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WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC
(two briefings)

WHEN: October 19 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Contents

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

Agency for Health Care Policy and Research
NOTICES
Clinical practice guidelines development:
Selection criteria; comment request, 49308

Agriculture Department
See Animal and Plant Health Inspection Service
See Federal Grain Inspection Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Mediterranean fruit fly, 49186

Architectural and Transportation Barriers Compliance Board
NOTICES
Meetings:
Recreation Access Advisory Committee, 49284

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Committees; establishment, renewal, termination, etc.:
Workers' Family Protection Task Force, 49311

Children and Families Administration
RULES
Public assistance programs:
Aid to families with dependent children (AFDC)—
Omnibus Budget Reconciliation Act; implementation of certain provisions; legal guardian term elimination, child abuse and neglect reporting, etc., 49218

Commerce Department
See Export Administration Bureau
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 49351

Defense Department
See Defense Logistics Agency
NOTICES
Meetings:
Telecommunications Service Priority (TSP) System Oversight Committee, 49287
Privacy Act:
Systems of records, 49287

Defense Logistics Agency
NOTICES
Privacy Act:
Computer matching programs, 49288
Systems of records, 49290

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
U.S. Drug Testing, Inc., 49320

Education Department
RULES
Special education and rehabilitative services:
National Institute on Disability and Rehabilitation Research—
Technical amendments, 49418
NOTICES
Grants and cooperative agreements; availability, etc.:
Children with severe disabilities program, 49394

Employment and Training Administration
NOTICES
Adjustment assistance:
Zebulon Manufacturing et al., 49321

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Natural gas exportation and importation:
Bonus Gas Processors, Inc., 49297
Senior Executive Service:
Performance Review Board; membership, 49293

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emmission standards:
Perchlorethylene emissions from dry cleaning facilities, 49354
Hazardous waste program authorizations:
Wisconsin, 49199
Superfund program:
National oil and hazardous substances contingency plans—
Off-site response actions; procedures for planning and implementing, 49200
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 49254
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, 49265
Dry bulb onions, 49263
Orthoarsenic acid, 49267
Pentachloronitrobenzene, 49264
Toxic substances:
Significant new uses—
Hydrogenated arylated polydecene, 49271
Sulfur bridged substituted phenols, 49269
NOTICES
Meetings:
Benchmark dose methodology; workshop, 49297
Science Advisory Board, 49297
Pesticide programs:
2,4,5-T and silvex; Federal disposal program closure, 49301
Pesticide registration, cancellation, etc.:
Talstar 10WP Insecticide/Miticide, etc., 49298
Pesticides; temporary tolerances:
Monsanto Agricultural Co., 49298

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Iran Air, 49284

Federal Communications Commission
RULES
Common carrier services:
New telecommunications technologies use; spectrum redevelopment to encourage innovation, 49220
PROPOSED RULES
Common carrier services:
Telecommunications companies; uniform system of accounts—
Litigation; accounting for judgments and other costs, 49276
Radio broadcasting:
Distance separation calculations; rounding restrictions, 49278
NOTICES
Agency information collection activities under OMB review, 49301
Rulemaking proceedings; petitions filed, granted, denied, etc., 49303

Federal Emergency Management Agency
NOTICES
Agency information collection activities under OMB review, 49303
Disaster and emergency areas:
New Jersey, 49304
North Carolina, 49304
Texas, 49304
Meetings:
National Fire Academy Board of Visitors, 49305

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Northeast Utilities Service Co. et al., 49291
Potomac Edison Co. et al., 49292
Applications, hearings, determinations, etc.:
Arkla Energy Resources, 49295
El Paso Natural Gas Co., 49295
KN Interstate Transmission Co., 49296
Tennessee Gas Pipeline Co., 49296
Western Resources, 49297

Federal Grain Inspection Service
PROPOSED RULES
Grain standards:
Beans, 49248

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Cargonauts, Inc., et al., 49305
Frama International of Florida, Inc., et al., 49305

