stoichiometry of a single material, or to alloy multiple composition materials. The addressable heating characteristics may also be used for a maskless lithography on pixel elements. The result is an array of separately, but simultaneously, processed films. Properties of film elements may be measured using electrical contact pads. The array of processed films may be used for sensors, electronic devices, greatly accelerated materials development processes, and solid state physics, biology and chemistry studies.

NIST Docket No. 93–023

Title: Method and Apparatus for Precisely Measuring Accelerating Voltage Applied to X-Ray Sources

Description: This invention allows the accurate measurement of the accelerating voltage applied to an x-ray tube. Variation in accelerating voltage affects the amount of radiation penetrating the radiated object and thus the contrast of the resulting radiographic image. In certain diagnostic applications, e.g. mammography and coronary angiography, radiographic contrast is critical to making an accurate diagnosis. This invention allows precise measurement of the accelerating voltage and thus accurate calibration of x-ray equipment to ensure proper contrast in the resulting images.

Dated: May 10, 1993.

Raymond G. Kammer,

Acting Director.

[FR Doc. 93–11633 Filed 5–14–93; 8:45 am]

BILLING CODE 3510–13–M

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, June 2, 1993, from 9 a.m. to 5 p.m., Thursday, June 3, 1993, from 9 a.m. to 5 p.m., and Friday, June 4, 1993 from 9 a.m. to 1 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems and report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress. All sessions will be open to the public.

DATES: The meeting will be held on June 2–4, 1993. On June 2 and 3, 1993 the meeting will take place from 9 a.m. to 5 p.m. and on June 4, 1993 from 9 a.m. to 1 p.m.

Public submissions (as described below) are due by 4 p.m. (EDT) May 27, 1993 to allow for sufficient time for distribution to and review by Board members.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, MD. On June 2 and 4, 1993, the meeting will be held in the Administration Building, Lecture Room "B", and on June 3 the meeting will be held in the Administration Building, "Green Auditorium".

Submissions (as described below), including copyright waiver if required, should be addressed to: Cryptographic Issue Statements, Computer System Security and Privacy Advisory Board,

Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD, 20899 or via FAX to 301/948–1784. Submissions, including copyright waiver if required, may also be sent electronically to "crypto@csrc.ncsl.nist.gov".

Agenda

—Welcome and Review of Meeting Agenda
—Government-developed "Key Escrow" Chip Announcement Review
—Discussion of Escrowed Cryptographic Key Technologies
—Review of Submitted Issue Papers
—Position Presentations & Discussion
—Public Participation
—Annual Report and Pending Business
—Close

Public Participation

This Advisory Board meeting will be devoted to the issue of the Administration's recently announced government-developed "key escrow" chip cryptographic technology and, more broadly, to public use of cryptography and government cryptographic policies and regulations. The Board has been asked by NIST to obtain public comments on this matter for submission to NIST for the national review that the Administration's has announced it will conduct of cryptographic-related issues. Therefore, the Board is interested in: (1) Obtaining public views and reactions to the government-developed "key escrow" chip technology announcement, "key escrow" technology generally, and government cryptographic policies and regulations (2) hearing selected summaries of written views that have been submitted, and (3) conducting a general discussion of these issues in public.

The Board solicits all interested parties to submit well-written, concise issue papers, position statements, and background materials on areas such as those listed below. Industry input is particularly encouraged in addressing the questions below.

Because of the volume of responses expected, submittors are asked to identify the issues above to which their submission(s) are responsive. Submittors should be aware that copyrighted documents cannot be accepted unless a written waiver is included concurrently with the submission to allow NIST to reproduce the material. Also, company proprietary information should not be included, since submissions will be made publicly available.

This meeting specifically will not be a tutorial or briefing on technical details of the government-developed "key escrow" chip or escrowed cryptographic key technologies. Those wishing to address the Board and/or submit written position statements are requested to be thoroughly familiar with the topic and to have concise, well-formulated opinions on its societal ramifications.

Issues on which comments are sought include the following:

1. Cryptographic Policies and Social/Public Policy Issues

Public and Social policy aspects of the government-developed "key escrow" chip and, more generally, escrowed key technology and government cryptographic policies.

Issues involved in balancing various interests affected by government cryptographic policies.

2. Legal and Constitutional Issues

Consequences of the government-developed "key escrow" chip technology and, more generally, key escrow technology and government cryptographic policies.

3. Individual Privacy

Issues and impacts of cryptographic-related statutes, regulations, and standards, both national and international, upon individual privacy.

Issues related to the privacy impacts of the government-developed "key escrow" chip and "key escrow" technology generally.

4. Questions Directed to American Industry

4.A Industry Questions: U.S. Export Controls

4.A.1 Exports—General

What has been the impact on industry of past export controls on products with password and data security features for voice or data?

Can such an impact, if any, be quantified in terms of lost export sales or market share? If yes, please provide that impact.

How many exports involving cryptographic products did you attempt over the last five years? How many were denied? What reason was given for denial?

Can you provide documentation of sales of cryptographic equipment which were lost to a foreign competitor, due solely to U.S. Export Regulations.

What are the current market trends for the export sales of information security devices implemented in hardware solutions? For software solutions?

4.A.2 Exports—Software

If the U.S. software producers of mass market or general purpose software (word processing, spreadsheets, operating environments, accounting, graphics, etc.) are prohibited from exporting such packages with file encryption capabilities, what foreign competitors in what countries are able and willing to take foreign market share from U.S. producers by supplying file encryption capabilities?

What is the impact on the export market share and dollar sales of the U.S. software industry if a relatively inexpensive hardware solution for voice or data encryption is available such as the government-developed "key escrow" chip?

What has been the impact of U.S. export controls on Computer Utilities software packages such as Norton Utilities and PCTools?

What has been the impact of U.S. export controls on exporters of Other Software Packages (e.g., word processing) containing file encryption capabilities?

What information does industry have that Data Encryption Standard (DES) based software programs are widely available abroad in software applications programs?

4.A.3 Exports—Hardware

Measured in dollar sales, units, and transactions, what have been the historic exports for: Standard telephone sets, Cellular telephone sets, Personal computers and work stations, FAX machines, Modems, Telephone switches.

What are the projected export sales of these products if there is no change in export control policy and if the government-developed "key escrow" chip is not made available to industry?

What are the projected export sales of these products if the government-developed "key escrow" chip is installed in the above products, the above products are freely available at an additional price of no more than $25.00, and the above products are exported without additional licensing requirements?

What are the projected export sales of these products if the government-developed "key escrow" chip is installed in the above products, the above products are freely available at an additional price of no more than $25.00, and the above products are to be exported with an ITAR munitions licensing requirement for all destinations?

What are the projected export sales of these products if the government-developed "key escrow" chip is installed in the above products, the above products are freely available at an additional price of no more than $25.00,

and the above products are to be exported with a Department of Commerce Licensing Requirement for all destinations?

4.A.4 Exports—Advanced Telecommunications

What has been the impact on industry of past export controls on other advanced telecommunications products?

Can such an impact on the export of other advanced telecommunications products, if any, be qualified in terms of lost export sales or market share? If yes, provide that impact.

4.B Industry Questions: Foreign Import/Export Regulations

How do regulations of foreign countries affect the import and export of products containing cryptographic functions? Specific examples of countries and regulations will prove useful.

4.C Industry Questions: Customer Requirements for Cryptography

What are current and future customer requirements for information security by function and industry? For example, what are current and future customer requirements for domestic banking, international banking, funds transfer systems, automatic teller systems, payroll records, financial information, business plans, competitive strategy plans, cost analyses, research and development records, technology trade secrets, personal privacy for voice communications, and so forth? What might be good sources of such data?

What impact do U.S. Government mandated information security standards for defense contracts have upon demands by other commercial users for information security systems in the U.S.? In foreign markets?

What threats are your product designed to protect against? What threats do you consider unaddressed?

What demand do you foresee for (a) cryptographic only products, and (b) products incorporating cryptography in: (1) The domestic market, (2) in the foreign-only market, and (3) in the global market?

4.D Industry Questions: Standards

If the European Community were to announce a non-DES, non-public key European Community Encryption Standard (ECES), how would your company react? Include the new standard in product line? Withdraw from the market? Wait and see?

What are the impacts of government cryptographic standards on U.S. industry (e.g., Federal Information Processing Standard 46–1 [the Data Encryption Standard] and the proposed Digital Signature Standard)?

5. Questions Directed to The American Business Community

5.A American Business: Threats and Security Requirements

Describe, in detail, the threat(s), to which you are exposed and which you believe cryptographic solutions can address.

Please provide actual incidents of U.S. business experiences with economic espionage which could have been thwarted by applications of cryptographic technologies.

What are the relevant standards of care that businesses must apply to safeguard information and what are the sources of those standards other than Federal standards for government contractors?

What are U.S. business experiences with the use of cryptography to protect against economic espionage, (including current and projected investment levels in cryptographic products)?

5.B American Business: Use of Cryptography

Describe the types of cryptographic products now in use by your organization. Describe the protection they provide (e.g., data encryption or data integrity through digital signatures). Please indicate how these products are being used.

Describe any problems you have encountered in finding, installing, operating, importing, or exporting cryptographic devices.

Describe current and future uses of cryptographic technology to protect commercial information (including types of information being protected and against what threats).

Which factors in the list below inhibit your use of cryptographic products?

Please rank:

—No need
—No appropriate product on market
—Fear of interoperability problems
—Regulatory concerns
—(a) U.S. export laws
—(b) foreign country regulations
—(c) other
—Cost of equipment
—Cost of operation
—Other

Please comment on any of these factors.

In your opinion, what is the one most important unaddressed need involving cryptographic technology?

Please provide your views on the adequacy of the government-developed "key escrow" chip technological approach for the protection of all your international voice and data communication requirements.

Comments on other U.S. Government cryptographic standards?

6. Other

Please describe any other impacts arising from Federal government cryptographic policies and regulations.

Please describe any other impacts upon the Federal government in the protection of unclassified computer systems.

Are there any other comments you wish to share?

The Board agenda will include a period of time, not to exceed ten hours, for oral presentations of summaries of selected written statements submitted to the Board by May 27, 1993. As appropriate and to the extent possible, speakers addressing the same topic will be grouped together. Speakers, prescheduled by the Secretariat and notified in advance, will be allotted fifteen to thirty minutes to orally present their written statements. Individuals and organizations submitting written materials are requested to advise the Secretariat if they would be interested in orally summarizing their materials for the Board at the meeting.

Another period of time, not to exceed one hour, will be reserved for oral comments and questions from the public. Each speaker will be allotted up to five minutes; it will be necessary to strictly control the length of presentations to maximize public participation and the number of presentations.

Except as provided for above, participation in the Board's discussions during the meeting will be at the discretion of the Designated Federal Official.

Approximately thirty seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Executive Secretary and Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, Maryland 20899, telephone: (301) 975–3240.

SUPPLEMENTARY INFORMATION: Background information on the government-developed "key escrow" chip proposal is available from the Board Secretariat; see address in "for further information" section. Also, information on the government-

developed "key escrow" chip is available electronically from the NIST computer security bulletin board, phone 301–948–5717.

The Board intends to stress the public and social policy aspects, the legal and Constitutional consequences of this technology, and the impacts upon American business and industry during its meeting.

It is the Board's intention to create, as a product of this meeting, a publicly available digest of the important points of discussion, conclusions (if any) that might be reached, and an inventory of the policy issues that need to be considered by the government. Within the procedures described above, public participation is encouraged and solicited.

Dated: May 10, 1993.

Raymond G. Kammer,

Acting Director.

[FR Doc. 93–11632 Filed 5–14–93; 8:45 am]

BILLING CODE 3510–13–M

Malcolm Baldrige National Quality Award's Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Tuesday, June 15, 1993 through Wednesday, June 16, 1993. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to begin the review process of the 1993 Award applicants to be recommended as Award winners. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 15, 1993, at 8:30 a.m. and adjourn at 2 p.m. on June 16, 1993. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 27, 1992, that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 10, 1993.

Raymond G. Kammer,

Acting Director.

[FR Doc. 93–11631 Filed 5–14–93; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescission of a Request to Consult on Certain Cotton Textile Products Produced or Manufactured in Argentina

May 12, 1993.

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) 482–4212.

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 United States Government has decided to rescind the request made on February 26, 1993 to consult on imports of cotton broadcloth in Category 314. Should it become necessary to discuss this category with the Government of Argentina at a later date, 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 57 FR 54976, published on November 23, 1992). Also see 58 FR 13057, published on March 9, 1993.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–11629 Filed 5–14–93; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

May 12, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: May 19, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. 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) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

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).

Inasmuch as no agreement has been reached on a mutually satisfactory solution on Category 219, the United States Government has decided to control imports in this category for the twelve-month period beginning on December 28, 1992 and extending through December 27, 1993 at a level of 619,476 square meters.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the United Arab Emirates, 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 57 FR 54976, published on November 23, 1992). Also

see 58 FR 5363, published on January 21, 1993.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 12, 1993.

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 in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 19, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Category 219, produced or manufactured in the United Arab Emirates and exported during the period beginning on December 28, 1992 and extending through December 27, 1993, in excess of 619,476 square meters [1].

Textile products in Category 219 which have been exported to the United States prior to December 28, 1992 shall not be subject to the limit established in this directive.

For the import period December 28, 1992 through January 21, 1993, there are zero charges to be made to the 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,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–11630 Filed 5–14–93; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 27, 1992.

DEPARTMENT OF DEFENSE

Marine Corps

Intent To Prepare an Environmental Impact Statement for Proposed Development of Revised Military Training Procedures, Facilities Construction, and Reconfiguring Airspace Utilization for the Yuma Training Range Complex

Pursuant to the National Environmental Policy Act (NEPA) as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the U.S. Marine Corps intends to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of revising management of the Yuma Training Range Complex to incorporate modified military training procedures, facilities construction, and airspace configuration.

Pursuant to 40 CFR 1501.6, the U.S. Air Force will be a cooperating agency in the preparation of the EIS.

Proposed changes to the Yuma Training Range Complex are needed to update the procedures, facilities, and airspace of the complex to obtain required training benefits. The proposed action includes designation of inert (non-exploding) and live (exploding) bombing areas in the Chocolate Mountain Range, the construction and use of limited ground facilities (e.g., aircraft landing sites, radio tracking/relay sites, simulated targets), designation of ground support sites (e.g., parachute drop zones, refueling points, bivouac/training sites) in the Chocolate Mountain and Goldwater Ranges, reconfiguration of Chocolate Mountain range airspace, and revision of scheduling parameters for airspace in the complex.

The land area of the Yuma Training Range Complex includes 719 square miles in the Chocolate Mountains Aerial Gunnery Range in California and 1,210 square miles in the western portion of the Barry M. Goldwater Air Force Range in Arizona. The remainder of the Yuma Training Range Complex is composed of special use airspace totaling about 5,000 square miles in southeast California and 5,000 square miles in southwest Arizona.

The land and airspace of the Chocolate Mountain Aerial Gunnery Range is controlled by the Marine Corps. The land and airspace of the western portion of the Goldwater Range is scheduled by the Marine Corps. The U.S. Air Force schedules the eastern portion of this range and exercises overall control of military use of the Goldwater Range.

Located almost entirely within the Goldwater Range is the Cabeza Prieta National Wildlife Refuge, which is administered by the U.S. Fish and Wildlife Service. The airspace over the refuge is controlled and scheduled by the Marine Corps and Air Force.

Major environmental issues that will be addressed in the EIS include, but are not limited to, air quality, noise, endangered species, cultural resources, wildlife refuge and wilderness area management, public health and safety, and socioeconomic impacts.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed and identifying the significant issues related to this action. The Marine Corps will hold public scoping meetings on June 7, 1993, beginning at 7 p.m., in the Woodard Junior High School multi-purpose room, 2250 8th Avenue, Yuma, Arizona; June 8, 1993, beginning at 7 p.m., at the Unified District Office, Logan Auditorium, 308 North Martin Avenue, Gila Bend, Arizona; and, June 9, 1993, beginning at 7 p.m., in the Central Union High School multi-purpose room, 1001 Brighton Avenue, El Centro, California. These meetings will be advertised in area newspapers.

A brief presentation will precede request for public comment. Marine Corps representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than June 25, 1993, to Commanding Officer, Marine Corps Air Station, Range Management Department, Box 99220, Yuma, AZ 85369–9220 (Attn: Mr. Ron Pearce), telephone (602) 341–3318.

Dated: May 5, 1993.

R.W. Watkins,

Colonel, U.S. Marine Corps, Head, Land Use and Military Construction Branch, Facilities and Services Division, Installations and Logistics Department.

By direction of the Commandant of the Marine Corps.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 92–11624 Filed 5–14–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93-592-000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 11, 1993.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER93-592-000]

Take notice that on April 29, 1993, Tampa Electric Company (Tampa) tendered for filing corrections to its filing filed in this docket on April 28, 1993.

Comment date: May 25, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Co.

[Docket No. ER93-635-000]

Take notice that on May 6, 1993, Commonwealth Edison Company (Edison) tendered for filing proposed changes in its FERC Electric Tariff, Rates 81 and 37. The proposed changes revised the Electric Service Contracts between Edison and the City of Rock Falls, Illinois (Rock Falls) and Edison and the Village of Winnetka, Illinois (Winnetka), to provide for additional metering facilities.

A copy of the filing has been served upon Rock Falls, Winnetka, and the Illinois Commerce Commission.

Comment date: May 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. The Connecticut Light and Power Co. and Public Service Co. of New Hampshire

[Docket No. ER93-482-000]

Take notice that on May 4, 1993, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) and Public Service Company of New Hampshire (PSNH) submitted more legible copies of its original filing at FERC Staff's request.

NUSCO states that copies of its submission have been mailed or delivered to New York Power Authority.

Comment date: May 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Co.

[Docket No. ER93-492-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on May 6, 1993, tendered for filing an amendment of its initial submittal in this docket. The amendment is Wisconsin Electric's application to the Public Service Commission of Wisconsin (PSCW) for authority to construct the Boxelder substation.

Wisconsin Electric renews its requested effective date of May 25, 1993, sixty days after its original tender date.

Copies of the filing have been served on Wisconsin Power and Light Company and the Public Service Commission of Wisconsin.

Comment date: May 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Co.

[Docket No. ER93-507-000]

Take notice that Florida Power & Light Company (FPL), on May 6, 1993, amended its filing in this docket.

Comment date: May 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Co. of New York, Inc.

[Docket No. ER93-633-000]

Take notice that on April 30, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its pending Rate Schedule in Docket No. ER93-254-000, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in annual revenues under the Rate Schedule by a total of $155,530.21. The Supplement also increases the charges for transmission service from $33.38 and $74.18 per MW per day to $34.53 and $77.21 per MW per day. Con Edison has requested that this increase take effect on July 1, 1993.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: May 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corp.

[Docket No. ER93-450-000]

Take notice that on April 30, 1993, Wisconsin Public Service Corporation (WPSC), tendered for filing with the Federal Energy Regulatory Commission an amendment to Section 2.1 of Service Schedule A of its Negotiated Capacity and Energy Agreement with Manitowoc Public Utilities (MPU). WPSC requests an effective date of May 15, 1993, which is 60 days after the date of its original submittal in this docket.

WPSC states that a copy of the filing has been served on each recipient of its original submittal, i.e., MPU and the State Commissions where WPSC and MPU serve at retail.

Comment date: May 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Colockum Transmission Co., Inc.

[Docket No. ER93-631-000]

Take notice that Colockum Transmission Company, Inc. (Colockum), on May 4, 1993, tendered for filing on behalf of itself and PacifiCorp an Agreement dated December 21, 1992 between Colockum and PacifiCorp.

This Agreement contemplates the exchange of capacity for energy, and involves no form of income for either party. Pursuant to the Agreement, PacifiCorp agrees to deliver firm energy to Colockum at a rate of exchange of 1947 kilowatt-hours of energy per kilowatt of capacity.

Comment date: May 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Co.

[Docket No. ER93-632-000]

Take notice that New England Power Company (NEP), on May 4, 1993, tendered for filing seventeen (17) revised service agreements under NEP's FERC Electric Tariff, Original Volume No. 3. The revisions more accurately describe NEP's transmission service to municipal customers purchasing generation output from Refuse Fuels Associates. NEP requests waiver of the Commission's notice requirements so that these agreements may become effective March 1, 1993.

Comment date: May 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Service Co.

[Docket No. ER93-522-000]

Take notice that on April 30, 1993, New England Power Service Company tendered for filing additional information to its original filing filed in this docket on March 31, 1993.

Comment date: May 25, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. The Washington Water Power Co.

[Docket No. ER93-157-000]

Take notice that on May 6, 1993, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR part 35, additional information related to the sale of the

output of the Skockumchuck Hydroelectric Project to Puget Sound Power and Light. WWP also requests waiver of the Commission's 60-day notice requirement.

A copy of this filing was mailed to PacifiCorp, Puget Sound Power and Light and Portland General Electric.

Comment date: May 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11554 Filed 5–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–115–000 and RS92–5–000]

Columbia Gas Transmission Corp.; Petition for Declaratory Order

May 11, 1993.

Take notice that on May 7, 1993, Joint Intervenor Group (the Group) tendered for filing with the Federal Energy Regulatory Commission a petition for a declaratory order. The Group petitions the Commission to issue a declaratory order finding that Columbia Gas Transmission Corporation (Columbia) is not eligible to recover any of the costs of producer claims in connection with the supply contracts Columbia rejected in bankruptcy under either Order No. 636 or any other mechanism, including but not limited to Order No. 528.

The Group states that the producer claims are currently estimated to exceed $11 billion. They represent the claims filed in bankruptcy court by those of Columbia's producer suppliers whose contracts Columbia rejected when it filed for bankruptcy in 1991. Following Columbia's rejection of them, the affected producers filed claims in bankruptcy to recover the estimated value of Columbia's remaining performance under the contracts. The Group urges that an eligibility determination of whether these costs are transition costs should be made now, in the context of the requested declaratory order, in order to prevent a premature section 4 filing by Columbia to recover these producer contract rejection claims.

The Group requests that the Commission make its eligibility determination in, or contemporaneously with, the Commission's order on Columbia's Order No. 636 compliance filing.

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 June 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room. Answers to the Group's pleading shall also be due on or before June 1, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11555 Filed 5–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–148–000]

Idaho Power Co.; Filing

May 11, 1993.

Take notice that on April 16, 1993, Idaho Power Company (Idaho) tendered for filing supplemental information to its original filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11556 Filed 5–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–324–000]

Natural Gas Pipeline Company of America; Application

May 11, 1993.

Take notice that on April 30, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–324–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and reduce the Reserved Daily Capacity (RDC), effective December 1, 1992, and abandon a firm and interruptible transportation service provided for Trunkline Gas Company (Trunkline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it seeks to abandon and reduce the RDC, for Trunkline, from 405,000 Mcf to 305,000 Mcf of natural gas received by Natural at Natural's receipt point located near Holly Beach in Cameron Parish, Louisiana, effective December 1, 1992. Natural states further that this service is provided pursuant to its Rate Schedule X–49 authorized in Docket No. CP73–219, as amended.

Natural states, in addition, that it also seeks to abandon its firm and interruptible transportation service for Trunkline performed under Natural's Rate Schedule X–49.

It is stated that by agreement dated December 1, 1992, Natural and Trunkline agreed to reduce the RDC. It is stated further that Trunkline has requested Natural to abandon the remaining RDC and the interruptible maximum daily quantity of 135,000 Mcf of natural gas received at the UTOS receipt point.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before June 1, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be

considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11557 Filed 5–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–6–000]

Paiute Pipeline Co.; Informal Settlement Conference

May 11, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on May 20, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1992).

For additional information, contact Edith A. Gilmore at (202) 208–1093 or Irene E. Szopo at (202) 208–1602.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11560 Filed 5–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–14–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

May 11, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on May 7, 1993 First Revised Third Revised Fourth Revised Sheet No. 50 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective November 1, 1992.

TGPL states that the purpose of the instant filing is to track a rate change attributable to the transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT–NT. The tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule FT–NT.

Included in Appendix A attached to the filing is the explanation of the rate change and details regarding the computation of the revised FT–NT rates.

TGPL states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214, 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11561 Filed 5–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–327–000]

Williams Natural Gas Co.; Application

May 11, 1993.

Take notice that on May 3, 1993, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–327–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale, certain facilities known as the Wamsutter Gathering System located in Carbon and Sweetwater Counties, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams states that it seeks to abandon and transfer ownership to Williams Gas Processing-Wamsutter Company (WGP–W), an affiliated company, approximately 278.8 miles of various diameter pipeline, and measuring and appurtenant facilities in the Wamsutter Gathering System.

Williams states further that all facilities abandoned by Williams would remain in place for the continued use and operation by WGP–W as a non-regulated, independent, and separately managed business.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before June 1, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment

are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11558 Filed 5–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–329–000]

Williams Gas Processing-Wamsutter Co.; Petition for Declaratory Order

May 11, 1993.

Take notice that on May 3, 1993, Williams Gas Processing-Wamsutter Company (WGP–W), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP93–329–000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order that the facilities of, and services performed by the Wamsutter Gathering System would be exempt from the jurisdiction of the Commission under section 1(b) of the Natural Gas Act.