Federal Reserve System
NOTICES
Meetings:
Consumer Advisory Council, 49306
Applications, hearings, determinations, etc..
Banc One Corp. et al., 49306
Fuji Bank, Ltd., et al., 49307
Jennings, Paul, et al., 49307
Northern Illinois Financial Corp. et al., 49308

Fish and Wildlife Service
RULES
Endangered and threatened species:
McKittrick pennyroyal, 49244
Spineless hedgehog cactus, 49242
PROPOSED RULES
Endangered and threatened species:
Pahrump poolfish, 49279
Hunting and fishing:
Refuge-specific regulations, 49382

Food and Drug Administration
RULES
Administrative practice and procedure:
Procedural regulations; list update, 49190
Food for human consumption:
Food labeling—
Diluted juice beverages; ingredients declaration, 49190
NOTICES
Meetings:
Advisory committees, panels, etc., 49312

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Social Security Administration

Health Care Financing Administration
PROPOSED RULES
Medicaid:
Child support enforcement agency referrals; medicaid agency requirements, 49272

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
October, 49316

Housing and Urban Development Department
NOTICES
Occupancy Standards in Public and Assisted Housing Task Force; report availability; correction, 49317

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
RULES
Income taxes:
Regulated investment companies and real estate investment trusts; earnings and profits
Correction, 49352

International Trade Commission
NOTICES
Import investigations:
Anisotropically etched one megabit and greater DRAMS, components, and products containing DRAMS, 49317
Tape dispensers, 49317

Welded stainless steel pipe from Malaysia, 49317

Interstate Commerce Commission
NOTICES
Rail carriers:
Cost recovery procedures—
Adjustment factor, 49318
Railroad services abandonment:
CSX Transportation, Inc., 49319

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Georgia-Pacific Corp., 49319
Metropolitan Dade County et al., 49320
Pagano, Mary, et al., 49320

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration
RULES
Federal service contracts; labor standards:
Prevailing wages and fringe benefits; determinations, 49192

Land Management Bureau
NOTICES
Survey plat filings:
Idaho, 49317

National Archives and Records Administration
RULES
Records management:
Micrographic records, 49193
PROPOSED RULES
Public availability and use:
NARA research facilities; locations and hours, 49251
NOTICES
Organization, functions, and authority delegations:
Move to Archives II, College Park, MD—
Nontextual Archives Division, Cartographic and Architectural Branch, 49330
Presidential Libraries Office, Nixon Presidential Materials Staff, 49331

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Challenge/Advancement Advisory Panel, 49331

National Oceanic and Atmospheric Administration
PROPOSED RULES
Endangered and threatened species:
Johnson's seagrass
Correction, 49352
NOTICES
Satellite-based fishing vessel monitoring systems; standards, 49285

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 49351

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Long Island Power Authority, 49332
Meetings:
Reactor Safeguards Advisory Committee, 49332
Reports; availability, etc.:
Radioactive waste classification; concentration averaging and encapsulation; staff technical position, 49333
Applications, hearings, determinations, etc.:
Northeast Nuclear Energy Co., 49333

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Chicago Corp. et al., 49322
UIU Health Welfare Plan et al., 49326

Personnel Management Office
RULES
Retirement:
Civil Service Retirement System—
Disability retirement, 49177

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Letter-size ZIP+4 and barcoded rate mailings; preparation requirements, 49402

Presidential Documents
ADMINISTRATIVE ORDERS
Ecuador; drawdown of DOD articles and supplies for international disaster assistance (Presidential Determination No. 93–27 of June 24, 1993), 49175

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 49335

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 49336
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 49336
Boston Stock Exchange, Inc., 49337
Chicago Board Options Exchange, Inc., 49339
Chicago Stock Exchange, Inc., 49341
Pacific Stock Exchange, Inc., 49343
Philadelphia Stock Exchange, Inc., 49345
Applications, hearings, determinations, etc.:
Greece Fund, Inc., 49347
Turkish Growth Fund, Inc., 49348

Social Security Administration
PROPOSED RULES
Supplemental security income:
Parent-to-child deeming for certain disabled children; waiver, 49249

Treasury Department
See Internal Revenue Service

United States Information Agency
NOTICES
Agency information collection activities under OMB review, 49348

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Veterans education—
Flight training, 49196
PROPOSED RULES
Loan guaranty:
Attorney fees increase, 49253
Net value definition and pre-foreclosure debt waivers criteria; revisions, 49251
NOTICES
Disciplinary Appeals Board Panel; roster of employees; availability, 49349
Environmental statements; availability, etc.:
Miami, FL; national cemetery site, 49349
Pittsburgh, PA; national cemetery site, 49349

Separate Parts In This Issue

Part II
Environmental Protection Agency, 49354

Part III
Department of Interior, Fish and Wildlife Service, 49382

Part IV
Department of Education, 49394

Part V
Postal Service, 49402

Part VI
Department of Education, 49418

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Administrative Orders:
Presidential Determinations:
No. 93-27 of June 24, 1993 49175
5 CFR
631 49177
7 CFR
301 49186
Proposed Rules:
68 49248
20 CFR
Proposed Rules:
416 49249
21 CFR
10 49190
101 49190
26 CFR
1 49352
29 CFR
4 49192
34 CFR
346 49418
347 49418
354 49418
355 49418
356 49418
357 49418
358 49418
359 49418
360 49418
36 CFR
1222 49193
1230 49193
Proposed Rules:
1253 49251
38 CFR
21 49196
Proposed Rules:
36 (2 documents) 49251, 49253
39 CFR
Proposed Rules:
111 49402
40 CFR
9 49354
63 49354
272 49199
300 49200
Proposed Rules:
52 (2 documents) 49254, 49258
180 (4 documents) 49263, 49264, 49265, 49267
721 (2 documents) 49269, 49271
42 CFR
Proposed Rules:
433 49272
45 CFR
205 49218
233 49218
47 CFR
2 49220
21 49220
22 49220
94 49220
Proposed Rules:
32 49276
73 49278
50 CFR
17 (2 documents) 49242, 49244
Proposed Rules:
17 49279
32 49382
222 49352
227 49352

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93–27 of June 24, 1993

Presidential Determination on Drawdown of Department of Defense Articles and Services for International Disaster Assistance in Ecuador

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

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the "Act"), I hereby determine that it is in the national interest of the United States to draw down defense articles from the stocks of the Department of Defense and defense services of the Department of Defense for the purpose of providing disaster relief assistance in Ecuador.

Therefore, I hereby authorize the furnishing of up to $2 million of defense articles from the stocks of the Department of Defense and defense services of the Department of Defense and for the purposes and under the authorities of Chapter 9 of Part I of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 24, 1993.

[FR Doc. 93–23332
Filed 9–20–93; 2:03 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

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 831

RIN 3206–AB77

Civil Service Retirement System; Disability Retirement

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its Civil Service Retirement System (CSRS) regulations concerning disability retirement. Current regulations do not clearly state the conditions under which OPM finds a disability annuitant recovered from the disabling condition or restored to earning capacity. The regulations address these issues and consolidate current CSRS disability retirement regulations. These regulations do not affect the Federal Employees Retirement System (FERS).

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: H.T. Newland, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On March 30, 1990, OPM published (55 FR 11933) proposed regulations and requested comments on those proposed regulations to revise the CSRS disability retirement regulations. We received 20 comments on the proposed regulations. There were seven comments submitted by Members of Congress, four from national employee organizations, two from local units of employee organizations, one from an agency, and six from individuals.

Matters Not Subject to Regulation

One commenter suggested that individuals who become eligible for a discontinued service retirement annuity as a result of termination of a disability annuity have their new annuities computed on the basis of current salaries. Three commenters suggested that individuals subject to 7½% retirement deductions (such as law enforcement officers and firefighters) have ½% of those deductions refunded if they retire on disability and have their annuity computed under the disability formula. One commenter suggested that individuals retiring on disability be permitted to make an election under the Alternative Form of Annuity program. Another commenter suggested that certain types of overtime pay be included for annuity computation and restoration to earning capacity purposes. All of these suggested changes are beyond the scope of regulatory change, and would require legislation.