WGP–W states that the facilities that make up the Wamsutter Gathering system and the services provided thereby constitute the gathering of natural gas. WGP–W states further that WGP–W's petition is the companion to the application filed by Williams Natural Gas Company on May 3, 1993, and now pending in Docket No. CP93–327–000, to abandon the system and the services performed therewith.

It is stated that the system is located in Carbon and Sweetwater Counties, Wyoming.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 1, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–11559 Filed 5–14–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–19–NG]

Tenngasco Corporation; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tenngasco Corporation authorization to export up to 100 Bcf of natural gas to Mexico over a two-year term, beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 10, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–11628 Filed 5–14–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4655–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before June 16, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: National Emission Standard for Benzene Waste Operations (part 61 subpart FF)—Reporting and Recordkeeping Requirements (EPA ICR #1541.04; OMB #2060–0183). This ICR requests renewal of the existing clearance.

Abstract: Any facility which manages a waste containing benzene must maintain records and submit reports to the Agency. There is a tiered threshold for burden. Facilities managing waste containing less than 1 megagram of benzene must simply certify to that effect and maintain documentation to support their finding. Facilities managing more than 1 megagram and less than 10 megagrams of benzene-containing waste must prepare an initial certification, test annually to verify that their waste stream still falls within this range and maintain documentation to support those findings. Facilities managing more than 10 megagrams of benzene-containing waste must submit quarterly and annual reports documenting the results of continuous monitoring devices and must maintain documentation of that monitoring. The Agency uses this information to determine compliance and to select plants or processes for inspection.

Burden Statement: Public reporting burden for this collection of information is estimated to average 5.5 hours per quarterly response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information. Public recordkeeping burden for this collection of information is estimated to average 48 hours per respondent.

Respondents: Chemical plants, petroleum refineries, coke by-product recovery plants, and commercial treatment, storage and disposal facilities.

Estimated Number of Respondents: 240.

Estimated Total Annual Burden on Respondents: 17,000 hours.

Frequency of Collection: Quarterly, annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460,

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 10, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-11619 Filed 5-14-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4655-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 16, 1993. For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: "Screener Questionnaire for Industrial Laundries" (EPA No. 1646.01).

Abstract: EPA's Office of Water (OW) is planning to administer a screener questionnaire for the industrial laundries industry. The sampling plan for this screener questionnaire calls for a census of all facilities engaged in industrial laundering in the United States. This is a new data collection effort in support of technology-based effluent limitations guidelines for this industry pursuant to the Clean Water Act. The screener questionnaire will be mandatory pursuant to section 308 of the Clean Water Act. The development of effluent limitations for this industry is required by court order to be proposed by 12/31/96.

This screener questionnaire will collect data that includes the following: (1) Contacts, mailing addresses, and phone numbers for the facilities; (2) quantity and type of items accepted for laundering; (3) relative size of the industrial laundry based on the number of employees and financial data; (4) current wastewater treatment operations; (5) current water use at the facility; and (6) wastewater disposal practices.

EPA will use the information collected to determine which facilities are within the scope of this regulation, and to properly characterize and stratify the industrial laundries category. Additionally, the information will be used to select a stratified random statistical sampling of screener recipients who will receive a more extensive economic and technical questionnaire in 1994. This will greatly reduce the burden on the industry overall.

Burden Statement: Public reporting burden for this collection of information is estimated to average one hour per response including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the screener questionnaires.

Respondents: All facilities potentially engaged in industrial laundering in the United States.

Estimated Number of Respondents: 12,000 facilities.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: One time.

Estimated Total Annual Burden on Respondents: 2,000 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S.Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: May 11, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-11622 Filed 5-14-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59322A; FRL-4587-6]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TME's) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as T93-14, 15, 16, 17, and 18. The test marketing conditions are described below.

EFFECTIVE DATES: May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Laura A. Stalter, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 260-0028.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves T93-14, 15, 16, 17, and 18. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to T93-14, 15, 16, 17, and 18. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

T93-14

Date of Receipt: March 26, 1993.

Notice of Receipt: April 21, 1993 (58 FR 21454).
Applicant: The Glidden Company.
Chemical: (G) Hydrophilic Polymer Dispersant.
Use: (G) Automotive refinish paint.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 12 months, commencing on first day of commercial manufacture.

T93-15

Date of Receipt: March 30, 1993
Notice of Receipt: April 21, 1993 (58 FR 21454).
Applicant: The Glidden Company.
Chemical: (G) Nonionic Reactive Polymer Latex.
Use: (G) Automotive Refinish Paint.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 12 months, commencing on first day of commercial manufacture.

T93-16

Date of Receipt: March 30, 1993.
Notice of Receipt: April 21, 1993 (58 FR 21454).
Applicant: The Glidden Company.
Chemical: (G) Hydrophilic Polymer Dispersant.
Use: (G) Automotive Refinish Paint.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 12 months, commencing on first day of commercial manufacture.

T93-17

Date of Receipt: March 30, 1993.
Notice of Receipt: April 21, 1993 (58 FR 21454).
Applicant: The Glidden Company.
Chemical: (G) Aqueous Polyurethane Dispersion.
Use: (G) Automotive Refinish Paint.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 12 months, commencing on first day of commercial manufacture.

T93-18

Date of Receipt: March 30, 1993.
Notice of Receipt: April 21, 1993 (58 FR 21454).
Applicant: The Glidden Company.
Chemical: (G) Crosslinked Hydrophilic Latex.
Use: (G) Automotive Refinish Paint.
Production Volume: Confidential.
Number of Customers: Confidential.
Test Marketing Period: 12 months, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substances. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

Dated: May 6, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-116205 Filed 5-14-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-51809A; FRL-4588-4]

Certain chemical; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90-days for premanufacture notice (PMN) P93-66, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on August 9, 1993.

FOR FURTHER INFORMATION CONTACT: William B. Lee, New Chemicals Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613-A, 401 M Street, SW., Washington, DC 20460, (202) 260-1769.

SUPPLEMENTARY INFORMATION: On October 21, 1992, EPA received PMN P93-66 for a substance, generically identified as mannich based adduct. The submitter claimed the specific chemical identity, production volume, process information, and other information to be confidential business information. Notice of receipt was published in the **Federal Register** of November 17, 1992 (57 FR 54231). The 90-day review period is scheduled to expire on May 11, 1993.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in this PMN may be regulated under TSCA. The Agency requires an extension of the review periods, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to August 9, 1993.

PMNs are available for public inspection in Rm. NE-G004, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: May 7, 1993.

Charles M. Auer,

Director, Chemical Control Division.

[FR Doc. 93-11621 Filed 5-14-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1939]

Petitions for Reconsideration and Clarification and Application for Review of Actions in Rulemaking Proceedings

May 10, 1993.

Petitions for reconsideration and clarification and application for review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to these petitions and application must be filed June 1, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Provision of Access for 800 Service. (CC Docket No. 86-10) Number of Petitions Filed: 1

Subject: Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum to the Fixed-Satellite Service and the Mobile-Satellite Service for Low-Earth Orbit Satellites. (ET Docket No. 91-280, RM Nos. 7334, 7399, 7612) Number of Petitions Filed: 1

Application for Review

Subject: Request review by the Commission en banc of denial April 13, 1993 of Handicap Discrimination Compliant. Number of Applications Filed: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-11537 Filed 5-14-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy on Contracting With Outside Firms

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of policy.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has adopted a new policy concerning the fitness and integrity of contractors who provide goods or services to the FDIC. The purpose of this policy is to establish official written guidance to contracting personnel who are awarding high dollar value contracts and to firms bidding on such contracts. This policy applies to the acquisition of all categories of professional services, technical services and materials for the FDIC, with the exception of legal services. This policy has particular significance to potential contractors in litigation with the FDIC, the Resolution Trust Corporation (RTC), the Federal Savings and Loan Insurance Corporation (FSLIC) or any successor FSLIC, and firms or any of their affiliates that are in default on financial obligations to the FDIC, RTC, FSLIC or any successor to FSLIC.

EFFECTIVE DATE: This policy is effective May 4, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew G. Freimuth, Assistant Director, Office of Corporate Services, (202) 898–3660.

SUPPLEMENTARY INFORMATION:

Discussion

I. Background

Although the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) required the RTC to promulgate minimum standards of fitness and integrity for its contractors, there is no statutory requirement for the FDIC to do likewise. Nevertheless, the FDIC Board of Directors (Board) determined that it was prudent to apply similar standards to FDIC acquisition activities. Until recently, the FDIC relied on the RTC Contractor Database and the decisions made by the RTC Contractors' Conflicts Committee (RTC Committee or Committee) to assure that the contractors from whom it acquires property and services meet the FDIC's fitness and integrity standards.

On March 27, 1990, both the FDIC and RTC Boards of Directors adopted a policy that made it clear that the FDIC and the RTC could contract with firms despite the presence of litigation if the firm agreed to certain screening devices and other conditions and if the firm was otherwise in compliance with the RTC contractor fitness and integrity regulations set forth in 12 CFR part 1606. The Board delegated its authority to grant waivers under the policy to the RTC Committee.

In February 1992, however, the RTC disbanded the RTC Committee and significantly reduced its reliance on the contractor database as a conflict screening mechanism. Thus, the FDIC Office of Corporate Services (OCS) recently added new provisions to the FDIC's standard contracts in order to formally incorporate the FDIC's contractor fitness and integrity standards into its acquisition process.

In addition to using standard contract provisions to formalize the FDIC's contractor fitness and integrity standards, the FDIC has adapted for its use two policy statements published by the RTC on July 23, 1992. The two RTC policies address contracting with firms in litigation and firms with related entity defaults on financial obligations to the RTC, the FDIC, FSLIC or any successor to FSLIC. The FDIC has expanded the latter policy to address contracting with firms in default on such obligations.

II. Previous Policies

The FDIC's previous contracting policies were based on the urgency and immediacy of the FDIC's need for specific contract services (usually on a large scale) that might have been delayed or unavailable if the FDIC had refused to contract with firms with which it was in litigation, or with firms with related entities in default. Frequently, the most readily available sources of those services were large firms which, given their size and organizational complexity, faced a massive administrative burden in complying with the full scope of the RTC certification requirements for all their "related entities", as the term is defined at 12 CFR 1606.2(n). Consequently, the RTC Committee made decisions to limit the reporting and certification requirements of very large firms with respect to certain of their related entities.

In the case of firms in litigation with FDIC or RTC, when the RTC Committee determined that contracting with a particular firm would benefit the FDIC or RTC, and the firm could meet conditions imposed by the Committee, the policy was that the FDIC or RTC would, at their discretion, make a determination that the firm met the fitness and integrity standards, notwithstanding the pending litigation. Once such a determination was made, the FDIC and the RTC could continue to solicit offers from and award contracts to the firm pending further notification. In such cases, the conditions imposed required the firm to screen the persons and/or office(s) charged with wrongdoing from work on the FDIC or RTC contract, and to agree that it could not use its retention by the FDIC or RTC as a defense in the pending litigation.

In cases in which "related entities" of large business organizations had unsatisfied FDIC/RTC obligations, it became the policy of the FDIC and RTC, pursuant to decisions of the RTC Committee, to find that such firms could meet the minimum standards of fitness and integrity under the regulations set forth at 12 CFR part 1606 if the firm's defaulting related entity could be screened off and not allowed to participate in FDIC or RTC contract work.

Regarding firms in default, however, the RTC regulation at 12 CFR 1606.5(a) states that any potential RTC contractor who currently has an unsatisfied FDIC/RTC obligation shall be deemed not to meet minimum standards of fitness and integrity, and therefore ineligible to contract with the RTC. The FDIC officially adopts this policy.

III. Reasons for Issuing New Policy

The pool of competing vendors ready and able to provide a broad range of services to the FDIC has significantly expanded since 1990, and thus the business necessity rationale for contracting with firms in litigation and firms in default and their affiliated business entities has been substantially reduced. Thus, the FDIC has decided that it is appropriate at this time to further restrict contracting with firms in litigation with FDIC, RTC, FSLIC or any successor to FSLIC and with firms whose affiliated business entities have unsatisfied FDIC/RTC obligations.

Further, in regard to firms with affiliated business entities in default, the FDIC recognizes that ultimately the cost of unsatisfied FDIC/RTC obligations is borne by the insurance funds. Where the defaulting party is related to a firm which is endeavoring to enter into contracts with the FDIC for the provision of property or services, such default requires the FDIC to carefully evaluate whether it should contract with the related firm. Accordingly, in the future, in determining whether a potential contractor meets its basic standards of fitness and integrity, the FDIC will take into account any unsatisfied FDIC/RTC obligations of the firm's affiliated business entities and, except under the most extenuating of circumstances, a potential contractor will be held accountable for the failure

of its affiliated business entities to pay such obligations.

IV. Statement of Policy

(A) Definitions

1. *Affiliated Business Entity* means a business organization (e.g., a corporation, partnership, individual, etc.) that is under the control of the competing vendor, the offeror or the contractor, is in control of the competing vendor, the offeror or the contractor or is under common control with the competing vendor, the offeror or the contractor. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership. A subfranchiser shall not be considered an affiliated business entity of its master franchiser if the subfranchiser is independently owned and operated. In determining whether concerns are independently owned and operated and whether or not they are affiliated business entities, consideration is given to all appropriate factors, including common ownership, common management and contractual relationships.

2. *Competing Vendor* means:

(i) With respect to a new procurement (including any procurement using procedures other than competitive procedures) of property or services, any entity legally capable of entering into a contract or subcontract in its own name that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity;

(ii) In the case of a contract modification, the term competing vendor includes the incumbent contractor;

(iii) When used in the context of events occurring after submission of proposals in response to a Request for Proposals (RFP), the term competing vendor includes offerors.

3. *Contractor* means an entity which has entered into an enforceable, bilateral written agreement with the FDIC for the provision of property or services, or which is providing property or services in accordance with a unilateral written agreement, such as a purchase order.

4. *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a business organization, the ability to control in any manner the election of a majority of a business organization's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a business organization. For purposes of this directive, an entity or individual shall be presumed to have control of a company or organization if the entity or individual directly or indirectly, or acting in concert with one or more entities or individuals, or through one or more subsidiaries, owns or controls 25 percent or more of its equity, or otherwise controls or has power to control its management or policies.

5. *Default* means:

(i) A delinquency of ninety (90) or more days as to payment of principal or interest on a loan or advance from an insured depository institution; or

(ii) A failure to comply with the terms and conditions of a contract with the FDIC, RTC, FSLIC or any successor to FSLIC, or an insured depository institution, other than a loan or advance.

6. *Delinquent Obligation* means:

(i) A delinquency of ninety (90) days or more as to payment of principal or interest on a loan or advance from the FDIC, in any of its various capacities, or any predecessor or successor thereto;

(ii) With respect to a compromise settlement of any loan owed to the FDIC, in any of its various capacities, in cases where the borrower failed to recognize the amount of the balance reduction as income for federal income tax purposes during the applicable tax year or in any subsequent tax year, the difference between (1) outstanding unpaid principal balance of such loan immediately prior to such compromise settlement and (2) the settlement amount; or

(iii) A failure to comply with the terms and conditions of any contract with the FDIC, in any of its various capacities, or any predecessor thereto.

7. *Insurance Fund* means the Bank Insurance Fund (BIF), Savings Association Insurance Fund (SAIF), the FSLIC Resolution Fund (FRF) or the Resolution Trust Corporation Fund (RTCF).

8. *Insured Depository Institution* means any bank or savings association the deposits of which are insured by the FDIC.

9. *Offeror* means a competing vendor who submits a proposal in response to an RFP. In the case of a contract modification, the word offeror can include the incumbent contractor.

10. *Request for Proposals* (RFP) means a written summary of work to be performed in accordance with the terms of a proposed contract. Offerors base the proposed cost of their services on the RFP requirements and their evaluation of the impact that providing those services would have on their firms.

11. *Unsatisfied FDIC/RTC Obligation* is a default on an obligation to the FDIC, RTC, FSLIC or any successor to FSLIC in any of their capacities, or an unsatisfied final judgment in favor of the FDIC, RTC, FSLIC or any successor to FSLIC, or any depository institution under FDIC/RTC control.

(B) Applicability

This policy applies to the acquisition of all categories of professional services, technical services and materials for the FDIC, with the exception of legal services.

(C) General Policy on Contracting with Firms in Litigation with FDIC, RTC, FSLIC or Any Successor to FSLIC

When an offeror responding to an FDIC RFP is an adverse party to a lawsuit in which the FDIC, RTC, FSLIC or any successor to FSLIC is seeking recovery in excess of $50,000, the FDIC will evaluate the litigation to determine whether it can enter into a contract with that firm. The first points that the FDIC will consider are whether it has a compelling business need for the services provided by the firm and whether the services which the firm provides are available from one or more competing firms.

Where there is a compelling need for the firm's services, the following factors are among those that will be considered in determining whether the FDIC will contract with the firm:

1. Claims for substantial recoveries indicate a conflict of interest between the firm and the FDIC;

2. A large number of lawsuits, particularly naming numerous individuals and offices, raise a legitimate concern of widespread wrongdoing within the firm;

3. Lawsuits that accuse home office or high-level officials of wrongdoing raise a legitimate concern of inherent or institutional misfeasance or malfeasance;

4. Lawsuits accusing the firm of intentional wrongdoing or gross negligence are more significant than those alleging only negligence;

5. The question of whether the lawsuit was initiated by the FDIC or the offeror will be taken into consideration, and

6. A single lawsuit may be so substantial in its claim for damages or in the conduct alleged that it constitutes a conflict of interest between the firm and the FDIC. The FDIC will base its determination whether to enter into a contract with a firm on whether some or all of these factors are present.

(D) Policies on Contracting with Firms in Default on Financial Obligations and Their Affiliated Business Entities

It is the policy of the FDIC that an offeror with one or more unsatisfied FDIC/RTC obligations shall be deemed as not meeting the basic standards of fitness and integrity, and therefore ineligible to contract with the FDIC.

It is also the policy of the FDIC that if an offeror has any affiliated business entities with any unsatisfied FDIC/RTC obligations, those unsatisfied FDIC/RTC obligations will be considered in determining whether the offeror meets the FDIC's basic standards of fitness and integrity. At the time that any such unsatisfied FDIC/RTC obligations come to our attention, by whatever means, the FDIC will evaluate such obligations, and to the extent that one or more of a firm's affiliated business entities have failed to pay such obligations, the FDIC may exclude the firm from the FDIC's contracting program. If the matter is resolved to the FDIC's satisfaction, the FDIC may continue to solicit proposals for the provision of property and services from the firm.

(E) Representations and Certifications Form

During the contracting process, the FDIC will determine whether offerors and their affiliated business entities are in litigation with the FDIC, RTC, FSLIC or any successor to FSLIC, or are in default on obligations to the FDIC, RTC, FSLIC or any successor to FSLIC, by requiring each offeror to complete the Representations and Certifications Form (FDIC Form 3700/04). If an offeror's written response to the questions posed on the Representations and Certifications Form indicates that the offeror's firm has an unsatisfied FDIC/RTC obligation, the FDIC will not enter into a contract with that offeror. If the offeror's response indicates that the firm is in litigation with the FDIC, RTC, FSLIC or any successor to FSLIC, or has one or more affiliated business entities with unsatisfied FDIC/RTC obligations, the FDIC generally will not enter into a contract with that firm, except in the most extenuating of circumstances, in which case a waiver to this policy will be granted in the manner described in subsection V. below.

(F) Right to Offset Against Any Contract Payments for the Contractor's Delinquent Obligations

If, subsequent to the award of an FDIC contract, the contractor becomes delinquent on an obligation to the FDIC, or an unknown pre-existing delinquent obligation is discovered, the FDIC contract provision entitled "Right to Offset Against Any Contract Payments for Delinquent Obligations", which is included in the FDIC General Provisions, gives FDIC the right to offset a minimum of fifteen (15) percent of the contract price, and to negotiate with the contractor the additional amount, up to 100 percent of the contract price, which the FDIC will withhold to apply towards satisfaction of the delinquent obligation. The FDIC General Provisions are included in all standard FDIC contracts for the acquisition of property and services. The offset provision can be exercised as an alternative to terminating the contract when such termination is not in the best interest of the FDIC.

(G) Conflicts with Contract Provisions

In the event of a conflict between the terms of the FDIC General Provisions and this policy statement, the terms of the FDIC General Provisions shall govern.

V. Implementation

(A) Waiver Procedures

The Senior Contract Ethics Specialist from OCS will determine, on a contract-by-contract basis, whether it would be appropriate to waive the policy against contracting with firms in litigation or the policy against contracting with firms which have affiliated business entities with unsatisfied FDIC/RTC obligations. In making this determination, the Senior Contract Ethics Specialist will consult with the requesting FDIC office or division (as well as other affected offices or divisions), and obtain the concurrence of the FDIC Assistant Executive Secretary (Ethics). Documentation of the decision to grant a waiver will be included in the contract file. In the majority of cases, such determinations will be made only after the firm requiring a waiver has submitted a proposal for evaluation in competition with other firms, and after that firm's proposal has been evaluated as being the most advantageous to the FDIC of all the proposals received. As an exception to this policy, in a limited number of instances, the FDIC may grant a pre-bid review of a particular firm's fitness and integrity to enter into a contract resulting from a specific RFP when the FDIC determines, at its sole discretion, that the participation of that firm is necessary to foster a sufficient amount of competition in the procurement to assure that the resulting contract is at a fair and reasonable price.

(B) Conditions on Awards of Contracts to Firms in Litigation with FDIC/RTC.

Any determination to award a contract to an offeror in litigation will be subject to appropriate conditions, including the requirement that the firm screen the persons and/or office(s) charged with wrongdoing from work on the FDIC contract and agree that it cannot use its retention by the FDIC as a defense in the pending litigation. The FDIC may, at its discretion, seek independent verification of the efficacy of the contractor's screening process.

By Order of the Board of Directors.

Dated at Washington, DC this 4th day of May, 1993

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-11571 Filed 5-14-93; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 93-45]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR part 936) that were published in the Federal Register on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the sixth quarter review under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: Due Date for Member Community Support Statements for

Members Selected in Sixth Quarter Review: July 1, 1993.

Due Date for Public Comments on Members Selected in Sixth Quarter Review: July 1, 1993.