Section 831.1204

Two commenters suggested the deletion of § 831.1204(b) of the proposed regulations (changed to § 831.1204(c) in the final regulation). This provision merely restates the existing provision that filing a disability retirement application will not preclude or delay any other appropriate personnel action by the employing agency. Agencies have had, and continue to have, the right to defer action on other personnel actions pending a decision on a disability retirement application, but are not required to do so. Therefore, to clarify the matter, we have added an additional sentence to explicitly state that the agency may consider that the application is pending when deciding what other action is appropriate.

However, we decline to accept the suggestion that agencies be required to retain individuals who have filed disability retirement applications. To do so would create an unwarranted obstacle to an agency's pursuit of a personnel action, allowing an employee to effectively freeze the action by filing for disability retirement, thus resulting in specious disability retirement applications being filed solely to delay separations.

One commenter suggested that we restore the previous provision that we may consider "informal claims" as timely filed. We have done so, as § 831.1204(b).

Section 831.1207

Several commenters suggested that the word "ensure" in § 831.1207(b) be changed to "affect," to make the sentence read: "(w)ithdrawal of a disability retirement application does not affect the individual's continued employment." The same commenters also suggested that the second sentence of that subsection (stating that the employing agency must decide whether it is appropriate to continue the individual's employment) be deleted. Such changes would not be consistent with appropriate personnel policy. If, for example, an employee withdraws his or her disability retirement application and the employee's performance is unacceptable, the agency should proceed to remove or demote the employee.

With regard to § 831.1207(c), two commenters suggest that the subsection be amended to require that applicants be informed in writing that OPM considers voluntary acceptance of a permanent position in which the employee has civil service retirement coverage, including a position at a lower grade or pay level, to be a withdrawal of the employee's disability retirement application. This suggestion goes to the voluntariness of the acceptance of the position at the lower grade or pay level, rather than the disability retirement process, and is thus inappropriate for inclusion in these regulations. Nevertheless, we agree that this information should be transmitted to the employee, and have already incorporated a requirement to do so in Federal Personnel Manual Supplement 830–1, at section 60A2.1–5I.

Section 831.1208

Sixteen commenters questioned the proposed provisions to allow OPM to base a finding of recovery upon employment by a non-Federal employer or self-employment where the duties of the work performed have physical and/or mental requirements that resemble or exceed those of the position from which the annuitant retired (see § 831.1208(e) of the proposed regulations). The comments were generally based upon a misimpression that the proposal was intended to provide a basis, other than those in existing statute, upon which to find individuals recovered based upon work that is dissimilar to that performed while in Government service even if the annuitant was not actually recovered from the disability upon which the retirement was based.

It is almost tautological to say that an annuitant able to perform duties with the same requirements as those of the position from which the annuitant retired is no longer suffering from the disability. If OPM becomes aware that an individual is performing such a job, the regulations permit OPM to order a medical or other examination at any time to determine the facts relative to the nature and degree of disability. That authority in these new regulations is unchanged from the existing regulation.

Further, in evaluating medical documentation, OPM is not required to consider the evidence in a vacuum. If the annuitant's actual activities are inconsistent with apparent limitations reflected in medical documentation, OPM is free to further develop the case as needed to resolve the apparent conflict. Thus, in view of the confusion on the part of commenters and the fact that further regulatory authority is not actually needed, we have withdrawn this proposal as unnecessary.

Three commenters also objected to § 831.1208(f) of the proposed regulations, which would permit findings of recovery based on voluntary requests if the record does not contain medical documentation demonstrating that the annuitant is mentally incompetent. The objection is that this would constitute a new form of recovery outside of the statutory provisions.