ADDRESSES: Written comments may be submitted to the member's FHLBank. See section B of **SUPPLEMENTARY INFORMATION** for specific addresses.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2825, or Kathleen S. Brueger, Associate Director, Housing Finance Directorate, (202) 408–2821, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. Only members with post-July 1, 1990 CRA Evaluations and members not subject to CRA will be selected for review in the first two years following the effective date of the regulation. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members to be Reviewed in Sixth Quarter, Grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1, Post Office Box 9106, Boston, Massachusetts 02205–9106		
Society for Savings	Hartford	CT
Stafford Savings Bank	Stafford Springs	CT
Winter Hill Federal Savings Bank	Somerville	MA
Winchester Savings Bank	Winchester	MA
Mid Maine Bank, FSB	Auburn	ME
Biddeford Savings Bank	Biddeford	ME
Hampton Cooperative Bank	Hampton	NH
Federal Home Loan Bank of New York—District 2, One World Trade Center, 103rd Floor, New York, New York 10048		
Audubon Savings & Loan Association	Audubon	NJ
Chatham Savings & Loan Association	Chatham	NJ
The Jersey Bank for Savings	Montvale	NJ
Dreyfus Security S.B., FSB	Paramas	NJ
Interchange State Bank	Saddle River	NJ
Pulaski Savings Bank, SLA	Springfield	NJ
Albion FS&LA	Albion	NY
Canajoharie Building, SLA	Canajoharie	NY
Fairport S&LA	Fairport	NY
Highland Falls FS&LA	Highland Falls	NY
Sterling National Bank & Trust Co	New York	NY
Champlain National Bank	Willsboro	NY
Santander National Bank	Baymon	PR
Federal Home Loan Bank of Pittsburgh—District 3, 625 West Ridge Pike, Suite B–107, Conshohocken, Pennsylvania 19428		
Cambria County FS&LA	Cresson	PA
FNB of Fleetwood	Fleetwood	PA
Peoples Bank of Pennsylvania	Ford City	PA
First National Bank of Greencastle	Greencastle	PA
Harris Savings Bank	Harrisburg	PA
Jersey Shore State Bank	Jersey Shore	PA
Miners Bank of Lykens	Lykens	PA
Mid Penn Bank	Millersburg	PA
First FS&LA of New Castle	New Castle	PA
National Bank of North East	North East	PA
Bucks County Bank & Trust Company	Perkasie	PA
Pennsylvania Savings Bank	Philadelphia	PA
Phoenixville FS & LA	Phoenixville	PA
Mount Troy S&LA	Pittsburgh	PA
Snyder County Trust Company	Selinsgrove	PA
Turbotville National Bank	Turbotville	PA
West Milton State Bank	West Milton	PA
Woodlands Bank	Williamsport	PA
First West Virginia Bank, N.A	Buckhannon	WV
The Citizens Bank of Weston, Inc	Weston	WV
Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348.		
Central Bank of the South	Birmingham	AL
Bank of Dadeville	Dadeville	AL
Gulf FSB, a FSB	Mobile	AL
St. Clair FSB	Pell City	AL
Troy Bank and Trust Company	Troy	AL
First State Bank of Tuscaloosa	Tuscaloosa	AL

Member	City	State
Elmore County National Bank	Wetumpka	AL
Crestar Bank, N.A.	Washington	DC
First FS & LA of Englewood	Englewood	FL
First Family FS & LA	Eustis	FL
Liberty Bank of Fort Walton Beach	Fort Walton Beach	FL
Desjardins FSB	Hallandale	FL
Home SB, FSB	Hollywood	FL
Consumers SB	Miami	FL
Fifth Third Trust Co. and SB, FSB	Naples	FL
Ocala National Bank	Ocala	FL
US Trust Company of Florida SB	Palm Beach	FL
Citizens FSB of Port St. Joe	Port St. Joe	FL
Seminole Bank	Seminole	FL
Citrus Bank	Vero Beach	FL
Essex Savings Bank	West Palm Beach	FL
National Bank of Commerce	Winter Park	FL
Athens First Bank & Trust Company	Athens	GA
United Bank	Barnesville	GA
Charter Bank and Trust Company	Marietta	GA
Newnan SB, FSB	Newnan	GA
United Bank of Crawford	Roberta	GA
Allied Bank of Georgia	Thomson	GA
First SB, FSB	Thomson	GA
Park Avenue Bank	Valdosta	GA
Franklin SB, FSB	Baltimore	MD
Kopernik FSA	Baltimore	MD
Kosciuszko FSB	Baltimore	MD
Sandy Spring National Bank	Olney	MD
Carroll County Bank & Trust Company	Westminster	MD
Topsail State Bank	Hampstead	NC
Southern National Bank of North Carolina	Lumberton	NC
Mocksville Savings Bank, SSB	Mocksville	NC
Bank of Union	Monroe	NC
Randleman Savings and Loan Association	Randleman	NC
First Savings Bank of Rockingham County	Reidsville	NC
First Republic SB, FSB	Roanoke Rapids	NC
United Carolina Bank	Whiteville	NC
Enterprise National Bank of the Piedmont	Winston-Salem	NC
The Peoples National Bank	Easley	SC
Investors SB of S. Carolina, Inc	Florence	SC
Greenwood National Bank	Greenwood	SC
Poinsett Bank, FSB	Travelers Rest	SC
Union Bank and Trust Company	Bowling Green	VA
Patriot National Bank	Reston	VA
Southern Financial FSB	Warrention	VA
Federal Home Loan Bank of Cincinnati—District 5, Post Office Box 598, Cincinnati, Ohio 45201.		
Union National Bank & Trust Company	Barbourville	KY
Nelson County FS&LA	Bardstown	KY
Trans Financial Bank, N.A.	Bowling Green	KY
Meade County Bank, Inc	Brandenburg	KY
Brownsville Deposit Bank	Brownsville	KY
Trigg County Farmers Bank	Cadiz	KY
Taylor County Bank	Campbellsville	KY
The First National Bank in Clinton	Clinton	KY
Bank of Ohio County, Inc	Dundee	KY
City National Bank	Fulton	KY
The Commercial Bank of Grayson	Grayson	KY
The Hartford Bank & Trust Company	Hartford	KY
The Citizens Bank	Hickman	KY
Citizens Guaranty Bank	Irvine	KY
First State Bank	Irvington	KY
Citizens Bank & Trust Company of Jackson	Jackson	KY
The Anderson National Bank	Lawrenceburg	KY
Lewisburg Banking Company	Lewisburg	KY
Lexington Federal Savings Bank	Lexington	KY
First National Bank & Trust Company	London	KY
Mid American Bank & Trust Company	Louisville	KY
Stock Yards Bank and Trust Company	Louisville	KY
The Citizens Bank	Morehead	KY
Green River Bank	Morgantown	KY
First National Bank and Trust Company	Nicholasville	KY
Citizens Bank and Trust Company	Paducah	KY

Member	City	State
Farmers Bank and Trust Company	Princeton	KY
Princeton FS & LA	Princeton	KY
Southern Deposit Bank	Russellville	KY
Citizens Union Bank of Shelbyville	Shelbyville	KY
Shelby County Trust Bank	Shelbyville	KY
First & Peoples Bank, Springfield	Springfield	KY
The Peoples Bank	Taylorsville	KY
Pioneer Federal Savings Bank	Winchester	KY
The Farmers & Merchants State Bank	Archbold	OH
Bethel Building and Loan Company	Bethel	OH
Equitable S&L Company	Cadiz	OH
Harvest Home Savings Association	Cheviot	OH
Gateway Federal Savings Bank	Cincinnati	OH
Mt. Washington Savings and Loan Company	Cincinnati	OH
Patriot Federal Savings Bank	Cincinnati	OH
The Union Bank Company	Columbus Grove	OH
Galion Building & Loan Assoc.	Galion	OH
Harrison Building and Loan Association	Harrison	OH
First Federal Savings and Loan Association	Lorain	OH
Ripley Federal Savings & Loan Association	Ripley	OH
The Lenox Savings & Loan Company	St. Bernard	OH
Peoples Savings and Loan Company	Urbana	OH
Trumbull Savings and Loan Company	Warren	OH
Perpetual Savings Bank	Wellsville	OH
Peoples Savings Bank	Xenia	OH
First FSB of Eastern Ohio	Zanesville	OH
Citizens Bank	Collierville	TN
The Middle Tennessee Bank	Columbia	TN
The First National Bank of Polk County	Copperhill	TN
First State Bank of Covington	Covington	TN
First Federal Savings Bank	Dickson	TN
The Weakley County Bank	Dresden	TN
Bank of Hartsville	Hartsville	TN
NBC Knoxville Bank	Knoxville	TN
Citizens Bank of Blount County	Maryville	TN
McKenzie Banking Company	McKenzie	TN
National Bank of Commerce	Memphis	TN
Cavalry Bank, a FSB	Murfreesboro	TN
Nashville Bank of Commerce	Nashville	TN
Bank of Ripley	Ripley	TN
The Bank of Sharon	Sharon	TN
Valley Bank	Sweetwater	TN
Merchants & Planters Bank	Toone	TN
First Volunteer Bank	Union City	TN
Franklin County Bank	Winchester	TN
Federal Home Loan Bank of Indianapolis—District 6, P.O. Box 60, Indianapolis, IN 46205–0060.		
Central National Bank & Trust	Attica	IN
Bloomfield State Bank	Bloomfield	IN
First Federal S&LA or Corydon	Corydon	IN
Bank of Western Indiana	Covington	IN
First National Bank of Dana	Dana	IN
Blue River Federal Savings Bank	Edinburgh	IN
The Bright National Bank	Flora	IN
Fowler State Bank	Fowler	IN
First United Savings Bank, FSB	Greencastle	IN
Bank of Highland	Highland	IN
Landmark Savings Bank	Indianapolis	IN
Union FSB of Indianapolis	Indianapolis	IN
La Porte Savings Bank	La Porte	IN
Lafayette Savings Bank, FSB	Lafayette	IN
Union County NB	Liberty	IN
First FSB of Indiana	Merrillville	IN
Peoples S&LA of Monticello	Monticello	IN
First Citizens State Bank	Newport	IN
American State Bank	North Judson	IN
Union Bank and Trust Company	North Vernon	IN
Tri-County Bank & Trust Company	Roachdale	IN
First National Bank of Valparaiso	Valparaiso	IN
The Merchants Bank & Trust Company	West Harrison	IN
Byron Center State Bank	Bryon	MI
State Bank of Caledonia	Caledonia	MI
Capac State Bank	Capac	MI

Member	City	State
Century Bank and Trust	Coldwater	MI
Home Federal Savings Bank	Detroit	MI
Northern Michigan Savings Bank	Escanaba	MI
United Savings Bank, FSB	Farmington Hills	MI
Old State Bank Fremont	Fremont	MI
First National Bank of Gaylord	Gaylord	MI
BayBank	Gladstone	MI
The Peninsula Bank	Ishpeming	MI
The Newberry State Bank	Newberry	MI
National Bank of Royal Oak	Royal Oak	MI
Macomb S&LA	St. Clair Shores	MI
SJS Federal Savings Bank	St. Joseph	MI
Sterling Savings Bank, FSB	Southfield	MI
Interfirst Federal Savings Bank	Ypsilanti	MI
Omni Savings Bank	Columbia	SC
Federal Home Loan Bank of Chicago—District 7, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.		
Benld Loan Association	Benld	IL
Champion FS &LA	Bloomington	IL
Peoples Bank	Bloomington	IL
Capron State Bank	Capron	IL
Home FS&LA of Carbondale	Carbondale	IL
Cole Taylor Bank	Chicago	IL
Columbia National Bank of Chicago	Chicago	IL
Irving Federal Bank for Savings	Chicago	IL
LaSalle National Bank	Chicago	IL
LaSalle Northwest National Bank of Chicago	Chicago	IL
Mid-America National Bank	Chicago	IL
North Side FS&LA of Chicago	Chicago	IL
First Bank South	Dixon	IL
Old Kent Bank, N.A.	Elmhurst	IL
First Bank North	Freeport	IL
State Bank of Freeport	Freeport	IL
First Federal S&LA of Herrin	Herrin	IL
Jacksonville Savings Bank	Jacksonville	IL
Kankakee FS & LA	Kankakee	IL
Union FS & LA	Kewanee	IL
La Grange FS & LA	La Grange	IL
Bank of Ladd	Ladd	IL
Brickyard Bank	Lincolnwood	IL
Prospect Federal Savings Bank	Lombard	IL
LaSalle Bank Matteson	Matteson	IL
Heartland FS & LA	Mattoon	IL
First Bank & Trust Company, Mount Vernon	Mount Vernon	IL
Nokomis S & LA	Nokomis	IL
Oak Brook Bank	Oak Brook	IL
First Bankers Trust Company, N.A.	Quincy	IL
Pioneer Bank & Trust Company	River Grove	IL
First National Bank	Sullivan	IL
Busey Bank	Urbana	IL
North Shore Trust and Savings	Waukegan	IL
Waukegan Savings & Loan Association	Waukegan	IL
First FS&LA of Westchester	Westchester	IL
Metro Savings Bank, FSB	Wood River	IL
First Banking Center—Albany	Albany	WI
First National Bank & Trust Company	Beloit	WI
Charter Bank of Eau Claire	Eau Claire	WI
The Equitable Bank, SSB	Hales Corner	WI
State Bank of La Crosse	La Crosse	WI
F&M Bank—Lancaster	Lancaster	WI
The Park Bank	Madison	WI
Norwest Bank Wisconsin, N.A.	Milwaukee	WI
First National Bank and Trust	Monroe	WI
First National Bank of Portage	Portage	WI
Peoples State Bank	Prairie du Chien	WI
Valley Bank Western, FSB	Sparta	WI
Wisconsin Savings Bank, SA	Tomah	WI
Community State Bank	Union Grove	WI
State Bank of Withee	Withee	WI
Federal Home Loan Bank of Des Moines—District 8, 907 Walnut Street, Des Moines, Iowa 50309		
American Trust and Savings Bank	Dubuque	IA
The Garnavillo Savings Bank	Garnavillo	IA

Member	City	State
Ida County State Bank	Ida Grove	IA
Iowa State Bank and Trust Company	Iowa City	IA
Home State Bank	Jefferson	IA
Farmers & Merchants Savings Bank	Manchester	IA
Nevada National Bank	Nevada	IA
Northwoods State Bank	Northwood	IA
Mahaska State Bank	Oskaloosa	IA
Morningside Bank and Trust	Sioux City	IA
Commercial Trust and Savings Bank	Storm Lake	IA
Tama State Bank	Tama	IA
West Des Moines State Bank	West Des Moines	IA
Peoples State Bank	Winthrop	IA
Security State Bank of Aitkin, Inc.	Aitkin	MN
Security Bank Minnesota	Albert Lea	MN
First State Bank	Emmons	MN
Itasca State Bank	Grand Rapids	MN
Security State Bank of Holdingford	Holdingford	MN
Jackson FS & LA	Jackson	MN
American National Bank of Little Falls	Little Falls	MN
American Bank Mankato	Mankato	MN
State Bank of McGregor	McGregor	MN
National City Bank of Minneapolis	Minneapolis	MN
Peoples State Bank of Plainview	Plainview	MN
Citizens State Bank of St. James	St. James	MN
Security Bank Northwest	St. Michael	MN
Cherokee State Bank of St. Paul	St. Paul	MN
First Security State Bank	Sleepy Eye	MN
Wadena State Bank	Wadena	MN
Jefferson S&LA	Ballwin	MO
Bank 10	Belton	MO
Polk County Bank	Bolivar	MO
Peoples Bank	Cuba	MO
Tri-County State Bank of El Dorado Springs	El Dorado Springs	MO
Bank of the Leadbelt	Flat River	MO
Farmers & Merchants Bank	Hannibal	MO
Allegiant State Bank	Kahokia	MO
Mark Twain Bank	Ladue	MO
First Bank of Maryville	Maryville	MO
Community Bank & Trust	Neosho	MO
Allegiant Bank	St. Louis	MO
Southwest Bank of St. Louis	St. Louis	MO
Chemical Bank	Sweet Springs	MO
Western State Bank	Devils Lake	ND
State Bank of Alcester	Alcester	SD
Commercial Trust and Savings Bank	Mitchell	SD
Federal Home Loan Bank of Dallas—District 9, 5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038.		
Superior Federal Bank, FSB	Fort Smith	AR
Bank of Hot Springs	Hot Springs	AR
Leachville State Bank	Leachville	AR
First National Bank in Mena	Mena	AR
First National Bank of Paragould	Paragould	AR
First Bank of Arkansas	Russellville	AR
Citizens S&LA of Washington Parish	Bogalusa	LA
First National Bank of St. Charles Parish	Boutte	LA
Caldwell Bank and Trust Company	Columbia	LA
Homeland Federal Savings Bank	Columbia	LA
The D'Arbonne Bank & Trust Company	Farmerville	LA
Progressive Bank & Trust Company	Houma	LA
Bank of LaPlace at St. John the Baptist	LaPlace	LA
National Bank of Commerce	Lake Charles	LA
Omni Bank	Metairie	LA
First Bank and Trust	New Orleans	LA
United Bank and Trust Company	New Orleans	LA
West Carroll National Bank	Oak Grove	LA
St. Landry Homestead, FSB	Opelousas	LA
Springhill Bank & Trust Company	Springhill	LA
First FS & LA	Aberdeen	MS
Bank of Anguilla	Anguilla	MS
Citizens Bank & Trust Company	Belzoni	MS
Guaranty Bank and Trust Company	Belzoni	MS
First Federal Bank for Savings	Columbus	MS
Sunburst Bank	Grenada	MS

Member	City	State
Community Federal Savings Bank	Tupelo	MS
Wilkinson County Savings Bank	Woodville	MS
The Bank of New Mexico	Albuquerque	NM
Western Bank of Clovis	Clovis	NM
First National Bank of Bay City	Bay City	TX
Citizens Bank and Trust Company	Baytown	TX
Citizens National Bank of Texas	Bellaire	TX
Stemmons Northwest Bank, N.A	Dallas	TX
Texas Community Bank	Dallas	TX
American Bank	Houston	TX
MetroBank, N.A	Houston	TX
Pinemont Bank	Houston	TX
Post Oak Bank	Houston	TX
Preferred Savings Association	Houston	TX
University State Bank	Houston	TX
Community Bank	Katy	TX
Bank of Livingston	Livingston	TX
First Federal Savings Bank	Longview	TX
Community State Bank	Lufkin	TX
First National Bank of Plainview	Plainview	TX
Hale County State Bank	Plainview	TX
Canyon Creek National Bank	Richardson	TX
Southwest Bank of San Angelo	San Angelo	TX
Sugar Creek National Bank	Sugar Land	TX
First American Bank, Sulphur Springs, NA	Sulphur Springs	TX
Sulphur Springs State Bank	Sulphur Springs	TX
Wallis State Bank	Wallis	TX
Federal Home Loan Bank of Topeka—District 10, Post Office Box 176, Topeka, Kansas 66601.		
Alpine Bank, Aspen	Aspen	CO
Alpine Bank, Basalt	Basalt	CO
Platte Valley Bank	Brighton	CO
FNB of Estes Park	Estes Park	CO
Alpine Bank and Trust	Glenwood Springs	CO
FNB of La Jara	La Jara	CO
First National Bank of Steamboat Springs	Steamboat Springs	CO
FNB of Sterling	Sterling	CO
Citizens Bank	West Minster	CO
First Security Bank of Windsor	Windsor	CO
Bank Central	Beloit	KS
Bank of the Southwest	Dodge City	KS
Fidelity State Bank & Trust Company	Dodge City	KS
The Walnut Valley State Bank of El Dorado	El Dorado	KS
Peoples State Bank & Trust Company	Ellinwood	KS
Army National Bank	Fort Leavenworth	KS
FNB & Trust Company in Great Bend	Great Bend	KS
Neodesha S & LA	Neodesha	KS
The Bank	Oberlin	KS
Miami County National Bank of Paola	Paola	KS
Gering State Bank & Trust Co.	Gering	NE
Home State Bank and Trust Company	Humboldt	NE
Home State Bank	Louisville	NE
Farmers & Merchants Bank	Milford	NE
Norwest Bank Nebraska, N.A.	Omaha	NE
Plattsmouth State Bank	Plattsmouth	NE
First State Bank	Scottsbluff	NE
Nebraska State Bank	South Sioux City	NE
Farmers State Bank & Trust Company	Superior	NE
First National Bank & Trust Company	Ada	OK
Alva State Bank & Trust Company	Alva	OK
Citizens Bank of Ardmore	Ardmore	OK
Lincoln Bank & Trust Company	Ardmore	OK
Grand Federal Savings Bank	Grove	OK
Green Country FS & LA	Miami	OK
Guaranty Bank & Trust Company	Oklahoma City	OK
The Liberty NB & Trust Co. of Oklahoma City	Oklahoma City	OK
First State Bank of Picher	Picher	OK
The First NB & Trust Company of Tulsa	Tulsa	OK
Western NB	Tulsa	OK
Welch State Bank of Welch	Welch	OK
Federal Home Loan Bank of San Francisco—District 11, 307 East Chapman Avenue, Orange, California 92666.		
Zions First National Bank of Arizona	Mesa	AZ

Member	City	State
Rio Salado Bank	Tempe	AZ
First American Federal Bank, FSB	Tucson	AZ
Borrego Springs Bank	Borrego Springs	CA
First Central Bank, N.A.	Cerritos	CA
Southern Pacific Thrift & Loan Association	Culver City	CA
Humboldt Bank	Eureka	CA
Six Rivers National Bank	Eureka	CA
Eurekabank, a FSB	Foster City	CA
High Desert National Bank	Hesperia	CA
First Los Angeles Bank	Los Angeles	CA
General Bank	Los Angeles	CA
Topa Thrift and Loan Association	Los Angeles	CA
Western Bank	Los Angeles	CA
Monterey County Bank	Monterey	CA
CivicBank of Commerce	Oakland	CA
Ventura County NB	Oxnard	CA
Palm Desert National Bank	Palm Desert	CA
De Anza National Bank	Riverside	CA
Central Sierra Bank	San Adreas	CA
Peninsula Bank of San Diego	San Diego	CA
First Republic Thirft and Loan	San Francisco	CA
Gateway Bank, a FSB	San Francisco	CA
National American Bank	San Francisco	CA
Sequoia National Bank	San Francisco	CA
Marin Community Bank, N.A.	San Rafael	CA
California Thrift and Loan	Santa Barbara	CA
Visalia Community Bank	Visalia	CA
Comstock Bank	Carson City	NV
Federal Home Loan Bank of Seattle—District 12, 1501 4th Avenue, Seattle, Washington 98101–1693.		
Alaska FS & LA	Juneau	AK
First Security Bank of Idaho, N.A.	Boise	ID
Bank of the Cascades	Bend	OR
Siuslaw Valley Bank, Oregon	Florence	OR
South Umpqua State Bank	Roseburg	OR
First Security Bank of Oregon	Salem	OR
State Bank of Southern Utah	Cedar City	UT
First Western National Bank	Moab	UT
Bank of Utah	Ogden	UT
Far West Bank	Provo	UT
First Mutual Savings Bank, WA	Bellevue	WA
United Security Bank, WA	Chewelah	WA
Frontier Bank	Everett	WA
American National Bank	Kennewick	WA
Pioneer Savings Bank	Lynnwood	WA
U.S. Bank of Washington, N.A.	Seattle	WA
Bank of Vancouver	Vancouver	WA
Pioneer National Bank	Yakima	WA
Rocky Mountain Bank, FSB	Cheyenne	WY
First Federal Savings Bank	Sheridan	WY

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBank no later than July 1, 1993.

All public comments concerning the Community Support performance of selected members must be submitted to the member's FHLBank no later than July 1, 1993.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Dated: May 10, 1993.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–11507 Filed 5–14–93; 8:45 am]

BILLING CODE 6725–01–M

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)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to passenger or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West) and Alaska Pacific Boat Company, 4th and Battery Bldg., suite 700, Seattle, Washington 98121.

Vessel: SPIRIT OF ALASKA.

West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West) and Westfive Enterprises, 4th and Battery Bldg., suite 700, Seattle, Washington 98121.

Vessel: SPIRIT OF DISCOVERY.

West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West) and West Marine, Inc., 4th and Battery Bldg., suite 700, Seattle, Washington 98121.

Vessel: SPIRIT OF GLACIER BAY.

West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West), 4th and Battery Bldg., suite 700, Seattle, Washington 98121.

Vessel: SPIRIT OF 98.

Dated: May 11, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–11547 Filed 5–14–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

West Travel, Inc. (d/b/a Alaska, Sightseeing/Cruise West), 4th and Battery Bldg., suite 700, Seattle, Washington 98121.

Vessels: SPIRIT OF ALASKA, SPIRIT OF DISCOVERY and SPIRIT OF GLACIER BAY.

Dated: May 11, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–11549 Filed 5–14–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P1–93]

Australia/Eastern USA Shipping Conference, Australia-Pacific Coast Rate Agreement, and Australia-New Zealand Direct Line-Petition for Temporary Exemption From Electronic Tariff Filing; Filing of Petition

Notice is hereby given that the Australia/Eastern USA Shipping Conference ("AEUSA"), the Australia-Pacific Coast Rate Agreement ("APCRA")[1] and Australia-New Zealand Direct Line ("ANZDL") (hereinafter "Petitioners") have filed a petition, pursuant to 46 CFR § 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Specifically, Petitioners request exemption from the June 4, 1993, electronic filing deadline for a period of sixty (60) days. Petitioners state that Columbus Line, BSNA and ANZDL are parties to a pending agreement known as the Australia/United States Containerline Association ("AUSCLA") (FMC Agreement No. 202–011407), that will become effective under the Shipping Act of 1984 on May 24, 1993, but likely will not become effective under Australian law until sometime in July, 1993. Petitioners aver they are seeking the temporary exemption to avoid the expense and inefficiencies of converting existing individual tariffs to electronic format and filing them electronically before June 4, only to replace those tariffs with new AUSCLA tariff(s) shortly thereafter.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than May 24, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for Petitioners: Marc J. Fink, Esq. and Wayne R. Rohde, Esq., Sher & Blackwell, 1255 23rd Street, NW., suite 500, Washington, DC 20037.

[1] The members of AEUSA are Hamburg-Sudamerikanishe Dampfschifffarhts Gesellschaft, Egger & Amsinck ("Columbus Line") and Blue Star (North America) Limited ("BSNA"). The members of APCRA are Columbus Line and BSNA.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–11623 Filed 5–14–93 8:45 am]

BILLING CODE 6730–01–M

Mitsui O.S.K. Lines, Ltd., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. 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.: 232–011327–001.

Title: MOL/Kawasaki Kisen Kaisha, Ltd. Space Charter and Sailing Agreement in the Far-East-West Asia/Mid-East-U.S. Pacific Coast Trades.

Parties: Mitsui O.S.K. Lines, Ltd., Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed amendment increases the maximum number of vessels which the parties may contribute for operation to the Agreement from 12 to 16.

Agreement No.: 202–008493–021

Title: Trans-Pacific American Flag Berth Operators Agreement.

Parties: American President Lines, Ltd., Sea-Land Service, Inc.

Synopsis: The proposed amendment expands the geographic scope of the Agreement to include ports and points in the Far East and ports and points in the United States (including Hawaii and Alaska, and its commonwealths, territories and possessions).

Agreement No.: 232–011413.

Title: Sea-Land/CACL Space Charter Agreement.

Parties: Sea-Land Service, Inc. Central American Container Line, S.A.

Synopsis: The proposed Agreement authorizes the parties to charter space on each other's vessels, and to coordinate sailings, in the trade between ports and points in the west coast of the

United States and ports and points on the West Coast of Central America, Mexico, Belize and Panama.

Dated: May 11, 1993.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93-11580 Filed 5-14-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dakota Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dakota Bancorp, Inc., Watertown, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of South Dakota, Watertown, South Dakota, the successor to First Federal Savings Bank, Watertown, South Dakota. In connection with this application, Dakota Company, Inc., Minneapolis, Minnesota; South Dakota Bancorp, Inc., Minneapolis, Minnesota; and South Dakota Financial Bancorporation, Inc., Minneapolis, Minnesota, to acquire 100 percent of the voting shares of Dakota Bancorp, Inc., Watertown, South Dakota, and thereby indirectly acquire Bank of South Dakota, Watertown, South Dakota, successor to First Federal Savings Bank, Watertown, South Dakota.

In connection with this application, Dakota Company, Inc., Minneapolis, Minnesota; South Dakota Bancorp, Inc., Minneapolis, Minnesota; and South Dakota Financial Bancorporation, Inc., Minneapolis, Minnesota, have applied to acquire Dakota Bancorp, Inc., Watertown, South Dakota, and thereby indirectly engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of South Dakota.

Board of Governors of the Federal Reserve System, May 11, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-11603 Filed 5-14-93; 8:45 am]

BILLING CODE 6210-01-F

Kootenai Bancorp, Inc., Employee Stock Ownership Trust, 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 June 7, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Kootenai Bancorp, Inc., Employee Stock Ownership Trust, Libby Montana; to acquire 10.65 of the voting shares of Kootenai Bancorp, Inc., Libby, Montana, and thereby indirectly acquire The First National Bank in Libby, Libby, Montana.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. B. John Barry, Aspen, Colorado; to acquire an additional 17.03 percent of the voting shares of Aspen Bancshares, Inc., Aspen, Colorado, for a total of at least 25 percent, and thereby indirectly acquire Pitkin County Bank & Trust Company, Aspen, Colorado.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Benjie Sims Reed. Mexia, Texas; to acquire 14.85 percent; and Bobby Lynn Reed, Groesbeck, Texas, to acquire 14.85 percent of the voting shares of First Groesbeck Holding Company, Groesbeck, Texas, and thereby indirectly acquire First National Bank, Groesbeck, Texas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. North Cascades Bancshares, Inc. Employee Stock Ownership Trust, Chelan, Washington; to acquire up to 17.4 percent of the voting shares of North Cascades Bancshares, Inc., Chelan, Washington, and thereby indirectly acquire North Cascades National Bank, Chelan, Washington.

Board of Governors of the Federal Reserve System, May 11, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-11604 Filed 5-14-93; 8:45 am]

BILLING CODE 6210-01-F

Meridian Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Meridian Bancorp, Inc., Reading, Pennsylvania; to merge with Commonwealth Bancshares Corp., Williamsport, Pennsylvania, and thereby indirectly acquire Commonwealth Bank, Williamsport, Pennsylvania.

In connection with this application, Applicant also proposes to acquire Commonwealth Employer Services, Inc., Williamsport, Pennsylvania, and thereby engage in providing employee benefit consulting services pursuant to Board Order *Commonwealth Bancshares Corporation*, 73 Federal Reserve Bulletin 158 (1987); Susquehanna Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting, as reinsurer, credit life and accident and health insurance pursuant to § 22.525(b)(8); and Commonwealth Bancshares Community Development Corp, Williamsport, Pennsylvania, and thereby engage in making equity and debt investments in corporations or projects designed primarily to promote community welfare pursuant to § 22.525(b)(6) of the Board's Regulation Y. These activities will be conducted in the State of Pennsylvania.

Board of Governors of the Federal Reserve System, May 11, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-11602 Filed 5-14-93; 8:45 am]

BILLING CODE 6210-01-F

NationsBank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 10, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to merge with MNC Financial, Inc., Baltimore, Maryland, and thereby indirectly acquire Maryland National Bank, Baltimore, Maryland, and American Security Corporation, Washington, D.C., and thereby indirectly acquire American Security Bank, National Association, Washington, D.C.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Covington County, Inc., Opp, Alabama; to merge with County Bancshares, Inc., Troy, Alabama, and thereby indirectly acquire Pike County Bank, Troy, Alabama.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Allendale Bancorp, Inc., Allendale, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Allendale, Allendale, Illinois.

2. Boatmen's Bancshares, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of FCB Bancshares, Inc., Merriam, Kansas, and thereby indirectly acquire First Continental Bank and Trust Company, Overland Park, Kansas.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American Bancorp of Oklahoma, Inc., Edmond, Oklahoma; to acquire at least 80 percent of the voting shares of Texas Guaranty National Bank, Houston, Texas.

2. BNMHC Acquisition Corporation, Newport, Minnesota; to become a bank holding company by acquiring 80.4 percent of the voting shares of The Bank of New Mexico Holding Company, Albuquerque, New Mexico, and thereby indirectly acquire The Bank of New Mexico, Albuquerque, New Mexico.

3. Fourth Financial Corporation, Wichita, Kansas; to merge with Commercial Landmark Coporation, Muskogee, Oklahoma, and thereby indirectly acquire First Bank and Trust Co. of Fort Gibson, Fort Gibson, Oklahoma; Commercial Bank and Trust

Co., Muskogee, Oklahoma; First Bank and Trust Co. of Tahlequah, Tahlequah, Oklahoma; and Commercial Bank and Trust Co. of Tulsa, Tulsa, Oklahoma.

4. *Washington Investment Company*, Otis, Colorado; to acquire 100 percent of the voting shares of Wray State Bancorporation, Wray, Colorado, and thereby indirectly acquire Wray State Bank, Wray, Colorado; First National Bank of Akron, Akron, Colorado; and First National Bank of Yuma, Yuma, Colorado.

Board of Governors of the Federal Reserve System, May 11, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-11601 Filed 5-14-93; 8:45 am]

BILLING CODE 6210-01-F

Riverside Banking Company; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Riverside Banking Company*, Fort Pierce, Florida; to engage *de novo* through its subsidiary, RBCA, Inc., Fort Pierce, Florida, in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 11, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-11600 Filed 5-14-93; 8:45 am]

BILLING CODE 6210-01-F

West Coast Bancorp, Inc., 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 June 7, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *West Coast Bancorp, Inc.*, Cape Coral, Florida; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the State of Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to engage *de novo* through its subsidiary, ONB Investment Services, Inc., Evansville, Indiana, in providing securities brokerage services pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Banque Nationale de Paris*, Paris, France; to engage *de novo* through its subsidiary, Banexi International Financial Services (North America) Corporation, New York, New York, in providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financings and loan syndications); and conducting financial feasibility studies; and providing financial and transaction advice regarding the structuring and arranging of swaps, caps, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 11, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-11605 Filed 5-14-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Inter-City Telecommunications Services; Request for Comments

May 5, 1993.

AGENCY: GSA.

ACTION: Notice for request for ideas/comments; inter-city telecommunications services.

SUMMARY: The federal government currently meets its needs for inter-city telecommunications services through the FTS2000 program. The existing FTS2000 contracts will expire in December 1998.

The federal government desires a free and open discussion of ideas related to the provision of intercity telecommunications resources to its users after 1998. Areas of interest to the government include, but are not limited to, the future direction of telecommunications technology, market offerings, applications, and regulation as they impact the provision of economical telecommunications services to the federal user. The government is also interested in comments related to mandatory use, procurement strategies, and program management.

The government will accept ideas and comments from all interested parties using two mechanisms. First, the government is hereby requesting written comments related to the above areas of interest. These comments will be organized into a post-FTS2000 environment Concept Development Record. This record will be used as one informational basis for the desired concept development. The government will make this record available to the public for review and further comment. Second, the government will conduct a conference to hear further comments and encourage discussion of different points of view on the post-FTS2000 environment. Based on written comments received, the government will invite representative points of view to be presented at the "Concept Development Conference".

The government plans to conduct this conference during October 1993. (Information pertaining to the exact date, time and location of the conference will be published at a later date.) This conference will provide an opportunity for the presentation of multiple points of view related to: the future direction of the telecommunications marketplace, services, technology, and regulation; the future telecommunications requirements of the federal government, including major government and society trends likely to affect future telecommunications requirements; strategies for the procurement of telecommunications services and systems; program management strategies; possible price structures; and, how the government can ensure continuing competitive prices.

Comments for inclusion in the Concept Development Record may be submitted to the General Services Administration, Attention: Concept Development Conference, 7980 Boeing Court, Vienna, VA 22182–3988. It is requested that comments be provided in hardcopy and on 3.5" MS–DOS formatted floppy diskettes containing WordPerfect 5.1. Comments must be received no later than August 1, 1993. It is anticipated that the Concept Development Record will be available for public review at a designated GSA location on/or about September 1, 1993. (Location will be published at a later date.) This is a notice for request for ideas/comments, there is no solicitation document available at this time.

DATES: The final date for receipt of comments on this action is August 1, 1993. The Concept Development Record is scheduled for public review on/or about September 1, 1993, and the Concept Development Conference is scheduled for October 1, 1993.

ADDRESSES: Responses to this Notice must be mailed to: General Services Administration, Attention: Concept Development Conference, 7980 Boeing Court, Vienna, VA 22182–3988.

FOR FURTHER INFORMATION CONTACT: H. Buckley Cording, CPCM, Contracting Officer, (703) 760–7486.

SUPPLEMENTARY INFORMATION: Information pertaining to the scheduling of the October 1, 1993 Concept Development Conference will be published at a later date. Also the location for the Concept Development Record, scheduled for public review on/or about September 1, 1993, will be published when it becomes available at a later date.

H. Buckley Cording,

Branch Chief, Network a Contracts Branch.

[FR Doc. 93–11545 Filed 5–14–93; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Personnel Administration

Revision of Privacy Act System of Records

AGENCY: Office of the Assistant Secretary for Personnel Administration, HHS.

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of the Assistant Secretary for Personnel Administration (ASPER) is publishing a notice of revision of a system of records, 09–90–0020—Suitability for Employment Records, HHS/OS/ASPER. It was most recently published in Office of the Federal Register, Privacy Act Issuances, 1991 Compilation, vol. I, p. 348. The notice is being revised to improve clarity with minor editorial changes and to reflect the Department's current computer technology, which allows for automated storage and password-protected access to these records. It is also being revised to increase the period during which records can be retained. These changes will affect the following sections: Storage, Safeguards and Retention and Disposal. Records in this system contain information relating to the suitability of current employees and applicants for a position in the Department.

The revision contains no new routine uses.

EFFECTIVE DATE: The proposed changes shall take effect on June 16, 1993, unless ASPER receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: ASPER Regional Liaison, Department of Health and Human Services, Room 500E, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, (202) 690–8655.

All comments received will be available for review at this location.

FOR FURTHER INFORMATION: Contact Dave Mischel at the address and telephone number above.

SUPPLEMENTARY INFORMATION: The Department has been moving for a number of years to update its methods of collecting, storing, and accessing records in this system of records in order to take advantage of the efficiency of computer technology. The practice of maintaining such records primarily in file folders sometimes makes it difficult to know just where appropriate records are located and also leads to establishing duplicative (and

incomplete) files in a variety of offices throughout the Department. While many of the records will still be maintained in file folders, the emphasis will be, whenever practicable, to store these records in electronic media where they can be more efficiently as well as protected from unauthorized disclosure by password identification procedures and other systems-based protection methods.

Dated: May 7, 1993.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

09-90-0020

SYSTEM NAME:

Suitability for Employment Records, HHS/OS/ASPER.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personnel Offices listed in "Applicants for Employment Records" HHS System 09-90-0006, Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to an individual's suitability for employment in terms of character, reputation and fitness, including letters of reference, and responses to pre-employment inquiries. National Agency Checks and inquiries material received from the Office of Personnel Management, the Merit Systems Protection Board, and the U.S. Office of Special Counsel relating to nonsensitive positions, qualifications and character investigations, and other information which may relate to the suitability of the individual for the position.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302, 7301; Executive Order 10577; Executive Order 11222.

PURPOSE(S):

Records in this system are used by the designated appointing and selecting authorities to make determinations concerning the individual's suitability for employment. These records are maintained at ASPER, OPDIV Headquarters and field offices, and Regional Personnel Offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Information in these records may be used by the Office of Personnel Management, Merit Systems Protection Board, U.S. Office of Special Counsel, Equal Employment Opportunity Commission, and the Federal Labor Relations Authority (including the General Counsel of the Authority and the Federal Service Impasses Panel) in carrying out their functions.

2. In the event that this system of records indicates 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 regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. In the event the Department deems it desirable or necessary in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

4. A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

5. When federal agencies having the power to subpoena other federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

6. When a contract between a component of the Department and a labor organization recognized under 5 U.S.C. Chapter 71 provides that the agency will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed to such organization.

7. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

8. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

9. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and in electronic form.

RETRIEVABILITY:

Records are indexed by any combination of name, date of birth, Social Security Number, or identification number.

SAFEGUARDS:

1. Authorized Users: Data in electronic form are accessed by passwords known only to those whose official duties require access.

2. Physical Safeguards: File cabinets and rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel.

3. Procedural and Technical Safeguards: A password is required to

access files maintained in electronic form. Passwords are changed frequently. All users of the information (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," and the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records from the Office of Personnel Management, the Merit Systems Protection Board, and the U.S. Office of Special Counsel concerning applicants for or incumbents of nonsensitive positions, are retained until a decision is reached on whether to hire or retain the applicant or incumbent, and are then destroyed. Other records in this system are retained until there is no further administrative need for them, the individual leaves the Department, or three years have elapsed, whichever is later, and are then destroyed. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file.

SYSTEM MANAGER(S) AND ADDRESS:

Heads of personnel offices which service organizational units in which the individual is employed or in which he/she applied for employment. See Applicants For Employment Records, HHS, System 09–90–0006, Appendix 1.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager as indicated above. The requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include the requester's name, date of birth, and organization in which employed or to which he or she applied for employment. The requester must understand that knowing and willful request for a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

To obtain access to records, write to the System Manager as indicated above to obtain access to records and provide the same information as is required under the Notification Procedures. Requesters should reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Records that contain information that is inaccurate, incomplete, untimely, or irrelevant may be contested. To contest such information, individuals should contact the System Manager specified above. They should reasonably identify the record, specify the information contested, the corrective action sought, and state their reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from:

- Applications and other personnel and security forms furnished by the individual.
- Information furnished by other Federal agencies.
- Information provided by sources such an employers, schools, references, former employers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Individuals will be provided information from the above system except when in accordance with the provisions of 5 U.S.C. 552a(k)(5): 1. disclosure of such information would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence; or 2. if the information was obtained prior to the effective date of section 3, Pub. L. 93–579, disclosure of such information would reveal the identity of a source who provided information under an implied promise that the identity of the source would be held in confidence. (45 CFR 5b.11.)

[FR Doc. 93–11591 Filed 5–14–93; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 93F–0136]

Ecolab, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ecolab, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an aqueous solution of hydrogen peroxide, acetic acid, peroxyacetic acid, octanoic acid, peroxyoctanoic acid, sodium 1-octanesulfonate, and hydroxyethylene diphosphonic acid as a sanitizing solution to be used on food-processing equipment and utensils and on food-contact surfaces in public eating places.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4371) has been filed by Ecolab, Inc., 840 Sibley Memorial Hwy., St. Paul, MN 55118. The petition proposes to amend the food additive regulations in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) to provide for the safe use of an aqueous solution of hydrogen peroxide, acetic acid, peroxyacetic acid, octanoic acid, peroxyoctanoic acid, sodium 1-octanesulfonate, and hydroxyethylene diphosphonic acid as a sanitizing solution to be used on food-processing equipment and utensils and on food-contact surfaces in public eating places.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 7, 1993.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–11539 Filed 5–14–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0132]

Lonza, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lonza, Inc., has filed a petition proposing that the food additive

regulations be amended to provide for the safe use of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin intended for use as preservatives in adhesives, resinous and polymeric coatings and clay-type fillers for paper and paperboard in food-contact articles.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4367) has been filed on behalf of Lonza, Inc., c/o Delta Analytica Corp., 1414 Fenwick Lane, Silver Spring, MD 20910. The petition proposes that the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105), § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300), and § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin intended for use as preservatives in adhesives, resinous and polymeric coatings and clay-type fillers for paper and paperboard in food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 7, 1993.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-11541 Filed 5-14-93; 8:45 am]

BILLING CODE 4160-01-F

Food and Drug Administration

[Docket No. 91G-0452]

Amaranth Institute; Withdrawal of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 1G0372) proposing that the use of amaranth grain as a direct human food ingredient be affirmed as generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT: Gerald J. Buonopane, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9519.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 6, 1992 (57 FR 413), FDA announced that a petition (GRASP 1G0372) had been filed by Amaranth Institute, P.O. Box 216, Bricelyn, MN 56014. This petition proposed that the use of amaranth grain as a direct human food ingredient is GRAS. Amaranth Institute has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: May 7, 1993.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-11540 Filed 5-14-93; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Joint Meeting of the Arthritis Advisory Committee and OTC Drugs Advisory Committee

Date, time, and place. June 1 and 2, 1993, 8:30 a.m., conference rooms D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 1, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; closed committee deliberations, June 2, 1993, 8:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3741.

General function of the committees. The Arthritis Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions. The OTC Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 21, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 1, 1993, the committee will discuss: (1) Juvenile rheumatoid arthritis (JRA) guidelines, and (2) the new drug application (NDA) for Naprosyn® (Naproxen) NDA 20-204, Syntex Corp., switch from prescription to over-the-counter (OTC).

Closed committee deliberations. On June 2, 1993, the committee will review trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. June 3 and 4, 1993, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Parking in the Clinical Center Visitor area is reserved for clinical center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, June 3, 1993, 9 a.m to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; open committee

discussion, June 4, 1993, 9 a.m. to 1 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211 or Valerie M. Mealy, Advisors and Consultants Staff, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 20, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 3, 1993, the committee will discuss possible labeling revisions for organic nitrates. On June 4, 1993, the committee will discuss possible labeling revisions for quinidine.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drugs (IND's) and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Drug Abuse Advisory Committee

Date, time, and place. June 7, 1993, 9 a.m., and June 8, 1993, 8:30 a.m., conference rooms D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 7, 1993, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; closed committee deliberations, June 8, 1993, 8:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

General function of the committee. The committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 28, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 7, 1993, the committee will discuss: (1) The results of the levo-alpha-acetylmethadol hydrochloride (LAAM) usage trial, (2) the adequacy of the proposed labeling, (3) the safety and efficacy of LAAM under the conditions of use recommended in the proposed labelling for the treatment of opiate addiction, and (4) completeness of the application and the possible need for any phase IV studies.

Closed committee deliberations. On June 8, 1993, the committee will review trade secret and/or confidential commercial information relevant to a pending NDA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Blood Products Advisory Committee

Date, time, and place. June 28, 1993, 8 a.m. and June 29, 1993, 8:30 a.m., Holiday Inn Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 28, 1993, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 6 p.m; open committee discussion, June 29, 1993, 8:30 a.m. to 3 p.m.; closed committee discussion, 3 p.m. to 4 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Bethesda, MD 20852, 301–227–6700.

General function of the committee. The committee reviews and evaluates data on the safety, effectiveness, and appropriate use of blood-based biological products and devices intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 21, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 28, 1993, the committee will participate in a public workshop entitled: The Safety of Plasma Donation and make recommendations. The issues to be discussed are as follows: (1) The effect of plasmapheresis on donor health; (2) the quality of plasma and plasma derivatives; and (3) ethical issues in remuneration of plasma donors. On June 29, 1993, the committee will discuss and provide comments on the following topics: (1) Donor suitability criteria relative to exposure to malaria, (2) the public health issue of Idiopathic CD4+ T-Lymphocytopenia (ICL), and (3) the report of the scientific site visit review for the Laboratory of Hemastasis, Division of Hematology, Office of Blood and Blood Research, Center for Biologics Evaluation and Research.

Closed committee deliberations. The committee will discuss information of a personal nature where disclosure would constitute clearly unwarranted invasion of personal privacy. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)).

OTC Drugs Advisory Committee

Date, time and place. June 28 and 29, 1993, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, June 28, 1993, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; open committee discussion, June 29, 1993, 8 a.m. to 1 p. m.; open public hearing, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 5 p.m.; Mae Brooks or Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 21, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of June 28, 1993, the committee will discuss labeling for OTC drug products containing doxylamine succinate to alert consumers that studies have shown an increase in the development of tumors in laboratory animals administered this ingredient. The agency summarized these studies in the final monograph for OTC antihistamine drug products that published in the **Federal Register** of December 9, 1992, (57 FR 58356). The Pulmonary-Allergy Drugs Advisory Committee has recommended that doxylamine remain OTC but that there be some warning to consumers that the animal tumorigenicity data exist. The committee will limit its discussion to potential OTC drug products labeling to alert consumers appropriately of these findings. The committee's recommendations will be considered by the agency in making a final decision on doxylamine in OTC antihistamine drug products, which will be published in the **Federal Register** at a later date. The committee's recommendations will also apply to doxylamine used in OTC nighttime sleep-aid drug products, marketed under approved applications.

On the afternoon of June 28, 1993, the committee will have an informational briefing on the regulation of advertising of OTC drug products by the Federal Trade Commission. This briefing is intended to inform the committee how OTC drug products are regulated and is not directly related to any issues currently under consideration by the committee or the agency.

On June 29, 1993, the committee will discuss the relationship between alcohol and acetaminophen-induced liver toxicity. The agency's evaluation of data relating to the role of microsomal enzyme inducers, including alcohol, in acetaminophen-induced liver damage was discussed in comment 27 of the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, published in the **Federal Register** of November 16, 1988 (53 FR 46204). Additional new data submitted since that time will be considered by the committee members as they discuss whether the totality of the information warrants label revisions concerning the use of OTC dosages of acetaminophen with alcohol. The committee's recommendations will be considered by the agency in its preparation of the final monograph for OTC internal analgesic drug products.

Closed committee deliberations. On June 28, 1993, the committee will discuss trade secret and/or confidential commercial information relevant to pending IND's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency

documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 10, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–11542 Filed 5–14–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on June 22, 1993, at the National Institutes of Health, Bethesda, Maryland 20892, from 8 a.m. to 5 p.m., in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to discussion of "The NIH Strategic Plan" and "Commercialization of Research Results from NIH Funding."

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, room 103, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: May 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–11626 Filed 5–14–93; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services.

ACTION: New routine use.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a(e)(11)), we are notifying the public of our intent to establish a new routine use of information maintained in the system of records entitled "Master Files of Social Security Number Holders, HHS/SSA/OSR, 09–60–0058," to delete an obsolete routine use from that system, and to correct technical and grammatical errors in the system.

The proposed routine use will permit SSA to disclose Social Security Number (SSN) information about individuals without their consent to the Office of Personnel Management (OPM), for OPM's use in administering its Civil Service Retirement (CSR) program for retired Federal Civil Service employees.

We invite public comments on this publication.

DATES: The proposed routine use will become effective as proposed, without further notice, on June 16, 1993, unless we receive comments on or before that date which would warrant our preventing the changes from taking effect.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Benson, Social Insurance Specialist, Office of Policy, 6401 Security Boulevard, Baltimore, Maryland 21235; telephone 410–965–1736.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background of the Proposed Routine Use

OPM, among its other responsibilities, administers the CSR program for retired Federal Civil Service employees. OPM uses the SSN as its personal identifier. Although OPM has the SSNs of most retirees under its CSR program, it has been unable to obtain the SSNs of a few retirees, most of whom have been on the OPM rolls for many years.

Although SSA has for some time verified the correctness of SSNs submitted by OPM, SSA has not provided SSNs when OPM has no number to verify. OPM now wishes to obtain this information from SSA, and has cited as its authority 5 U.S.C. 8347(m)(3), a Civil Service statute, which requires SSA to furnish personal information in its files (not just SSNs) to OPM on request, for OPM's use in administering the CSR program.

When complying with a statutory provision that mandates disclosure, SSA also follows the procedures established under the Privacy Act of 1974 (5 U.S.C. 552a) by publishing a new routine use for the system of records containing the subject information, in this case the Master Files of Social Security Number Holders. The routine use which we are proposing to add to the system as number 28 provides for the following disclosure:

SSN information may be disclosed to the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), when OPM needs the information in administering the Civil Service Retirement program for retired Federal Civil Service employees.

B. Compatibility of the Proposed Routine Use

We are proposing the routine use discussed above in accordance with the Privacy Act of 1974 (5 U.S.C. 552a(a)(7) and 5 U.S.C. 552a(b)(3)) and our disclosure regulation, 20 CFR part 401.

The Privacy Act permits us to disclose information about individuals without their consent for a routine use in situations in which disclosure is compatible with the purposes for which we collected the information. Our disclosure regulation (20 CFR 410.310) also permits us to disclose information when another statute mandates the disclosure. In such cases, SSA deems that the disclosures are "compatible" with the purposes for which SSA collected or compiled the information, based on the Congressional intent that the records be used for the purposes for which the other statute requires disclosure. The proposed disclosure discussed above meets the criteria in both the Privacy Act and our regulation for routine uses.

C. Effect of the Proposed Routine Use on Individuals

The only persons affected by this routine use will be those Federal Civil Service retirees who (for whatever reason) have heretofore not disclosed their own SSNs to OPM. The effect on their privacy will be minimal, because OPM will use the SSN information only for administering the CSR pension program. OPM is, of course, subject to the same Privacy Act restrictions on redisclosure of the information as any other Federal agency.

D. Other Changes

When the current notice for this system of records was published in 1989, revisions intended for routine use number 17, providing for disclosure to the Department of Justice, were mistakenly published as a new routine use, number 30. At the same time, a new routine use, number 29, providing for disclosure to the General Services Administration and the National Archives and Records Administration, was inadvertently added that was identical to the existing routine use number 26. To correct these errors, we have deleted routine use number 17 and inserted in its place the routine use that was numbered number 30 and deleted the duplicative routine use number 29. In addition, we have deleted the routine use formerly numbered number 28, since it concerns a pilot project that has been completed. Finally, we are proposing several other changes to correct technical and other minor errors, to reflect changes in some agency names, and to more clearly identify statutes mentioned in the notice.

Dated: April 27, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

[FR Doc. 93–11535 Filed 5–14–93; 8:45 am]

BILLING CODE 4190-29-M

[Social Security Acquiescence Ruling 93-2(2)]

Conley v. Bowen; Determination of Whether an Individual With a Disabling Impairment Has Engaged in Substantial Gainful Activity Following a Reentitlement Period

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January11, 1990 (55 FR 1012), the Principal Deputy Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 93-2(2).

EFFECTIVE DATE: May 17, 1993.

FOR FURTHER INFORMATION CONTACT: Walt Burton, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966-5041.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Second Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after May 17, 1993. If we made a determination or decision on your application for benefits between October 13, 1988, the date of the Court of Appeals' decision, and May 17, 1993, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the Federal Register to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the Federal Register stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security - Disability Insurance; 93.803 Social Security -Retirement Insurance; 93.805 Social Security - Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Acquiescence Ruling 93-2(2)

Conley v. Bowen, 859 F.2d 261 (2d Cir. 1988)—Determination of Whether an Individual With a Disabling Impairment Has Engaged in Substantial Gainful Activity Following a Reentitlement Period—Title II of the Social Security Act.

Issue: Whether, in making a determination following an individual's reentitlement period that an individual with a disabling impairment has engaged in substantial gainful activity (SGA), the Secretary may consider work and earnings by the individual in a single month rather than an average of work and earnings over a period of months.

Statute/Regulation/Ruling Citation: Sections 216(i)(2)(D), 223(a)(1) and 223(e) of the Social Security Act (42 U.S.C. 416(i)(2)(D), 423(a)(1) and 423(e)); 20 CFR 404.316(d), 404.321(c), 404.325, 404.337(d), 404.352(d), 404.401a, 404.1571-404.1576, 404.1579, 404.1592a and 404.1594; and SSR 83-33, 83-34 and 83-35.

Circuit: Second (Connecticut, New York, Vermont). *Conley v. Bowen*, 859 F.2d 261 (2d Cir. 1988).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge hearing and Appeals Council).

Description of Case: In May 1977, the plaintiff, Edith Conley, filed an application for disability insurance benefits under Title II of the Social Security Act (the Act). In May 1978, she was awarded benefits effective February 1977.

In 1982 the plaintiff submitted a work activity report to the Social Security Administration (SSA), indicating that she had worked for several months in 1978 and on two occasions in 1979 and 1980. SSA investigated the plaintiff's work activity and determined that she was still disabled.

In June 1983, SSA investigated additional work activity by the plaintiff and in January 1984 notified her that, unless she presented evidence to the contrary, SSA intended to find that she had demonstrated her ability to engage in SGA and that her benefits should have ceased effective December 1982. The plaintiff submitted a work activity report reflecting various employment between November 1980 and September 1983.

Ultimately, SSA determined initially and on reconsideration that the plaintiff had demonstrated her ability to engage in SGA despite a disabling impairment and that her benefits should have ceased in December 1982. She requested and was granted a hearing before an Administrative Law Judge (ALJ). The ALJ determined that:

(1) She had completed her 9-month trial work period in November 1980;

(2) Her reentitlement period had commenced in December 1980 and ended in March 1982;

(3) During her reentitlement period, the plaintiff had engaged in SGA from December 1980 through May 1981, in August 1981, and from October through December 1981;

(4) December 1982 was the first month following her reentitlement period in which she had performed SGA, because that was the first month in which she had earned more than $300[1]; and

(5) As a result of her earnings of $338.54 in December 1982, the plaintiff's entitlement to disability insurance benefits had terminated that month. The plaintiff requested that the Appeals Council review the ALJ's decision. The Appeals Council denied her request.

The plaintiff sought judicial review of the Secretary's decision, alleging that:

(1) The Secretary was required by his own regulations defining SGA, which are set forth at 20 CFR 404.1571 through 404.1576, to average her earnings over a period of months, rather than look at a single month's earnings, in determining whether she had performed SGA; and

(2) The Secretary erred in applying 20 CFR 404.1592a, which governs SGA during the reentitlement period.

The district court found that the Secretary properly applied §404.1592a in determining whether the plaintiff had engaged in SGA in December 1982 and dismissed the complaint. The plaintiff then appealed to the United States Court of Appeals for the Second Circuit.

Holding: Because it found that 20 CFR 404.1592a did not govern the work period at issue, the court of appeals reversed the judgment of the district court with directions to remand for further proceedings before the ALJ.

The court of appeals concluded that a straightforward reading of 20 CFR 404.1592a reveals that this regulation applies only to eligibility for, and the method of calculation of, benefits during the reentitlement period. As explained by the court of appeals:

> Section 404.1592a is entitled, "The reentitlement period." Subparagraph (b) defines when the reentitlement period begins and ends. Subparagraph (a) sets forth when benefits will be paid during the reentitlement period, and subparagraph (c) defines when persons are not entitled to a reentitlement period.

859 F.2d at 265.

The court of appeals thus held that §404.1592a is limited in scope to the duration of the reentitlement period, and it had no application to the period of work activity at issue (December 1982) which was after the plaintiff's reentitlement period had expired. The court stated that the only other regulations that define SGA are set forth at 20 CFR 404.1571 through 404.1576. It stated further that, while the Secretary contended that these regulations were applicable only to initial determinations of disability, there is nothing in the language of these regulations that limits the definition of, and criteria for, determining "substantial gainful activity" to initial determinations of disability.

Statement as to How Conley Differs From Social Security Policy

Beginning with the month following a completed trial work period, an individual is entitled to a reentitlement period, during which he or she may continue to test his or her ability to work despite a disabling impairment.[2] At any time during or after this reentitlement period, the individual's work may be evaluated by the Agency to determine whether his or her work activity warrants a cessation of disability status and benefits. In determining whether disability has ceased due to the performance of SGA, SSA will, if necessary, average the individual's work and earnings over the actual period of time in which work was performed, which may include work performed during the trial work period or during or after the reentitlement period.[3]

If it is determined that disability ceased on the basis that an individual is engaging or has engaged in SGA, then the individual's entitlement to disability payments will terminate as of the third month following the month that the individual engaged in SGA, but in no event earlier than the first month after the reentitlement period. All work activity during the reentitlement period which occurs in or after the third month following the month of the disability cessation determination is evaluated on a month-by-month basis. This means that an individual is not paid benefits for any month in which he or she engages in SGA, but benefits are paid for months during the reentitlement period in which he or she does not engage in SGA. Therefore, when determining whether to pay benefits for any month after the month disability ceased due to SGA, SSA does not average earnings. Likewise, after the reentitlement period has ended, SSA determines SGA based on work and earnings in each month individually, rather than by averaging work and earnings over a period of months. Benefits which were reinstated during the reentitlement period are terminated effective with the first month of SGA-level earnings after the reentitlement period. This policy is consistent with the language of section 223(a)(1) of the Act, inasmuch as Congress, by prescribing a set period of months for the reentitlement period and a set termination month, did not intend for an individual to be given an additional period of time, beyond the reentitlement period, to test his or her ability to perform SGA.

The Second Circuit's holding is inconsistent with the above-referenced policy, in that it would require SSA, in cases where a cessation determination based on SGA has been made, to average work and earnings after the reentitlement period has ended for the purposes of payment or nonpayment of benefits.

Explanation of How SSA Will Apply This Decision Within the Circuit

This Ruling applies only to cases involving the termination of Title II disability insurance benefits of recipients who (1) have completed a 9-month trial work period and performed SGA despite their disabling impairment(s), and (2) reside in Connecticut, New York or Vermont at the time of the determination or decision at any administrative level, *i.e.*, initial, reconsideration, Administrative Law Judge hearing or Appeals Council.

[1] SSA regulations, at 20 CFR 404.1574(b), define what level of earnings ordinarily is considered SGA. At the time of the *Conley* decision, earnings in excess of $300.00 per month ordinarily would be considered SGA. The SGA monthly threshold is currently $500.00.

[2] At the time of the ALJ's decision, the Act provided for a fifteen-month reentitlement period. As of January 1988, the Act provides for a thirty-six month reentitlement period, so long as the individual's condition continues to be disabling. During the reentitlement period, cash benefits will be reinstated for any month(s) that an individual's earnings drop below SGA after disability has been ceased due to demonstrated ability to perform SGA.

[3] It is not always necessary or appropriate to average earnings in every case, *e.g.*, where the earnings from month-to-month or job-to-job remain constant and uniform. Averaging would be required, however, in the case of a fluctuation of earnings from month-to-month, or where the individual performs two or more different types of work which are not representative of one another. *See* Social Security Ruling 83-35 for further explanation of the averaging concept.

In such cases, when making a determination of whether an individual has performed SGA following that individual's reentitlement period, SSA must consider the individual's average monthly earnings and amount of work (in accordance with procedures outlined in 20 CFR 404.1571 through 404.1576 and SSR 83-35), rather than his or her work in and earnings for a single month. SSA intends to clarify the regulation at issue in this case, 20 CFR 404.1592a, through the rulemaking process. SSA will continue to apply this Ruling until such clarification is made. At that time, pursuant to 20 CFR 404.985(e)(4), SSA may rescind this Ruling.

[FR Doc. 93-10037 Filed 5-14-93; 8:45 am]

BILLING CODE 4190-29-F

Substance Abuse and Mental Health Services Administration

Mental Health Services Demonstration Grants for Statewide Family Networks

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of availability of funds.

Introduction

The Center for Mental Health Services (CMHS) is providing grants to family-controlled organizations for Child and Adolescent Service System Program (CASSP) projects to develop and/or expand statewide, networks providing support and information to families of children and adolescents with serious emotional, behavioral or mental disorders.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000. This Request for Applications (RFA) is related to priority area 6, Mental Health Disorders. Specific subsections include: 6.3, "Reduce to less than 10 percent the prevalence of mental disorders among children and adolescents," and 6.14, "Increase to at least 75 percent the proportion of providers of primary care for children who include assessment of cognitive, emotional, and parent-child functioning, with appropriate counseling, referral, and follow-up, in the clinical practices." [1]

[1] Potential Applicants may obtain a copy of Healthy People 2000 (Full Report; Stock Number 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock Number 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Program Description

Background

Since its inception in 1984, the Child and Adolescent Service System Program (CASSP), now located within the Center for Mental Health Services (CMHS)[2] has assisted States and communities to:

(1) Develop leadership capacity and foster interagency coordination at State and local levels;

(2) Plan for improvements in the system of care to meet the needs of children and adolescents with serious emotional or mental disorders and their families;

(3) Carry out demonstrations which systematically examine and evaluate components of the strategy being used and assess the impact of system changes on the availability, accessibility, appropriateness and effectiveness of care; and

(4) Involve family members, members of culturally and ethnically diverse populations, and alternative community-based service providers who generally provide service to youth outside of the "system" in policy development and system assessment and planning activities in order to ensure that the service system that is developed meets the needs of the entire target population, including those at risk of serious emotional or mental disorders.

There is a long history of citizen participation and consumer advocacy in this country. Much of the specific legislation that gave rise to citizen participation was passed in the mid to late sixties, during a time of growing concern over poverty and civil rights. Citizen participation was supported in the 1970's by federal legislation in a variety of fields including health, mental health and education. Since the late 1970's the concept of consumer participation in the mental health field has broadened to include family and consumer participation, with parents and other family members serving as consumer advocates for their children with mental and emotional disorders. As with other childhood disabilities, parents of children with mental and emotional disorders are increasingly asking for a change in roles from "involvement in programs" to full participation in decision-making at all levels.

One way for family members to effectively participate in service system improvements efforts and advocate for quality services for their children, is to develop an organized base from which to work. Statewide family advocacy organizations can provide a political base for families to disseminate information, support each other in advocacy efforts, and to participate fully in decision making services.

Program Goals

The over-arching goal of CASSP is to increase the quality and availability of services for children and adolescents with, or at risk of, serious emotional, behavioral or mental disorders and their families. In the past, the National Institute of Mental Health (NIMH), and currently CMHS, have approached this goal through the development and dissemination of knowledge about the relative efficacy of different State and community strategies to improve community-based systems of care for children and adolescents with, or at risk of, serious emotional, behavioral or mental disorders. These systems of care emphasize comprehensive and individualized services, services provided within the least restrictive most appropriate environment, full participation of families, cultural competence, gender appropriateness and coordination among all child-serving agencies and programs.

The primary objectives of these statewide family network grants are:

- To develop and/or expand statewide, family-controlled networks, which address the specific information and support needs of families of youngsters with serious emotional, behavioral, or mental disorders;
- To provide necessary assistance and advice to individual family members and family groups throughout the State;
- To disseminate information to individual family members and family groups throughout all geographic regions of the State; and
- To document the progress of this process in the State.

Target Population

The population[3] of children and adolescents with, or at risk of, serious

[2] On October 1, 1992, The Alcohol, Drug Abuse, and Mental Health Administration was reorganized into a new service agency called the Substance Abuse and Mental Health Services Administration (SAMHSA) within the Public Health Service of the Department of Health and Human Services (DHHS). SAMHSA consists of three Centers that administer the prevention and treatment services programs formerly in ADAMHA—the Center for Substance Abuse Prevention (CSAP), Center for Substance Abuse Treatment (CSAT), and Center for Mental Health Services (CMHS). CMHS is responsible for coordinating the prevention and treatment of mental illness and the promotion of mental health.

[3] Section 1912(c) of the Public Health Services Act, as amended, requires the Center for Mental Health Services to publish a definition of Children with a Serious Emotional Disturbance for epidemiological purposes under the Community

Continued

emotional, behavioral or mental disorders is defined as follows:

Age. Client eligibility is limited to those under 22 years of age.

Diagnosis. Client eligibility requires the presence of an emotional, behavioral, or mental disorder diagnosable under DSM–III–R or their ICD–9–CM equivalents, or subsequent revisions (with the exception of DSM–III–R "V" codes, substance use disorders and developmental disorders, unless they co-occur with another diagnosable serious emotional disturbance.)

Disability. Client eligibility should be defined on the basis of functional impairment which substantially interferes with or limits role function in family, school or community activities. States may further define what level of impairment is required for eligibility.

Multi-agency Need. The level of disability defined by States should require multi-agency intervention. The children and adolescents should have service needs in two or more community agencies, such as mental health, substance abuse, health, education, juvenile justice, or social welfare.

Duration. Disability must be present for at least 1 year or, on the basis of diagnosis, is expected to last more than 1 year.

The population of children and adolescents with, or at risk of, serious emotional, behavioral, or mental disorders is defined as follows:

Children and adolescents who, as a result of environmental and/or biological factors, have a high probability of becoming seriously emotionally disturbed as described above. Children and adolescents at risk of serious emotional, behavioral or mental disorders include but are not limited to:

- Those who are homeless, either as part of a family unit or alone;
- Those living with parents who are unable to provide adequate care and nurturance, including drug-addicted parents;
- Those who have been victims of violence;
- Those who abuse alcohol and/or other drugs;
- Those who are HIV infected; and
- Those with a family history of psychiatric illness.

Mental Health Services Block Grant Program. The population of children and adolescents with serious emotional, behavioral or mental disorders defined for this program represents both a subset of the block grant defined population and an expansion to include at risk. This definition includes multi-agency need and a broader age range from birth up to age 22. It also includes the at-risk population for purposes of outreach to families who may need support and information.

Project Requirements

Grantees under this program must perform the following required activities:

- Develop the infrastructure of a statewide family organization that will insure the expansion and development of the network across the state;
- Develop a statewide network of family-controlled groups and individual members;
- Support organizations within the network; and
- Participate in the evaluation of grant related activities.

In performing these activities, the grantees must:

- Address how the organization will relate to child mental health planning activities undertaken by States in compliance with section 1912 of the Public Health Service Act, as amended, which replaces the State Comprehensive Mental Health Services Plans of Public Law 99–660;
- Assure Board membership is comprised of no less than 51 percent family members of children or adolescents with serious emotional, behavioral or mental disorders (See Eligibility Requirements Section);
- Develop specific strategies for inclusion of families from various cultural, ethnic, and racial groups in the family support activities of the project and for representation of these parents on the Board of the statewide organization, as well as a strategy for assuring cultural competence in all activities under the grant;
- Develop a specific strategy for inclusion of both inner city and rural families in parent support activities and on the statewide organization's governing body;
- Provide adequate budgeting for travel related to the grant, including at least two out-of-State trips annually for the project director to attend a project directors' meeting in Washington, DC and one additional national training institute/conference.
- Develop policies which provide assurance that callers will not be required to give identifying information in order to receive services;
- Develop policies which address privacy protection for any personally identifiable data received and for any mailing lists that may be developed and which assure that any data provided to the Federal Government or the public-at-large will be provided only in aggregate form; and
- Submit annual Progress Reports as part of Grant Renewal Application for 2nd and 3rd year funding, with a Final Report due at the end of 3rd year;
- Monitor progress toward project goals and objectives and participate in a national evaluation that will use a standard data reporting format across statewide projects.

Eligibility Requirements

Applicants shall be nonprofit private agencies. They must be family-controlled or have agreed to ensure that decision-making for the project will be under the authority of a family-controlled Board of Directors. For purposes of this requirement, family-controlled means an organization that has a Board or other controlling body comprised of no less than 51 percent family members of children or adolescents with serious emotional, behavioral, or mental disorders. In cases where the applicant is a nonprofit organization with a broader mission (such as a State Mental Health Association, a State Alliance for the Mentally Ill, or a Parent Training and Information Center), decision-making authority for this project must be within the family-controlled Board, and written assurances to this effect must be provided by both organizations and included as an attachment to the application.

CMHS is limiting eligibility to family-controlled organizations largely because the members have the experience of caring for children and adolescents with serious emotional and behavioral disorders which keeps the organization unequivocally focused on the needs of the children and families. They are also in the best position to develop networking and support services for family members that can be implemented by parent organizations who are not awarded grants. Because the resources allocated for these awards are not sufficient to build a totally new organization where none currently exists, it is expected that applicants shall build on existing organizations.

Availability of Funds

In 1993, it is estimated that $1.3 million will be available to support 20 to 25 projects. The expected average amount of a base award is approximately $50,000 per year. Actual funding levels will depend upon the availability of funds at the time of award.

Period of Support

Applicants may request support for a project period of up to 3 years. Annual awards will be made subject to continued availability of funds and successful implementation of the proposal.

Special Requirements

Coordination with Other Federal/Non-Federal Programs

Applicants seeking support under this announcement are encouraged to coordinate with other programs. Program coordination helps to better serve the multiple needs of the client population and to maximize the impact of available resources, and to eliminate duplication of services. Funding priority will be given to applicants who demonstrate a coordinated approach. Applicants should identify the coordinating organizations by name and address and describe the process to be used for coordinating efforts. Letters of commitment specifying the kinds and level of support from organizations (both public and private) which have agreed to work with the applicant must be attached to this application.

Agencies, officials and programs with which applicants may find coordination productive include:

- State CASSP Directors and/or State Child Mental Health Directors;
- State and local agencies, both public and private, providing mental health, education, child welfare, juvenile justice, health, substance abuse, and other related services;
- Other State and local parent support organizations, including those families with children with non-mental health disorders, and those which focus on advocacy within the special education system;
- National parent support networks such as the National Alliance for the Mentally Ill—Child and Adolescent Network, and the Federation of Families for Child Mental Health;
- State and local reform efforts such as demonstration projects funded under the Robert Wood Johnson Foundation Mental Health Services Program for Youth and the Annie E. Casey Foundation Child Mental Health Program; and
- Ongoing Federal Programs such as:

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration (SAMHSA):
Center for Substance Abuse Prevention:
—Community Partnership Program

Health Resources and Services Administration (HRSA):
Maternal and Child Health Bureau:
—Special Projects of Regional and National Significance

Administration on Children and Families (ACF):
—Projects for Runaway and Homeless Youth, including drug education and Youth Shelters and Centers;
—Programs focused on reducing Child Abuse and Neglect; and
—Youth Gang Projects

Department of Education

Office of Special Education Programs:
—Projects funded under the Drug Free Schools Act; and
—Demonstration Program on Children with Serious Emotional Disturbances

Intergovernmental Review (E.O. 12372)

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through HHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of and comment on applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instruction on the State's applicable procedure. A current listing of SPOCs is included in the application kit. The SPOC should send any State process recommendations to the following address: Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review, Center for Mental Health Services, room 18C–07, 5600 Fishers Lane, Rockville, Maryland 20857, ATTN: SPOC.

The due date for State process recommendations is no later than 60 days after the deadline date for the receipt of applications. The CMHS does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Evaluation

The CMHS will be responsible for conducting a national evaluation which will include both formative and outcome components. The evaluation will be conducted by Portland Research and Training Center on Family Support and Children's Mental Health. All grantees are expected to participate in these evaluations. This will include maintaining data for technical assistance and other grant related activities.

The grantees must provide assurances that the organization will cooperate fully in the evaluation.

Application Procedures

All applicants must use application form PHS 5161–1 (Rev. 7/92), which contains Standard Form 424 (face page). The following information should be typed in Item Number 10 on the face page of the application form: Statewide Family Network Grants.

Grant application kits (including Form PHS 5161–1 with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937–0189) may be obtained from: Steve Hudak, Grants Management Officer, Center for Mental Health Services, room 7C–23, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4456.

The original signed by the authorized official of the applicant organization, with appropriate appendices, and two (2) additional copies of application and appendices must be sent to the following address: Center for Mental Health Services, Division of Research Grants, National Institutes of Health, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892*.

*If an overnight carrier or express mail is used, the Zip Code is 20816 and the envelope must be clearly marked, "CMHS Support of Statewide Family-Controlled Networks".

Because of the short time available for review, it is recommended that one additional copy of the application be sent directly to: Center for Mental Health Services, Division of Extramural Activities, room 18C–07, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Only one application seeking Public Health Service (PHS) support for the same programmatic service demonstration activities with the same population may be submitted to the Public Health Service, and that same application may be submitted in response to only one PHS Program Announcement or Request for Applications.

The CMHS intends to limit awards under this announcement to no more than one per State and therefore encourages the formation of coalitions among family organizations within a State in developing a unified application where possible.

APPLICATION RECEIPT AND REVIEW SCHEDULE

Receipt of applications	Initial review	Council review	Earliest start date
July 30, 1993.	August	August	Sept. 30, 1993.

Consequences of Late Submission

Applications received after the receipt date above will be returned to the applicant without review.

The DRG system requires that applications must be received by the published application receipt date(s). However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof of mailing date is not later than one week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day.

Review Process

Applications submitted in response to this RFA will be reviewed for technical merit in accordance with established PHS/Substance Abuse and Mental Health Services Administration (SAMHSA) peer review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will not be accepted for review and will be returned to the applicant if:

- It is received after the specified receipt date;
- It is incomplete;
- It is illegible;
- It exceeds the specified page limits;
- It does not conform to instructions for format, which include that it be typed single-spaced, using standard size black type not smaller than 15 characters per 1 inch or 2.5 centimeters, one column per page, with conventional border margins (1 inch or 2.5 centimeters), on only one side of standard size 8½×11 paper that can be photocopied;
- It is non-responsive to the announcement; or
- The material presented is insufficient to permit an adequate review. Returned applications may not be resubmitted due to the single receipt date of this RFA.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Notification of the IRG's recommendation will be sent to the applicant upon completion of the initial review. In addition, the IRG recommendations on technical merit of applications will undergo a second level of review by the appropriate advisory council once established, whose review will be based on policy considerations as well as technical merit.

Review Criteria

Each grant application is evaluated on its own merits against the review criteria listed below.

- Demonstration of an understanding of the purpose, requirements, and scope of the grant announcement including the soundness and feasibility of proposed strategies to develop and implement a statewide family-controlled organizational structure to provide information and support to families whose children have serious emotional or mental disorders;
- Organization competence of the applicant organization including adequacy of management and proposed staffing plan for completion of tasks;
- Clarity and measurability of the goals and objectives of the project and fulfillment of the project requirements as stated in the text of this announcement;
- Emphasis on the special needs of racial/ethnic minority children and families and the quality of strategies for increasing the cultural competence of outreach and family support activities designed to reach these populations;
- Reasonableness of the proposed budget.

Award Criteria

Applications recommended for approval by the Initial Review Group will be considered for funding based on the availability of funds in addition to the following considerations:

- Geographical distribution to equitably allocate assistance among the principal geographic region of the U.S.

(Note: Applicants should be aware that 15% of the funds for this program must be set aside for projects in rural areas.);

- Coordination with other programs (both public and private) as evidenced by letters of commitment from those organizations specifying kind and levels of support, and
- Focus on cultural and ethnic minority populations.

Terms and Conditions of Support

Allowable Items of Expenditure

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including both direct and indirect costs which can be specifically identified with the project.

Grant funds may be used for the costs of planning, developing, and implementing activities to support attainment of the project objectives. Applicants are expected to determine the costs of the project for the proposed project period.

Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of project coordinator and other supporting staff engaged in the project activities (Grant support for salaries and wages of staff who are engaged less than full-time in the grant-supported activities, must be commensurate with the effort under the grant);
- Travel directly related to carrying out activities under the approved project;
- Supplies, communications, and rental of space directly related to approved project activities;
- Contracts to local government, not-for-profit agencies and organizations, public institutions, and consultants necessary for performance of activities under the approved project; and
- Other such items necessary to support project activities, as approved by CMHS.

Funds cannot be used for the following:

Funds cannot be used for the purchase of a facility to house any portion of the proposed program. Any funds proposed to be utilized for renovation expenses must be detailed and linked directly to programmatic activities. Any lease arrangements in association with the proposed program utilizing PHS funds may not extend beyond the project period or cover non-programmatic activities.

Alterations and Renovations

Costs for alterations and renovations (A&R) will be allowable only where such alterations and renovations are necessary for the success of the program. However, as subject to the Public Health Service (PHS) Grants Policy Statement, the maximum amount of funds budgeted or used for A&R under a single grant during three consecutive budget periods (whether or not the 3 years overlap two distinct competitive segments or support) cannot exceed the lesser of $150,000 or

25% of the total funds reasonably expected to be awarded by the PHS grant for direct cost for three-year period. (The maximum amount of PHS grant funds that may be applied to any single A&R project of $150,000.) Construction costs are not allowed.

Administrative Costs

Section 520A(d) specifies that a grant may not be made unless applicant agrees that no more than 10 percent of the grant award will be expended for administrative expenses.

Reporting Requirements

Annual and final progress reports and financial status and expenditure reports will be required and specified to grantees in accordance with PHS Grant Policy requirements.

Contacts for Additional Information

Questions concerning program issues may be directed to: Judith Katz-Leavy, Child, Adolescent, and Family Branch, Division of Demonstrations, Center for Mental Health Services, 5600 Fishers Lane, room 11C–09, Rockville, Maryland 20857, (301) 443–1333.

Questions regarding grants management issues may be directed to: Steve Hudak, Grants Management Officer, Center for Mental Health Services, room 7C–23, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4456.

Authority and Regulations

Statutory Authority

Grants awarded under this RFA are authorized under section 520A of the Public Health Service Act, as amended (42 U.S.C. 290bb–32).

Applicable Federal Regulations

Federal regulations at title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

PHS Grants Policy Statement

Grants must be administered in accordance with the PHS Grants Policy Statement (Revised September 1, 1991).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.125.

Dated: May 11, 1993.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–11581 Filed 5–14–93; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–01–4410–04–ADVB]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session Friday, June 11, 1993, from 8 a.m. to 5 p.m., and Saturday, June 12, 1993, from 8 a.m. to 2 p.m., in the Galleria conference room of the Mission Inn, 3649 Seventh Street, Riverside, California.

Agenda Items for the meetings will include:

—A briefing on the U.S. Fish and Wildlife Draft Desert Tortoise Recovery Plan and the West Mojave Coordinated Management Plan.
—An update on wilderness legislation.
—A progress report on the Rand Mountains-Freemont Valley Management Plan.
—Review of the proposed Rand Mining expansion project.
—Status report on major District Environmental Assessments/ Environmental Impact Statements.
—Discussion of a 1992 proposed Amendment to the California Desert Conservation Area Plan regarding Ward Valley.
—A briefing on the California Desert District's Bighorn Sheep Program.
—An update on RS 2477.
—Review of BLM's film permit process regarding commercial filming on public lands.
—A presentation on the District's Volunteer Program.
—Status report on mineral issues.
—An update on proposed Desert solid waste management projects.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Mr. David Fisher, c/o Bureau of Land Management, External Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments are also accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR MORE INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, External Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507; (909) 697–5215.

Dated: May 10, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–11635 Filed 5–14–93; 8:45 am]

BILLING CODE 4310–40–M

[CA–060–65–4210–05, CACA#27161]

Realty Action; Classification of Public Lands for Recreation and Public Purposes; County of San Bernardino, CA

ACTION: Notice of Realty Action CACA#27161, Classification of Public Lands for Lease/Conveyance pursuant to the Recreation and Public Purposes Act.

SUMMARY: The following described public lands near the community of Ridgecrest, County of San Bernardino, California have been examined and found suitable for lease or conveyance pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 *et seq.*, and the regulations promulgated thereunder, title 43 Code of Federal Regulations 2912:

Mount Diablo Meridian, California

T. 27S., R. 41E.,
Sec. 6: SW¼SE¼;
Sec. 7: N½NW¼NE¼.
Totalling approximately 60 acres.

The City of Ridgecrest, California plans to use these lands for the construction of a law enforcement shooting range and training facility. The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management land use planning and disposal is deemed to be in the public interest.

The lease/patent, when issued, shall be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior, and to the following reservations to the United States:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
2. The terms and conditions as stipulated within the Environmental Assessment.
3. All valid existing rights documented on the official public land records at the time of lease/ patent issuance.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

For further information contact Mike Hogan, Ridgecrest Resource Area, 300 S. Richmond Rd., Ridgecrest, CA 93555.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons or parties may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, California Desert District, 6221 Box Springs Boulevard, Riverside, CA 92507–0714. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: May 5, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–11606 Filed 5–14–93; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Extension of Public Comment Period on the Draft Recovery Plan for the Desert Tortoise (Mojave Population)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of time period for public comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), is extending the comment period for review of the Draft Recovery Plan for the Desert Tortoise (Mojave Population). The notice of document availability for the Draft Recovery Plan for the Desert Tortoise (Mojave Population) was published on March 30, 1993 (58 FR 16691).

DATES: Comments on the draft recovery plan must be received on or before June 30, 1993.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Nevada Ecological Services Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, Field Supervisor, at the above Reno, Nevada, address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada, address.

FOR FURTHER INFORMATION CONTACT: David L. Harlow, Nevada Ecological Services Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502 at (702) 784–5227.

SUPPLEMENTARY INFORMATION: The Service published a Notice of Availability for the Draft Recovery Plan for the Desert Tortoise (Mojave Population) on March 30, 1993 (58 FR 16691). It established a public comment period ending on June 1, 1993. Due to the complexity of the plan, the Service has received requests for extending the comment period. Extending the comment period will allow interested parties additional time to submit written comments on the proposal. The comment period is, therefore, extended to June 30, 1993.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 10, 1993.

William E. Martin,

Acting Regional Director.

[FR Doc. 93–11573 Filed 5–14–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

May 11, 1993.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jefferson B. Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305 or facsimile: (202) 514–1534. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) 1993 Sample Survey of Law Enforcement Agencies.

(2) CJ–44 and CJ–44A. Office of Justice Programs.

(3) Every three years.

(4) State or local governments. This survey will collect administrative and management statistics from a nationally representative sample of law enforcement agencies in the United States in order to provide basic information on their workload and resources.

(5) 3,300 annual responses at 1.27 hours per response.

(6) 4,200 annual burden hours.

(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Request for Recognition as a Non-profit Religious, Charitable, Social Service or Similar Organization Established in the United States under 8 CFR 292.2.

(2) EOIR–31. Executive Office for Immigration Review.

(3) On occasion.

(4) Non-profit institutions. This information is needed by the Board of Immigration Appeals to make recognition determinations under 8 CFR 292.2.

(5) 50 annual responses at 1.00 hour per response.

(6) 50 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: May 11, 1993.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–11552 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–18–M

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on May 5, 1993, a proposed consent decree in *United States* v. *Borough of Lemoyne, et al.* was lodged with the United States District Court for the Middle District of Pennsylvania, Civil Action No. 4:CV–93–667. The decree pertains to the Keystone Sanitation Landfill Site in Union Township, Adams County, Pennsylvania. A complaint was filed simultaneously with the lodging of the Consent Decree.

The proposed consent decree requires the Settling Defendants to pay the United States $912,179.00, which equals 100% of Settling Defendants' shares of past response costs, 100% of Settling Defendants' shares of estimated future response costs for the Site, and a 150% premium on the estimated future response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Borough of Lemoyne, et al.* (M.D. Pa.) and DOJ Ref. No. 90–11–2–656. The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Pennsylvania, Suite 309, Federal Building, Washington & Linden Streets, Scranton, PA 18501, or at the office of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. A copy of the proposed consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $5.25 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–11594 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed stipulation and order in *In re Coated Sales, Inc.*, Nos. 88 B 11331 (CB) through 88 B 11336 (CB), was lodged on April 16, 1993 with the United States Bankruptcy Court for the Southern District of New York. The proposed stipulation and order would partially settle a claim filed by the United States under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The portion of the claim to be settled relates to the debtors' alleged liability for costs of response to releases and threatened releases of hazardous substances at the Kenyon Piece Landfill in Charlestown, Rhode Island. The proposed stipulation and order provides that debtors will pay the United States $75,000 in satisfaction of the claim relating to Kenyon Piece Landfill, and the United States will withdraw its objection to the debtors' motion to abandon that property.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed stipulation and order. Comments should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Coated Sales, Inc.*, DOJ Ref. #90–11–2–440.

The proposed consent decree may be examined at the office of the United States Attorney, 100 Church Street, 19th Floor, New York, New York; the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–11612 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, 42 U.S.C. 6973(d) and 42 U.S.C 9622(i), notice is hereby given that on April 27, 1993, a proposed consent decree in *United States of America* v. *General Chemical Corp., et al.*, Civil Action No. 93–10923T, was lodged with the United States District Court for the District of Massachusetts. The United States' complaint, filed at the same time as the consent decree, seeks recovery of response costs and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and under the Resource Conservation and Recovery Act against the General Chemical Corp. and 221 other entities responsible for hazardous substances and hazardous wastes found at the Silresim Superfund Site in Lowell, Massachusetts, a National Priorities List facility. The consent decree provides that the defendants will pay $40,989,278 to the United States so that the U.S. Environmental Protection Agency (EPA) can perform the response actions contained in the Record of Decision (ROD) issued by EPA. The remedial work will include excavation and treatment of contaminated soils and pumping and treating the contaminated groundwater.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Chemical Corp. et al.*, D.J. Ref. 90–11–2–774.

The proposed consent decree may be examined at the office of the United States Attorney, 1107 John W. McCormack Federal Building, U.S. Post and Courthouse, Boston, MA 02109 and

at the Region I office of the Environmental Protection Agency, One Congress St., Boston, MA 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G. St., NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G. St., NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost, exclusive of the costs of copying the appendix) payable to the "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 93–11595 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *IMC Fertilizer, Inc.*, Case No. 93–499–CIV–T–21A, has been lodged with the United States District Court for the Middle District of Florida, Tampa Division, on March 29, 1993.

The Complaint filed in this matter charges IMC with violating sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, by mechanically landclearing 40.1 acres of wetlands after its Army Corps of Engineers permit had expired and subsequently mining 17 acres of that parcel. Additionally, it is alleged that IMC exceeded the limits of another Corps permit, issued in connection with its commercial phosphate mining activities, by mining 2.8 acres which were not authorized.

Defendant has agreed to the proposed Final (Consent) Judgment, which would require the payment of a $100,000 civil penalty to the United States and require defendant to implement a computer tracking program to track all existing and future Corps permits issued to it. Additionally, defendant has agreed to reclaim the 2.8 acres of wetlands mined in accordance with a state and county reclamation plan. Regarding the 40.1 acres cleared, defendant has agreed to apply for an after-the-fact permit from the Corps covering 23.1 acres of that parcel cleared, but not mined, and to fully restore the property if the permit is denied. Defendant shall reclaim the additional 17 acres, which were mined, pursuant to a reclamation plan approved by an existing Corps permit and the Corps agrees to confirm that Nationwide Permit No. 32, which authorizes activities covered by completed judicial enforcement actions, applies to that portion. The Corps also has agreed to confirm that NWP 32 applies to the reclamation of the 2.8-acre parcel.

The Department of Justice will receive until June 22, 1993, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Michael A. Cauley, Assistant U.S. Attorney, 500 Zack Street, Rm. 410, Tampa, Florida 33602, and should refer to *U.S.A.* v. *IMC Fertilizer, Inc.*, Case No. 93–499–CIV–T–21A.

The Consent Decree may be examined at the Clerk's Office, United States District Court, 611 North Florida Avenue, Tampa, Florida 33602 during normal business hours.

Myles E. Flint,

Acting Asst. Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–11596 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 76–93]

Privacy Act of 1974; Minor Modification to System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), which requires that Federal agencies describe the character of their systems of records in the **Federal Register**, notice is given that the Department of Justice proposes to make minor modifications to a system of records maintained by the Civil Rights Division (CRT). The system of records is entitled, "Central Civil rights Division Index File and Associated Records, JUSTICE/CRT–001." The proposed changes are made as a result of an internal reorganization establishing a Public Access Section within CRT. Specifically, the categories of records have been redescribed to reflect the redistribution of responsibilities within the newly reorganized CRT. The changes have been italicized for the public's convenience.

Dated: April 29, 1993.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/CRT–001

SYSTEM NAME:

Central Civil Rights Division index File and Associated Records.

SYSTEM LOCATION:

United States Department of Justice Civil Rights division (CRT) 10th and Constitution Avenue NW., Washington, DC 20530 *1425 New York Avenue, NW. Washington, DC 20530*; and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Subjects of investigations, victims, potential witnesses, individuals of Japanese ancestry who are eligible, or potentially eligible, for restitution benefits as a result of their evacuation, relocation, or internment during World War II, correspondents on subjects directed or referred to CRT or other persons or organizations referred to in potential or actual cases and matters of concern to CRT, and CRT employees who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing the names of those individuals identified above and the associated record to which the indices relate containing the general and particular records of all CRT correspondences cases, matters, and memoranda, including, but not limited to, investigative reports, correspondence to and from the Division memoranda, legal papers, evidence, and exhibits. The names of some individuals, e.g., witnesses, may not yet be on the central indices. Records relating to such individuals may be obtained by direct access to the file jackets. Such file jackets are located within the respective sections of CRT according to the legal subject matter assigned to each CRT section. The delegated legal duties and responsibilities of each section are described as follows:

The records related to the duties of the Appellate Section of CRT include records generated by all CRT cases that have entered the U.S. Supreme Court and the Courts of Appeal. Other records include those generated in the course of Appellate Section duties such as advising Members of Congress on legislative matters, providing legal counsel on civil rights issues to Federal agencies and providing counsel to the various components of the Department of Justice.

The records related to the duties of the Coordination and Review Section of CRT include letters, studies, and reports concerning the implementation of Executive Orders 12250 and 12236. Under E.O. 12250, the Attorney General coordinates and monitors the

enforcement of Title VI of the Civil Rights Act of 1964. Title IX of the Education Amendments of 1972, as amended, and the civil rights provisions of any Federal assistance grant which forbids discrimination in federally assisted programs on the basis of race, color, national origin, sex, handicap or religion. The Coordination and Review Section also works with Federal agencies under E.O. 12236 to monitor review of their enabling legislation on the basis of sex.

In addition, the records related to the duties of the Coordination and Review Section of CRT include complaint investigation files and other matters arising under Titles II and III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131–12134, 12181–12189. Further, the Coordination and Review Section may maintain case-related records on investigations arising under section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, and other nondiscrimination statutes.

The records related to the duties of the Criminal Section of CRT include cases or matters arising under 18 U.S.C. 241 and 242 which prohibit persons acting under color of law or in conspiracy with others to interfere with or deny the exercise of Federal constitutional rights, cases involving criminal violations of the Voting Rights Act of 1965 (42 U.S.C. 1971 through 1974), cases or matters involving criminal interference with housing rights as is prohibited by 42 U.S.C. 3631 and criminal interference with other federally protected rights as is prohibited by 18 U.S.C. 245. Other Criminal Section records include cases or matters involving 18 U.S.C. 1581 through 1588 which prohibit involuntary servitude, some cases involving maritime law.

The records related to the duties of the Educational Opportunities Section of CRT include cases or matters arising under Federal laws requiring nondiscrimination in public education such as Titles IV and IX of the Civil Rights Act of 1964 (42 U.S.C. 2000c, 42 U.S.C. 2000h–2) which prohibit discrimination on the basis of race, color, religion, sex, or national origin: Title IX of the 1972 Education Amendments (20 U.S.C. 1681) which prohibits discrimination on the basis of sex in educational programs or activities receiving federal financial assistance and section 504 of the Rehabilitation Act of 1973 which grants rights to handicapped persons participating in educational programs receiving federal financial assistance. In addition, the records related to the duties of the Educational Opportunities Section include cases or matters arising under the Equal Educational Opportunities Act of 1974 (20 U.S.C. 1701).

The records related to the duties of the Employment Litigation Section of CRT include cases or matters arising under Federal laws prohibiting discriminatory employment practices by State and local governments such as the equal employment opportunity provisions contained within the Revenue Sharing Act of 1972, as amended. Other records include cases or matters arising under Title VII of the Civil Rights Act of 1964 and its amendment which is the Pregnancy Discriminatory Act of 1978 (42 U.S.C. 2000e(k)). In addition, the records related to the duties of the Employment Litigation Section include cases or matters arising under Executive Order No. 11246 involving equal opportunity laws applicable to public employers. Federal contractors and subcontractors involved in federally financed projects.

The records related to the duties of the Housing and Civil Enforcement Section of *CRT* include cases or matters involving the Fair Housing Act of 1968 (42 U.S.C. 3501 through 3619), and cases or matters involving fair credit laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691 through 1691g) as well as its implementing regulations. Regulation B (12 CFR Part 202). Other records include cases or matters arising under Title II and Title III of the Civil Rights Act of 1964 which prohibit discrimination in public facilities (except those Title III matters that involve prison facilities) and cases or matters arising under the nondiscrimination provisions of the Revenue Sharing Act and the Housing and Community Development Act of 1974.

The records related to the duties of the Special Litigation Section of CRT includes cases or matters arising under Title III of the Civil Rights Act of 1964 as it applies to prison facilities, cases or matters arising under the Civil Rights of Institutionalized Persons Act of 1980 (42 U.S.C. 1997), cases or matters involving the constitutional rights of institutional juveniles, and the constitutional rights of mentally and physically handicapped persons of all ages, cases arising under section 504 of the Rehabilitation Act of 1973, as amended.

The records relate to the duties of the Office of Redress Administration (ORA) and include records pertaining to the identification, location and authorization for restitution payments to eligible individuals of Japanese ancestry who were evacuated, relocated or interned during World War II. Such restitution payments are authorized by Section 1C5 of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b). Records will also relate to any criminal or civil cases arising under this Act which occur as a result of fraud, challenges to ORA administrative regulations.

The records related to the duties of the Public Access Section of the Civil Rights Division include cases or matters arising under Titles II and III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131–12134, 12181–12189, which prohibit discrimination by State and local governments, public accommodations, commercial facilities, and providers of certain examinations and courses on the basis of disability. Other records include cases or matters involving the certification of State and local building codes under section 308(b) of the ADA, 42 U.S.C. 12188(b)(1)(A)(ii), and the provision of technical assistance under section 506 of the ADA, 42 U.S.C. 12206. Further, the Public Access Section may maintain case-related records on investigations arising under section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 and other nondiscrimination statutes. Other records relate to litigation involving the civil rights statutes coordinated by the Department of Justice, and such other matters as may be required to fulfill the duties mandated by the President and Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in the system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to CRT under the provisions of 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Information in the system may be used by employees and officials of the Department to make decisions in the course of investigations and legal proceedings: to assist in preparing responses to correspondence from persons outside the Department to prepare budget requests, and various reports on the work product of CRT or to carry out other authorized Department functions.

B. A record maintained in this system of records may be disseminated as a

routine use of such records as follows: (1) A record relating to a possible or potential violation of law, whether civil, criminal, or regulatory in nature may be disseminated to the appropriate federal, state or local agency charged with the responsibility of enforcing or implementing such law; (2) in the course of the Administration by CRT of a federally mandated program, or the investigation or litigation of a case or matter, a record may be disseminated to a federal, state or local agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or has the expertise in an official or technical capacity to assist in the administration of such program or to analyze information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such assistance, information or expert analysis, or to obtain the cooperation of a prospective witness; (3) A record relating to a case or matter, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation; (4) a record relating to a case or matter may be disseminated to an actual or potential party to litigation or the party's attorney (a) for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or (b) in formal or informal discovery proceedings; (5) a record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any determination that has been made; (6) a record relating to a person held in custody or probation during a criminal proceeding or after conviction, may be disseminated to any agency or individual having responsibility for the maintenance, supervision or release of such person; (7) a record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d; (8) a record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subject to CRT records.

Release of information to the National Archives and Records Administration:

(NARA) and to the General Services Administration (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on index cards, in file jackets, and on computer disks or tapes.

RETRIEVABILITY:

Information is retrieved through either use of an index card system or logical queries to the computer-based system. Entries are arranged alphabetically by the names of individuals covered by the system. (Complaints received from individuals which have not been investigated by the Department have not been systematically indexed and information pertaining to such individuals may or may not be retrievable.) Information on such individuals may be retrievable from the file jackets by a number assigned and appearing on the index cards.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Department security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer to access the stored information.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the paper files are transferred to the Federal Records Center, Suitland, Maryland and some records are transferred to computer tape and stored in accordance with Department security regulations for system of records. Final disposition is in accordance with records retirement or destruction as scheduled by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer. Administrative Management Section, Civil Rights Division United States Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (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 access is received. A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), the subject of the case or matter as described under "Categories of records in the system," and any other information which is known and may be of assistance in locating the record, such as the name of the civil rights related case or matter involved, where and when it occurred and the name of the judicial district involved. The requester will also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information retrievable in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system may be an agency or person who has or offers information related to the law enforcement responsibilities and/or other statutorily-mandated duties of CRT.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted parts of this system from subsections (c)(3), (d), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) 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**.

These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to an official Federal investigation and/or law enforcement matter. Those files indexed under an individual's name which concern only the administrative management of restitution payments under Section 105 of the Civil Liberties Act of 1988 are not being exempted pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

[FR Doc. 93–11592 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Kaleida Labs, Inc.

Notice is hereby given that, on April 12, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Kaleida Labs, Inc. ("Kaleida") filed a written notification on behalf of Kaleida, Apple Computer, Inc. ("Apple"), and International Business Machines Corporation ("IBM") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties 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 are Kaleida, Mountain View, CA; Apple, Cupertino, CA; and IBM, Somers, NY. Kaleida, Apple, and IBM entered into a business venture in order to research, develop and market certain multimedia technologies, specifications and products for the personal computer and consumer digital media marketplaces. Kaleida's objective is to promote the creation of a strong multimedia publishing industry in the consumer marketplace, and to develop enabling technologies to encourage the creation and proliferation of high-production-value multimedia software titles for that consumer industry that run on a variety of desktop and portable personal computers and consumer devices.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–11611 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984—MCNC

Notice is hereby given that, on December 31, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), MCNC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. 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. Pursuant to Section 6(b) of the Act, the identities of the parties and its general areas of planned activity are given below.

MCNC is one institution along with six other participating institutions comprising a consortium of seven North Carolina nonprofit institutions with educational, research, and technology development programs that support next-generation microelectronics, communications and high-performance computing technologies. MCNC enhances these programs through its advanced technology development capability and promotes commercialization of newly developed technologies into direct application in industry.

MCNC's specific objectives include planning, developing, constructing, maintaining and operating related facilities to support education and research in the North Carolina universities and industry; conducting research and technology development programs in the furtherance of charitable, educational, and scientific purposes of the corporation; and assisting agencies of North Carolina State Government in establishing and maintaining effective working relationships with industry.

The MCNC Center for Microelectronic Systems Technologies maintains a cooperative research effort wherein MCNC staff and other consortium members' students, faculty and staff conduct research and develop technology relative to microelectronics. In furtherance of this cooperative research effort and to maintain links with industry, MCNC conducts an Industrial Affiliates Research Program, whereby Resident Professionals from various companies may be assigned to MCNC for a period of time. The Resident Professionals are an integral part of the Research Program and interact with all other researchers.

The noticed venture encompasses the activities of the five for-profit companies listed in the notice (Airco, Cadence, IBM, Mitsubishi, and NCR; designated by MCNC as Affiliates) that are primarily conducted within the MCNC division designated as the Center for Microelectronic Systems Technologies. The objective of the Affiliates Program is to provide shared access to capabilities and a research program in which the Affiliates may develop precompetitive research and technology that can be subsequently applied to solving design, simulation, production, or other problems within their own company.

An Industry Executive Council, comprised of Affiliate representatives, identifies, for MCNC's consideration, research priorities relevant to industrial application. Additionally, Affiliates who manufacture equipment or materials may place the equipment or materials at MCNC for development of capability with the support of the MCNC Community. When the pooled Research Program sponsored by Affiliates yields inventions, Affiliates get the advantage of early access to these inventions for their internal use. MCNC also gives Industrial Affiliates priority access to appropriate contract research capabilities when available.

The current MCNC Industrial Affiliates are as follows: Airco Industrial Gases, New Providence, NJ; Cadence Design Systems, Inc., San Jose, CA; International Business Machines Corporation, Purchase, NY; Mitsubishi Semiconductor America, Inc., Durham, NC; and NCR Corporation, Dayton, OH.

The six nonprofit institutions working closely with MCNC are as follows: Duke University, Durham, NC; North Carolina A&T State University, Greensboro, NC; North Carolina State University, Raleigh, NC; University of North Carolina at Chapel Hill, Chapel Hill, NC; University of North Carolina at Charlotte, Charlotte, NC; and the Research Triangle Institute, Research Triangle Park, NC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–11607 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on April 16, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) Tandem Computers, Inc., Cupertino, CA, has become a participant in MCC's Open Systems 2 Project within MCC's Packaging/Interconnect Technology Program and MCC's High Value Electronics Division; (2) Electric Power Research Institute, Inc., Palo Alto, CA, has entered into a Services Agreement with MCC's EINet Services Project.

On December 21, 1984, MCC and its shareholders filed their 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 January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on February 4, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 30, 1993 (58 FR 16703).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–11610 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

United States v. Pacific Telesis Group, et al.; Proposed Dismissal of Complaint

Notice is hereby given that the Department of Justice and Pacific Telesis Group have filed a stipulation with the United States District Court for the Central District of California announcing the Department's tentative plan to dismiss its complaint in *United States* v. *Pacific Telesis Group, et al.*, No. CV–86–1298–RMT.

The complaint in this case was filed on February 28, 1986. It alleged that Pacific Telesis' acquisition of Communications Industries, Inc., might tend substantially to lessen competition in the provision of cellular telephone service in the Los Angeles market. One result of the acquisition was to create a partnership between Pacific Telesis and the LIN Broadcasting Systems jointly to provide cellular telephone service in the Dallas-Ft. Worth market. At the time, LIN operated its business in a centralized manner, coordinating closely the operations of all of its cellular systems around the nation. The complaint alleged that in view of LIN's centralized operations, the partnership between LIN and Pacific Telesis in Dallas-Ft. Worth would hamper LIN's ability to compete effectively against Pacific Telesis in Los Angeles, where the franchise managed by LIN and Pacific Telesis' franchise were the only two facilities-based sources of cellular telephone service. The complaint alleged that this would increase the risk of collusion between LIN and Pacific Telesis as to the price, quality, and terms of cellular service in the Los Angeles market. At the time the complaint was filed, the defendants stipulated to a limitation on Pacific Telesis' participation in the management of the Dallas-Ft. Worth cellular business, and since that time Pacific Telesis has been subject to this restriction.

The factual basis for the case and for the restriction no longer obtains. First, following a substantial investment in LIN by an unaffiliated company, LIN operations were somewhat decentralized, and a partnership involving LIN and another company to provide cellular service in one city is now significantly less likely to impair competition between the same two firms in the provision of cellular service in another city. Second, LIN no longer solely controls, although it continues to participate in the management of, a cellular system in Los Angeles. Thus there appears to be no basis for continuing to restrict Pacific Telesis' participation in the Dallas-Ft. Worth cellular business in which it owns an interest. The Department plans to dismiss its complaint with prejudice, because this is the most efficient means of lifting the restriction against Pacific Telesis and because there is no longer a factual basis for litigation.

Interested persons may submit comments regarding the proposed dismissal of the complaint to the Department of Justice within sixty days of the publication of this notice. All comments received within this period will be filed with the court and made part of the public record in *United States* v. *Pacific Telesis Group, et al.* Comments should be addressed to: Richard L. Rosen, Chief, U.S. Department of Justice, Antitrust Division, Communications & Finance Section, 555 Fourth Street, NW., room 8104, Washington, DC 20001.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–11593 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984—Petrotechnical Open Software Corporation

Notice is hereby given that, on April 12, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following additional parties have become new, non-voting members of POSC: Bluestone Consulting, Inc., Mt. Laurel, NJ; Everest Technologies, Inc., Houston, TX; INGRES Corporation, Alameda, CA; Sybase Inc., Emeryville, CA; Allied Geophysical Laboratories, University of Houston, Houston, TX; Pohlman and Associates, Inc., Houston, TX; Oilfield Systems Ltd., Hampshire, UNITED KINGDOM; QC Data, Houston, TX; Rockall Data Systems, Houston, TX; Document Management Services, Hemel Hempstead, UNITED KINGDOM; INGEOMINAS, Santafe de Bogota D.C., COLOMBIA.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC 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 February 7, 1991, (56 FR 5021).

The last notification was filed with the Department on January 26, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 11, 1993, (58 FR 8062).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–11608 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Switched Multi-Megabit Data Service Interest Group

Notice is hereby given that, on April 9, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Switched Multi-Megabit Data Service Interest Group ("the Group") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following are additional parties to the Group: DSC Communications, Plano, TX; Loral Data Systems, Sarasota, FL; Network Communications, Bloomington, MN; Network Equipment Technologies, Santa Barbara, CA; Novell, San Jose, CA; The RAD Data Group, Tel Aviv, ISRAEL; Tekelec, Calabasas, CA; and Telenex, Springfield, VA.

The company listed as Base 2 is now referred to as Brooktree Corporation, Boulder, CO.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Group intends to file additional written notifications disclosing all changes in membership.

On April 19, 1991, the Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 23, 1991 (56 FR 23723). The last notification was filed with the Department on July 30, 1992. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 8, 1992 (57 FR 46409).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–11609 Filed 5–14–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–042]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: June 29, 1993, 9 a.m. to 4 p.m.

ADDRESSES: NASA, Lyndon B. Johnson Space Center, Gilruth Recreation Center—Ballroom, 2100 NASA Road One, Houston, Texas 77058.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, room 9K70, 300 E Street SW., Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overall Vision for the Committee

—Emerging Issues for Small Disadvantaged Business and NASA Priorities for 1993

—Reports from Committee Working Groups

—Invitation for Suggestions by Individuals in Attendance

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–11576 Filed 5–14–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–041]

NASA Advisory Council, Space Science and Applications Advisory Committee, Earth Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Earth Science and Applications Advisory Subcommittee.

DATES: June 1, 1993, 8 a.m. to 5 p.m.; June 2, 1993, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–3, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. James G. Lawless, Code Y, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0260.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Earth Science and Applications Division/Office of Mission to Planet Earth Review

—Earth Observing System (EOS) Rescoping

—EOS Data and Information System

—Earth Probes Status

—Landsat Status

—Potential Role of Advanced Technology

—Integration of EOS

—EOS Science and the Science Community

—Planning for Space Science and Applications Advisory Committee Retreat

—Public Outreach Status and Issues

—Discussion and Writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 10, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–11575 Filed 5–14–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Special Projects for Individual Theater Artists Collaborations, U.S./Japan Fellowships, and U.S./Mexico Fellowships Sections) to the National Council on the Arts will be held on June 8, 1993 from 9:30 a.m.–7 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m.–10 a.m. and 6 p.m.–7 p.m. for opening remarks, policy discussion and guidelines review.

The remaining portion of this meeting from 10 a.m.–6 p.m. is for the purpose

of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: May 10, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–11598 Filed 5–14–93; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (National Resources Section) to the National Council on the Arts will be held on June 10, 1993 from 9:30 a.m.–7 p.m. and June 11 from 9:30 a.m.–5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on June 10 from 9:30 a.m.–10 a.m. and June 11 from 4 p.m.–5:30 p.m. The topics will be opening remarks, policy discussion, and guidelines review.

The remaining portions of this meeting on June 10 from 10 a.m.–7 p.m. and June 11 from 9:30 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: May 10, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–11599 Filed 5–15–93; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Works on Paper Fellowships Section) to the National Council on the Arts will be held on June 21–24, 1993 from 9 a.m.–8 p.m. and June 25 from 10 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 25 from 3:30 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on June 21–24 from 9 a.m.–8 p.m. and June 25 from 10 a.m.–3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: May 10, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–11597 Filed 5–14–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Application Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by June 12, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 627,

Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. The application received is as follows:

1. Applicant

Dr. Bill J. Baker, Department of Chemistry, Florida Institute of Technology, Melbourne, FL 32901

Activity for Which Permit Requested

Introduction of Non-Indigenous Species into Antarctica. The applicant is requesting a permit to take four non-pathogenic microorganisms to McMurdo Station to perform antimicrobial assays on extracts from marine invertebrates. Microorganisms will be handled using sterile techniques and will be disposed of by sterilization at the conclusion of the study.

Location

McMurdo Station

Dates

10/01/93–02/28/94

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–11625 Filed 5–14–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 53rd meeting on Wednesday and Thursday, May 19 and 20, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on April 28, 1993 (58 FR 25849).

Wednesday, May 19, 1993

8:30 a.m.–8:45 a.m.: Opening Remarks by ACNW Chairman (Open)—The ACNW Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest.

8:45 a.m.–10:45 a.m.: Update on the Systematic Regulatory Analysis (SRA) (Open)—Hear briefings by and hold discussions with representatives of the NRC staff and the Center for Nuclear Waste Regulatory Analyses (CNWRA) on the current status of the Systematic Regulatory Analysis, conducted by CNWRA, and products resulting from this initiative, including technical assistance efforts and the development of the License Application Review Plan.

11 a.m.–1 p.m.: NRC High-Level Radioactive Waste Research Program Plan (Open)—Review and comment on the revised Draft HLW Research Program Plan, NUREG–1406, and associated technical assistance. Representatives of the NRC staff will participate.

2 p.m.–5 p.m.: NRC High-Level Radioactive Waste Research Program Plan (Open)—Continue discussion of the revised draft HLW Research Program Plan, NUREG–1406.

5:15 p.m.–6:30 p.m.: Committee Activities (Open/Closed)—Discuss anticipated and proposed Committee activities, future meeting agenda, and organizations and personnel matters relating to ACNW members, staff and consultants.

A portion of this session may be closed to public attendance pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the personnel rules and practices of this advisory committee and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Thursday, May 20, 1993

8:30 a.m.–8:45 a.m.: Standard Review Plan for the Review of Remedial Action of Inactive Mill Tailings Sites (Open)—Review and comment on Revision 1 of the Standard Review Plan for use in reviewing the Remedial Action of Inactive Mills Tailings Site Under Title I of the Uranium Mill Tailings Radiation Control Act. Representatives of the NRC staff will participate.

10 a.m.–12 Noon: NRC Staff's Standard Review Plan for DOE Study Plans (Open)—Hear a briefing by and hold discussions with representatives of the NRC regarding a proposed NRC staff Standard Review Plan for use in reviewing the DOE Study Plans.

1 p.m.–3 p.m.: NRC Staff's Responses to DOE Site Characterization Progress Reports (Open)—Hear briefings by and hold discussions with representatives of the NRC staff on NRC's responses and follow-up to the DOE Site Characterization Progress Reports for the proposed Yucca Mountain respository. Also, discuss the revised procedures for evaluating the DOE study plans. Representatives of DOE will participate, as appropriate.

3:15 p.m.–4:15 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports regarding items considered during this meeting.

4:15 p.m.–5:15 p.m.: Miscellaneous (Open)—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Excecutive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters

that relate solely to the personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c) (2) and (6).

Dated: May 11, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93-11584 Filed 5-14-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220; License No. DPR-63]

Niagara Mohawk Power Corp., Nine Mile Point Nuclear Station Unit No. 1; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated October 27, 1992, filed by Ben L. Ridings (Petitioner). The Petitioner requested that the Nuclear Regulatory Commission (NRC) issue an immediately effective order directing Niagara Mohawk Power Corporation (NMPC) to cease power operation of Nine Mile Point Nuclear Station Unit No. 1 (NMP-1) and place the reactor in a cold-shutdown condition until such time as subsequent tests and inspections are shown to provide the requisite reasonable assurance of no undue risk to public health and safety. The Petitioner also requested that the NRC hold a public hearing before the plant is allowed to operate again.

The Petition sought relief on the basis of assertions that (1) NMPC is operating NMP-1 in violation of the requirements for availability of an emergency core cooling system (ECCS) high-pressure coolant injection (HPCI) system, including the failure to provide the mandatory emergency backup power to the HPCI system; (2) 45 percent of the containment isolation valves have administrative deficiencies, and (3) NMPC, NMPC's quality assurance group, and the NRC have reviewed these safety concerns and, contrary to any practical justification, have remained silent.

On December 4, 1992, the Director of the Office of Nuclear Reactor Regulation acknowledged receipt of the Petition and notified the Petitioner that this matter would be considered pursuant to 10 CFR 2.206. The Petitioner's request for immediate action was denied in the Director's December 4, 1992, letter acknowledging receipt of the Petition. The Director's December 4, 1992, letter included a request for some specific information that was not fully legible or not provided in the Petition. The Petitioner submitted the requested information in a response received by the NRC Office of the Executive Director for Operations on January 5, 1993, or in a January 11, 1993, telephone conversation between the Petitioner and the NRC Project Manager for NMP-1. The Petitioner's response also asserted that the NMP-1 facility will not meet the leakage limits of 10 CFR part 50, Appendix J, when the leakage rates of Category A containment isolation valves are added to the leakage total for the NMP-1 containment building. In addition, the Petitioner contended that NMPC's asserted failures to comply with the requirements of 10 CFR part 50 precluded NMPC from operating NMP-1 with limited liability.

The NRC staff issued License Amendment No. 140 to the NMP-1 Facility Operating License (DPR-63) on April 12, 1993. This license amendment corrects the NMP-1 Technical Specifications tables that list the containment isolation valves, their initiating signals, and their stroke times. To the extent the Petitioner sought such corrections, this relief has been granted. NMPC has committed to update, by June 30, 1993, the NMP-1 Updated Final Safety Analysis Report (UFSAR) to properly list the containment isolation valves. The NRC staff will verify this commitment as part of its routine reviews of UFSAR updates. With regard to the other requests made by the Petitioner, an immediate shutdown of NMP-1 and the institution of a public hearing before authorizing resumption of plant operation, the Director has determined that the Petitioner's request should be denied. The reasons for the denial are given in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-93-10), which is available for inspection and copying in the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room for the Nine Mile Point Nuclear Station at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

A copy of the decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As stated in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after the date of issuance unless the Commission on its own motion institutes review of the decision within that time.

Dated at Rockville, Maryland, this 9th day of May 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-11583 Filed 5-14-93; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Violet R. Parker, Executive Personnel Division, Office of Personnel, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606-2420.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

James B. King,

Director.

The following have been selected as regular members of the Performance Review Board of the Office of Personnel Management:

Patricia W. Lattimore [Acting Chair], *Acting Deputy Director.*

Michael C. Cushing [Vice Chair], *Chief of Staff.*

Curtis J. Smith, *Associate Director, Retirement and Insurance Group.*

Patricia W. Lattimore, *Associate Director, Administration Group/Acting Deputy, Director.*

Leonard R. Klein, *Associate Director, Career Entry Group.*

Steven R. Cohen, *Regional Director, Chicago Region.*

Jean M. Barber, *Acting Associate Director, Personnel Systems and Oversight Group.*

John J. Lafferty, *Acting Associate Director for Investigations Group.*

Dona Wolf, *Director, Human Resources Development Group.*

[FR Doc. 93-11478 Filed 5-14-93; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32289; File No. SR-NASD-93-30]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members

May 10, 1993

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 4, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items 1, II, and III below, which items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 is proposing a rule change to amend Schedule A to the By-Laws to increase the amount of credit set forth in Section 1(d) of Schedule A, which is currently 59%, to 62%, and to apply the credit to the entire calendar year 1993.

II. Self-Regulatory Organization's Statement of the Purpose of, 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 Article VI of the By-Laws of the corporation, the NASD requires its members to pay an annual assessment fee based on gross income as determined by Schedule A, Section 1 to the By-Laws. In accordance with the NASD's shift from a fiscal to a calendar budget year in 1991, the NASD calculates the gross income assessment from the gross income reported for the calendar or fiscal year immediately preceding the NASD's calendar budget year. Final gross income reports for 1992 have now been received from substantially all of the members, and the NASD is proposing to amend the credit to adjust member assessments to reflect more closely the assessment revenue budgeted for 1993. This proposed rule change, therefore, amends the amount of the credit set forth in section 1(d) of Schedule A to the By-Laws, which is currently 59% to 62%, and applies the credit to the entire calendar year 1993.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)((3)(A)(ii) of the Act and Rule 19b-4(e)(2) promulgated thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning 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 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 June 7, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-11564 Filed 5-14-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32285; File No. SR-NYSE-93-22]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Extension of Rule 103A—Specialist Stock Reallocation—Until May 9, 1994

May 10, 1993.

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 April 28, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. At the same time, the Commission is granting temporary accelerated approval to the proposal.

[1] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(2) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of Rule 103A (Specialist Stock Reallocation) for an additional year until May 9, 1994.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grants authority to the Exchange's Market Performance Committee ("MPC") to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance. Based on such determinations, the MPC is authorized to conduct a formal Performance Improvement Action in an appropriate case.

On May 7, 1992, the SEC extended the effectiveness of the rule until May 9, 1993.[2] In the May 7 Order, the Commission stated its belief that the Exchange should develop objective performance standards to measure specialist performance.[3] The Exchange, with the assistance of outside consultants, and Exchange market professionals, continues to explore the development of additional objective performance standards.

The Exchange also continues to refine the existing standards contained in Rule 103A.[4] As the Rule is working well, the Exchange requests that its effectiveness be extended for another year, until May 9, 1994.

2. Statutory Basis

The statutory basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed extension of Rule 103A is consistent with these objectives in that it will allow the Exchange to continue to administer the rule on an uninterrupted basis ensuring quality specialist performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–22 and should be submitted by June 7, 1993.

IV. Discussion

The rules of the Exchange, in addition to the rules set forth under the Act, impose certain obligations upon the specialist unit, including, but not limited to, the maintenance of fair and orderly markets.[5] Because specialist units play a crucial role in providing stability, liquidity and continuity to the trading of stocks on the Exchange, the Commission believes that effective oversight, including periodic evaluation of the specialists' performance, is important to the maintenance of a fair and efficient marketplace. Critical to this oversight is the specialist performance evaluation process embodied in Rule 103A.

In the May 7 Order, the Commission stated its desire for the Exchange to develop objective measures of market making performance and incorporate such measures into the proposed rule change to extend the Rule 103A pilot. The Commission's request was consistent with its previous orders approving the extension of the Rule

[2] See Securities Exchange Act Release No. 30676 (May 7, 1992) 57 FR 20544 (May 13, 1992) ("May 7 Order") (order approving File No. SR–NYSE–92–11). The Commission originally approved the implementation of the Rule 103A pilot program in Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988) (order approving File No. SR–NYSE–87–25) and subsequently extended the effectiveness of Rule 103A several times in Release Nos. 28215 (July 17, 1990) ("July 1990 Order"), 55 FR 30060 (July 24, 1990) (order approving File No. SR–NYSE–90–24) and 29180 (May 8, 1991), 56 FR 22498 (order approving File No. SR–NYSE–91–14). The July 1990 Order also approved various substantive revisions to Rule 103A including, among other things, enhancing the performance criteria for administrative messages received through the Designated Order Turnaround ("DOT") system, and, at the same time, extended the effectiveness of the revised Rule 103A until May 9, 1991 (see Securities Exchange Act Release No. 28215). Subsequently, on February 27, 1991, the Commission approved the NYSE's proposal to adopt relative performance standards into the Rule 103A program (see Securities Exchange Act Release No. 28923 (February 27, 1991), 56 FR 9993 (order approving File No. SR–NYSE–90–44). See also notes 3 and 4 *infra*.

[3] The Commission notes that the Exchange's current evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests. Specialist performance also is measured by the Exchange's Specialist Performance Evaluation Questionnaire. However, objective market making measures currently are not included in the Rule 103A program.

[4] See Securities Exchange Act Release No. 32045 (March 24, 1993), 58 FR 16896 (March 31, 1993) (order approving File No. SR–NYSE–92–36). The Exchange amended Rule 103A to enhance performance standards relating to the turnaround time for specialists' handling of orders received by the DOT system by reducing the requirement of a 90% turnaround in two minutes to a 90% turnaround in one minute and, in the future, to a 90% turnaround in 30 seconds during any two quarters in a rolling four quarter period.

[5] See generally NYSE Rule 104; Rule 11b–1 under the Act, 17 CFR 240.11b–1 (1991).

103A pilot program. In fact, the Exchange informed the Commission that it had employed the services of an outside expert to study the feasibility of adopting such objective measures of specialist performance.[6] To date, however, the Exchange has not finished its development of objective measures of market making performance. Indeed, in the proposed rule change, the Exchange states that it continues to explore the development of additional objective performance standards and continues to refine the existing standards contained in Rule 103A. The Exchange requests that the Commission extend the effectiveness of the rule for an additional year because the rule is working well. However, the proposal herein to extend Rule 103A until May 9, 1994, does not include objective measures of market making performance as the Commission originally had requested.

Even though the proposal lacks objective market making performance standards, the Commission has determined to approve the proposal to extend the effectiveness of Rule 103A for an additional year in light of the significant enhancements the NYSE has made to the Rule 103A program thus far, and the substantial time and resources the Exchange already has dedicated to the development of objective criteria. The revision to Rule 103A, adopted in July, 1990[7], the subsequent adoption of relative performance standards[8], and the refinement of existing standards[9] have augmented the Exchange's ability to evaluate specialist performance.

As noted in previous orders,[10] the Commission stated that the mature status of the Intermarket Trading System ("ITS"), as a market structure facility, warrants the incorporation of ITS turnaround and trade-through concerns[11] into the NYSE's Rule 103A performance standards. The NYSE has responded to the Commission's request that it incorporate ITS turnaround and trade-through concerns into Rule 103A.[12] In this regard, the Exchange stated that ITS matters are more appropriately addressed by means of the Exchange's regulatory processes rather than by its performance measurement system. According to the Exchange, it has emphasized to specialists that all ITS commitments to trade are expected to be executed, and will take appropriate regulatory action if specialists are deficient in this matter. Moreover, the Exchange states that trade-throughs are not always the responsibility of the specialist and, therefore, would not appear to be an appropriate measure of specialist performance. In the Exchange's view, the current ITS trade-through resolution process works well, and is the appropriate means for addressing ITS trade-through concerns.[13] Despite the contentions of the Exchange, the Commission believes that evaluating the ITS turnaround and trade-through concerns can be a valid measurement of specialist performance and should be incorporated into the evaluation process. For example, the NYSE should measure how many times NYSE specialists trade-through other markets and how often specialists' ITS commitments expire. Although we agree with the NYSE that these factors should be addressed, where appropriate, by regulatory action, we also believe these factors can be a valid indication of specialist performance in the current trading environment.

The Commission continues to believe that the Exchange should develop objective performance standards that would measure accurately the traditional indicia of specialist performance, namely, market depth, price continuity and dealer participation and stabilization. The Commission, therefore, strongly encourages the NYSE to incorporate objective standards into the Rule 103A program prior to or simultaneous with the NYSE's future proposal to extend the effectiveness of Rule 103A or adopt the Rule on a permanent basis.[14]

The Commission has reviewed carefully the NYSE's proposed rule change and, for the above reasons, believes that the proposal is consistent with the requirements of Sections 6 and 11 of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and the public interest. Further, the Commission finds that the proposal is consistent with section 11(b) of the Act,[16] and Rule 11b–1 thereunder,[17] which allow securities exchanges to promulgate rules relating to specialists consistent with the maintenance of fair and orderly markets.

Specifically, the Commission believes that the NYSE's Rule 103A performance evaluation process provides the Exchange with the means to identify and correct poor specialist performance. Accordingly, the evaluation process is critical to the NYSE's duty to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities, as required pursuant to Exchange rules and the Act, and the rules and regulations thereunder.[18] Moreover, the possibility of a performance improvement action as a result of the evaluation process, in addition to the use of the evaluation results in stock allocation decisions, should help motivate and provide incentives for specialists to maintain and improve their market making performance for the benefit of investors. In summary, extension of Rule 103A's effectiveness until May 9, 1994 will provide the Exchange with the ability to continue evaluating specialist performance on an uninterrupted basis, which should enhance market quality and performance in Exchange listed securities. During the pilot, the Exchange should continue to consider and develop objective measures which evaluate both ITS matters and market making performance.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission believes it is appropriate to approve the proposed rule change on an accelerated

[6] See Securities Exchange Act Release No. 28215, *supra* note 2 and letter from Robert J. McSweeney, Senior Vice President, Market Surveillance, NYSE, to Sharon Lawson, Assistant Director, Commission, dated August 31, 1992 ("August 1992 letter").

[7] See Securities Exchange Act Release No. 30676, *supra* note 2.

[8] *Id.*

[9] See Securities Exchange Act Release No. 32045 *supra* note 4.

[10] See Securities Exchange Act Release Nos. 30676, 29180, 28215, and 25681 *supra* note 2.

[11] ITS Plan, Section 8(d) (i) and (ii), (as last amended March 9, 1993).

[12] See August 1992 letter, *supra* note 6.

[13] *Id.*

[14] In this regard, the Commission expects the NYSE to submit to the Division of Market Regulation, by February 28, 1994, a proposed rule change pursuant to Rule 19b–4 under the Act, 17 CFR 240.19b–4, to extend the Rule 103A pilot or make the Rule permanent. As emphasized above, this proposed rule change should include objective measures of market making performance that have been developed by the outside experts retained by the Exchange. The Commission also expects the Exchange to submit to the Division, by February 28, 1994, a status report on the implementation of Rule 103A. The report should contain data, for each quarter of 1993, on (1) the number of specialists that fell below acceptance levels of performance for each category; (2) the number of performance improvement actions commenced; (3) the number of units subjected to informal counseling to improve performance; and (4) a list of stocks reallocated due to substandard performance under the Rule and the particular unit involved.

[15] 15 U.S.C. 78f and 78k (1988).

[16] 15 U.S.C. 78k(b) (1988).

[17] 17 CFR 240.11b–1 (1991).

[18] See *supra* note 5.

basis so that the Exchange can continue to administer, on an uninterrupted basis, its Rule 103A evaluation process. During the one year extension of the Rule, the Commission expects the NYSE to continue its examination of the efficacy of its current specialist evaluation procedures, as well as determine whether to extend the pilot for a further period or, in the alternative, approve Rule 103A on a permanent basis. Finally, a substantial portion of current Rule 103A was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program.[19] Further, interested persons were invited to comment on the past proposals to extend the effectiveness of Rule 103A, the most recent of such proposals being the extension of Rule 103A until May 9, 1994. The Commission received no comments on these proposals. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.[20]

V. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with sections 6(b)(5) and 11(b) under the Act, and Rule 11b–1 thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act[21] that the proposed rule change be, and hereby is, approved for the period ending May 9, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

[FR Doc. 93–11562 Filed 5–14–93; 8:45 am]

BILLING CODE 8010–01–M

[19] See Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35821 (notice of filing of File No. SR–NYSE–87–25); and 25681 (May 9, 1988), 53 FR 17287 (order approving File No. SR–NYSE–87–25).

[20] 15 U.S.C. 78f (1988).

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32176; File Nos. SR–PHLX–90–23 and 91–07]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Dual Affiliations of Floor Members and Other Market Participants

April 20, 1993.

Correction

In FR Document No. 93–9885 beginning on page 25876 for Wednesday, April 28, 1993, the date should read as set forth above.

Dated: May 11, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–11563 Filed 5–14–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2641]

Oklahoma; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 26, 1993, and amendments dated April 27 and April 29, 1993, I find that the Counties of Mayes, Rogers, Tulsa, and Wagoner in the State of Oklahoma constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred April 24, 1993. Applications for loans for physical damage may be filed until the close of business on June 25, 1993, and for loans for economic injury until the close of business on January 26, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, suite 102, Fort Worth, Texas 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Cherokee, Craig, Creek, Delaware, Muskogee, Nowata, Okmulgee, Osage, Pawnee, and Washington may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.625
For Economic Injury:	
Businesses and Small Agricultural Cooperative Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 264112 and for economic injury the number is 789200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 6, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–11534 Filed 5–14–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1803]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its annual Meeting on Thursday, June 17, 1993, at 9:30 a.m. in Conference Room 1205, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State ad which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the office of Dr. Ernest N. Mannino, Department of State, telephone 703–875–7800, prior to June 17. All attendees must use the C Street entrance to the building.

Dated: April 27, 1993.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 93–11613 Filed 5–14–93; 8:45 am]

BILLING CODE 4710–34–M

[Public Notice 1808]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the

Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on July 21, August 18, September 15, October 20, and November 17, 1993. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950.

The purpose of these meetings is to prepare for the 39th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for November 29 through December 3, 1993, at the IMO headquarters in London, England.

Agenda items include preparation for the 39th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTM), 2100 Second Street, SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Dated: May 5, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93–11614 Filed 5–14–93; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 7, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48790.
Date filed: May 5, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Telex Mail Vote 631—Cameroon-Europe fares.
Proposed Effective Date: May 20, 1993.

Docket Number: 48791.
Date filed: May 5, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Telex Reso 024f—Currency Fare Changes Sweden to TC2.
Proposed Effective Date: May 12, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–11586 Filed 5–14–93; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 7, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48789.
Date filed: May 5, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 2, 1993.
Description: Application of Trinity Aviation Ltd. T/A Air Bahamas, pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a Foreign Air Carrier Permit, authorizing the scheduled and charter transportation of persons, property, freight, and mail between the Bahamas and the United States of America.

Docket Number: 48792.
Date filed: May 5, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 2, 1993.
Description: Application of USAir, Inc., pursuant to Section 401 of the act and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity so as to authorize USAir to provide scheduled foreign air transportation on a nonstop basis between Philadelphia, Pennsylvania and Tampa, Florida, on the one hand, and Mexico City, Mexico, on the other hand.

Docket Number: 48794.
Date filed: May 5, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 2, 1993.
Description: Application of UFS, Inc., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in interstate and overseas air transportation of persons, property and mail.

Docket Number: 48795.
Date filed: May 6, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 3, 1993.
Description: Application of Neitz Aviation Inc., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to engage in scheduled interstate/overseas air transportation.

Docket Number: 48796.
Date filed: May 6, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 3, 1993.
Description: Application of Renown Aviation, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing scheduled foreign air transportation of persons, property and mail so that it can commence United States-Bahamas passenger service and United States-Caribbean cargo services.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–11585 Filed 5–14–93; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

Requesting Topics for Presentation at Next Research and Development Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice requests suggestions for specific research and development topics for presentations by NHTSA at its next public meeting being planned for a June date.

DATE AND TIME: The deadline for suggesting specific topics is 4:15 p.m. on Thursday, May 27, 1993.

ADDRESSES: Suggestions for specific R&D topics as described below, should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, room 6206, 400 Seventh St. SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of quarterly public meetings. The first

meeting of the series was held on April 6, 1993, at which time NHTSA officials from the Office of Research and Development provided a summary overview of research and development projects in the areas of crashworthiness and crash avoidance. The second meeting is being planned for the mid-June time frame; the specific date has not been set yet. At subsequent meetings, NHTSA intends to present in greater detail its research and development activities in two to four of the topic areas listed below. The purpose of this notice is to solicit suggestions from interested parties regarding the specific topics for presentations by NHTSA at the June meeting. NHTSA asks that the suggestions be limited to five, in priority order, so that the presentations at the June R&D meeting can be most useful to the audience. NHTSA will use the suggestions as a basis for selecting specific topics on which to make presentations.

Specific Crashworthiness R&D topics are:

Dynamic side impact—LTVs
Door latch integrity
Improved glazing for reducing ejection
Hybrid III chest deflection
Improved frontal crash protection
Upgrade of rollover crash protection
Child safety rulemaking—FMVSS 213 upgrade
Improved safety belt design
Heavy truck rear end crash protection
Upgrade fuel system integrity
Highway traffic injury studies
Impact injury research
Human injury simulation and analysis
Crash test dummy development
Vehicle agressivity and fleet compatibility
Upgrade side crash protection
Upgrade seat and occupant protection system
Child safety
Electric vehicle safety

Specific Crash Avoidance R&D topics are:

Vehicle motion environment
Crash causal analysis
Heavy truck antilock brake systems
Long combination vehicle safety
Drowsy driver
Driver workload

Specific topics from the National Center for Statistics and Analysis are:

1992 NASS preliminary results
New data elements for FARS and NASS
Linkage of databases on police accident reporting and medical outcomes.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

Issued: May 10, 1993.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 93–11544 Filed 5–14–93; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93–33; Notice 1]

Toyota Motor Corporation; Receipt of Petition for Determination of Inconsequential Noncompliance

Toyota Motor Corporate Services of North America, Inc. has petitioned the agency on behalf of the Toyota Motor Corporation (Toyota) of Toyota-cho, Toyota-city, Aichi-ken, Japan. Toyota has determined that some of its replacement seat belts fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR part 573. Toyota has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Between July 1988 and April 1993, Toyota manufactured and sold approximately 7,900 replacement seat belts which did not include the installation and maintenance instructions required by Standard No. 209. The seat belt assemblies are for the 1989 through 1993 model year (MY) Corolla and Camry, and 1993 MY trucks.

Standard No. 209, section S4.1(k) requires that "[a] seat belt assembly or retractor shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle except for a seat belt assembly installed in a motor vehicle by an automobile manufacturer. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles * * *." In addition, Section S4.1(1) requires that "[a] seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened." The instructions pertaining to threading and nonlocking retractors do not apply to Toyota's belt designs.

Toyota supports its petition for inconsequential noncompliance with the following:

Lack of Installation Instructions

Toyota believes that improper installation or installation of an improper part is highly unlikely because:

The installer can easily identify the replacement seat belt installation method by simply reversing the removal process;

Seat belt assembly installation instructions are contained in the vehicle repair manual, which is widely distributed and readily available at all Toyota dealers and many independent repair facilities;

Owing to the variety of physical differences between models of seat belt assemblies, it is highly unlikely that a seat belt assembly would be installed in either an incorrect vehicle or incorrect seating position; and,

Since replacement seat belt assemblies are normally ordered from Toyota's parts supply system by referring to a parts catalogue, it is unlikely that an installer would order or receive an incorrect replacement seat belt assembly.

Toyota believes that a mismatch of a replaced seat belt assembly in either an incorrect model vehicle or seating position is unlikely because:

The identification, "TOYOTA GENUINE PARTS," is prominently printed on the container box, making it unlikely that the subject replacement seat belt assemblies would be used in other brand vehicles.

Since the part name and part number are labeled on the container box, the installer would not confuse the part with one for universal application.

Toyota states that the installation of the subject replacement seat belt assemblies does not require threading of the webbing or drilling of anchorage holes.

Lack of Usage and Maintenance Instructions

Toyota believes that the lack of usage and maintenance instructions with the subject belts is inconsequential to safety because:

The instructions for proper usage of the seat belt assembly are included in the vehicle

owner's manual, which is provided with all vehicles. Therefore, the lack of an instruction sheet with a replacement seat belt assembly would hardly affect any owner in possession of such an owner's manual. Replacements for missing manuals are available through Toyota dealers or Toyota Motor Sales, U.S.A., Inc.

The instructions for maintenance and periodic inspection of the seat belt assembly are also included in the vehicle owner's manual, which is provided with all vehicles. Therefore, the lack of such an instruction sheet with a replacement seat belt assembly would hardly affect any owner in possession of such an owner's manual. In addition, periodic maintenance is not needed, since Toyota's seat belt assemblies are basically maintenance-free.

Objectives of Standard No. 209

In considering disposition of other petitions for determination of inconsequential noncompliance, NHTSA has recognized that the safety objectives of a standard may be met by means other than complying with each specific technical requirement.

Toyota believes that the objectives of FMVSS 209 are satisfied, since our current replacement seat belt assembly practices and procedures, our replacement seat belt assembly owner's manual information, and the design of the replacement seat belt assemblies, themselves, are sufficient to ensure correct installation and proper usage. The agency so found in other similar cases involving Nissan, Chrysler, and Subaru [Chrysler was granted on October 5, 1992 (see Docket No. 92–24, Notice 2; 57 FR 45865); and Subaru on March 30, 1993 (Docket No. 93–04, Notice 2; 58 FR 16737)].

Interested persons are invited to submit written data, views, and arguments on the petition of Toyota, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 16, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: May 11, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–11565 Filed 5–14–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Secret Service

Appointment of Performance Review Board Members

AGENCY: Secret Service, Treasury.

ACTION: Appointment of Performance Review Board (PRB) Members.

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1992, and ending June 30, 1993. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

Guy P. Caputo—Deputy Director, U.S. Secret Service

Hubert T. Bell—Assistant Director, Protective Operations (USSS)

Raymond A. Shaddick—Assistant Director, Inspection (USSS)

David C. Lee—Assistant Director, Administration (USSS)

Don A. Edwards—Assistant Director, Government Liaison & Public Affairs (USSS)

Michael S. Smelser—Assistant Director, Training (USSS)

H. Terrence Samway—Assistant Director, Protective Research (USSS)

George J. Opfer—Assistant Director, Investigations (USSS)

John J. Kelleher—Chief Counsel, U.S. Secret Service.

FOR ADDITIONAL INFORMATION CONTACT

Susan T. Tracey, Chief, Personnel Division, room 901, 1800 G Street NW., Washington, DC 20223, Telephone No. 202–435–5635.

John W. Magaw,

Director.

[FR Doc. 93–11615 Filed 5–14–93; 8:45 am]

BILLING CODE 4810–42–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 93
Monday, May 17, 1993

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: 10:00 a.m., Thursday, May 20, 1993.

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. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–11719 Filed 5–13–93; 10:46 am]

BILLING CODE 6210–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Annual Meeting of the Board of Directors

TIME AND DATE: 10:15 a.m., Friday, June 4, 1993.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., 8th Floor Board Room, Washington, DC, 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, (202) 376–2441.

Agenda

I. Call to Order
II. Approval of Minutes, March 24, 1993, Regular Meeting
III. Election of Chairman
Election of Vice Chairman
IV. Committee Appointments:
a. Audit Committee
b. Budget Committee
c. Personnel Committee
V. Election of Officers
VI. Board Appointments
VII. Executive Director's Quarterly Management Report
VIII. Treasurer's Report
IX. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 93–11730 Filed 5–13–93; 11:09 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 10, 17, 24, and 31, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 10

Friday, May 14

10:30 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–8049)

2:30 p.m.
Briefing on Evolutionary and Advanced Light-Water Reactor Design Issues (Public Meeting)
(Contact: Richard Borchardt, 301–504–1193)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Amendments to 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste"
(Contact: Janet Lambert, 301–492–3857)

Week of May 17—Tentative

Tuesday, May 18

9:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: Ted Sherr, 301–504–3371)

10:30 a.m.
Briefing by the Executive Branch (Closed—Ex. 1)

1:30 p.m.
Briefing on Turkey Point Lessons Learned (Public Meeting)
(Contact: Fred Hebdon, 301–504–2024)

3:00 p.m.
(Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 24—Tentative

Wednesday, May 26

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on Status of Efforts for Risk Harmonization (Public Meeting)
(Contact: Richard Bangart, 301–504–3340)

Thursday, May 27

9:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Week of May 31—Tentative

Tuesday, June 1

10:00 a.m.
Briefing on Development of Standards, Certification Process, and Status of U.S. Enrichment Corporation Transition (Public Meeting)
(Contact: John Hickey, 301–504–3328)

2:00 p.m.
Briefing on Status of BWR Water Level Indicators (Public Meeting)
(Contact: Ashok Thadani, 301–504–3884)

Wednesday, June 2

10:00 a.m.
Briefing on Progress of Design Certification Review and Implementation (Public Meeting)
(Contact: Dennis Crutchfield, 301–504–1159 or Richard Borchardt, 301–504–1193)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, June 4

10:00 a.m.
Briefing on Status of Enhanced Participatory Rulemaking (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)

ADDITIONAL INFORMATION: By a vote of 5–0 on April 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management-Organization and Internal Personnel Matters" (Closed——Ex. 2 and 6) be held on April 23, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: May 7, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–11719 Filed 5–13–93; 10:46 am]

BILLING CODE 7590–01–M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
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700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
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27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–017–00009–4)	18.00	Jan. 1, 1992
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
*210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
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§§ 1.641–1.850	(869–017–00090–6)	19.00	Apr. 1, 1992
§§ 1.851–1.907	(869–017–00091–4)	23.00	Apr. 1, 1992
§§ 1.908–1.1000	(869–017–00092–2)	26.00	Apr. 1, 1992
§§ 1.1001–1.1400	(869–017–00093–1)	19.00	Apr. 1, 1992
§§ 1.1401–End	(869–017–00094–9)	26.00	Apr. 1, 1992
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600–End	(869–017–00101–5)	6.50	Apr. 1, 1992

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28	(869-017-00104-0)	37.00	July 1, 1992
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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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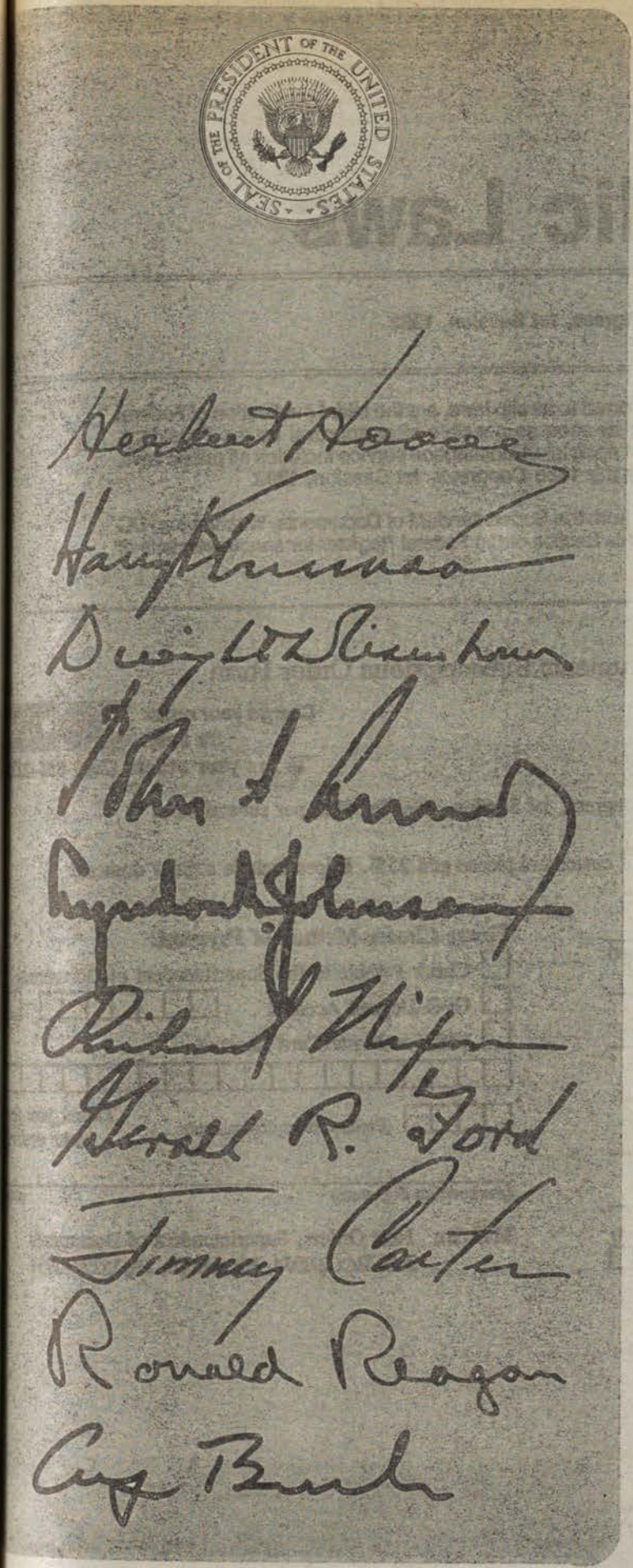

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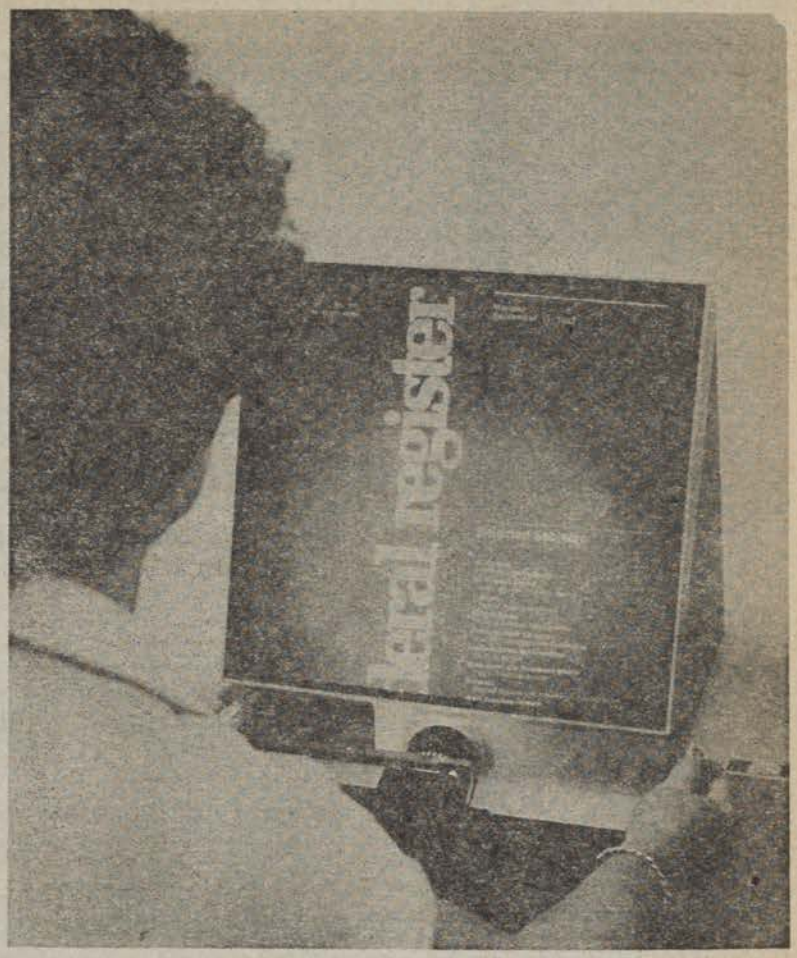

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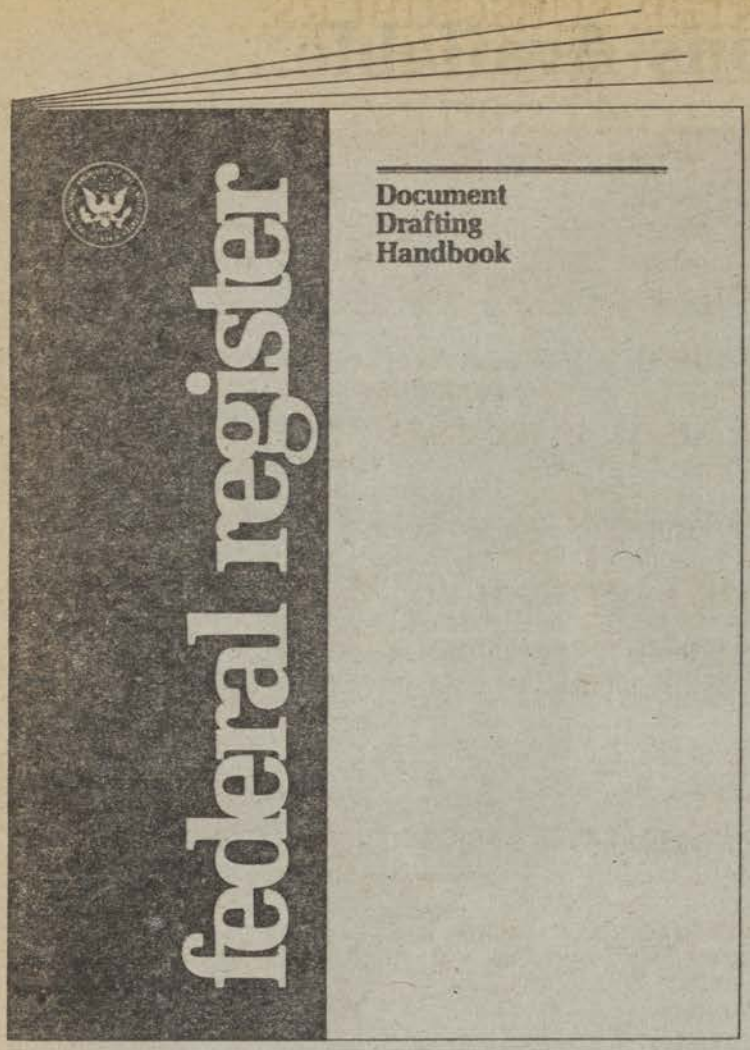

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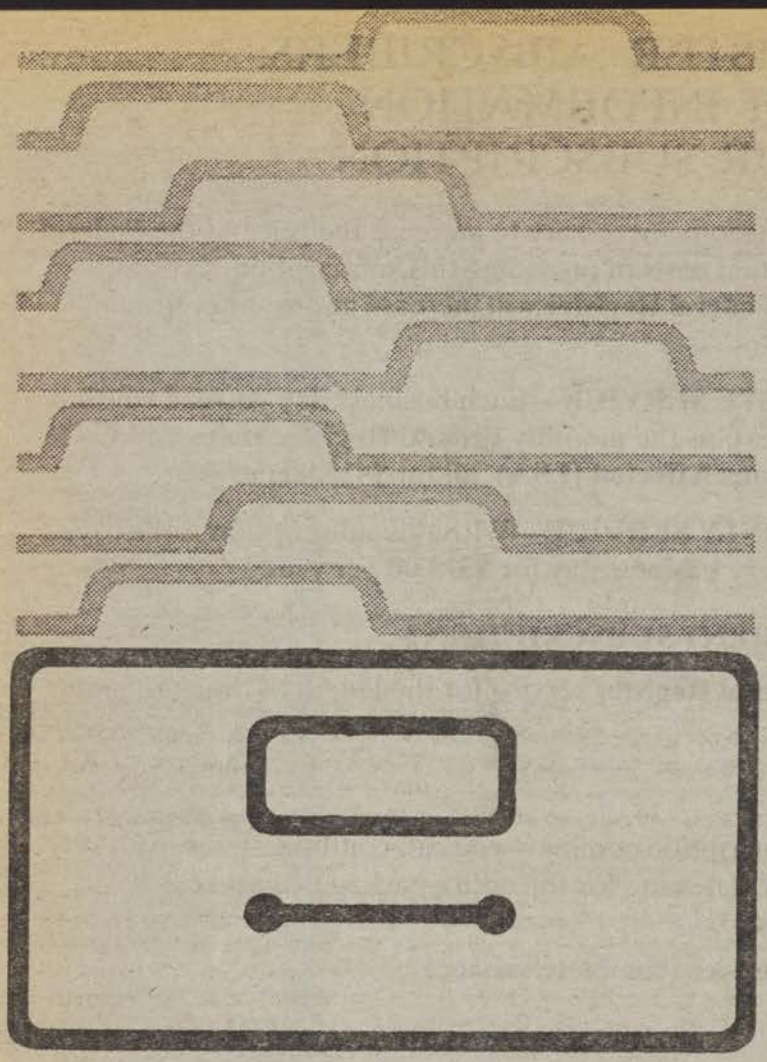

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