In actuality, this is just a statement of a form of evidence acceptable to make a finding of recovery under the existing statutory provisions. It is intended to remove a burden for those annuitants who are recovered; it is entirely voluntary; and it can only be initiated by an annuitant whom the record does not show to be incompetent. We see no benefit to anyone in requiring a recovered annuitant to go to the trouble and expense of obtaining new medical documentation to be found recovered, if he or she wishes to be so found.

Section 831.1209

Several commenters suggested that the restoration to earning capacity provisions are overly complex. While some of the material is detailed, the provisions involved are not simple, and less complex regulations would not adequately cover the matters involved. We have included detailed definitions and instructions only where actual experience has demonstrated them to be necessary. We have modified the provisions dealing with setting the current rate of pay to accommodate the changes in pay setting which have occurred since the regulations were proposed, and to make other minor changes to improve clarity.

Two employee organizations suggested that we require annuitants to annually furnish OPM with a copy of their Federal income tax returns, and follow Internal Revenue Service definitions of earned income. Income tax returns generally contain a great deal of personal information which is not relevant to determining earned income. While there are circumstances where submission of all or part of a Federal income tax return may be the best way to ascertain earned income, to require the submission of a return in every case would be an invasion of privacy which is not warranted, and we decline to require it.

However, we are greatly concerned with improving earned income determinations, so that there will be a simple and objective means of determining earned income applicable to as many cases as possible. Towards that end, and in response to the employee organization suggestions that we use Federal tax rules to simplify the matter, the regulations provide that all income which is subject to Federal employment taxes (i.e., social security and Medicare taxes) or self-employment taxes constitutes earned income.

That rule will deal with nearly all questions as to whether income should be counted towards determining restoration to earning capacity. Unfortunately, there are some situations which that rule will not cover, because even though certain income may have been earned, these taxes have not been paid. These include, but are not limited to, situations involving income earned outside of the United States (particularly in the case of foreign nationals), earned income in excess of the statutory limits on which these taxes are based, earned income of certain members of the clergy and religious workers, earned income of certain State and local employees, self-employment income which has been set off by losses for purposes of the self-employment taxes, and earned income on which taxes should have been paid but were not. It is therefore necessary to retain the admittedly complex proposed regulations to cover the relatively small number of such cases. To be equitable to all disability annuitants, we cannot accept definitions of income which could cover two similarly situated annuitants and result in one being found restored to earning capacity and the other not.

With regard to specific suggestions for this section, one commenter asks that "employer-employee relationship," used in § 831.1209(c)(1) be defined in § 831.1202. That regulation states that the normal common-law rules will be applied. It is unnecessary to further define this relationship.

One commenter suggests that the section make more detailed reference to the Postal Service pay system. Since it is clear that the pay system used for restoration to earning capacity will be that under which the annuitant was employed at retirement, it is unnecessary to make reference to specific pay systems unless they contain unusual provisions which require clarification, as in the case of § 831.1209(b)(3).

One commenter objects to § 831.1209(e)(3) as being inequitable. That provision provides that expenditures for the personal benefit of an annuitant who is a business owner may not be excluded from consideration of earned income even if they are deductible from the taxable income of the business. We believe this provision is fair, because it would be inequitable to permit business owners an unfair advantage in income consideration.

Two commenters object to § 831.1209(g)(2)(iii), which would have provided that permissible deductions from income involving services performed by family members may be deducted only if the amount claimed does not exceed the Federal minimum hourly rate in effect on December 31 of the calendar year in which claimed and the number of hours did not exceed 40 hours a week. While such situations are highly subject to abuses, we agree that the proposed standard would have been to strict, and we have revised the regulations.

Under the revised regulations, claims involving services performed by a family member or other individual directly employed by the annuitant may be deducted only if a true employer-employee relationship exists between the annuitant and the employed individual, and the amount claimed as an expense does not exceed the local market rate of payment to individuals who provide similar services. The regulations provide that it is the responsibility of the annuitant to provide evidence demonstrating that an employer-employee relationship exists, and what the local market rate is for such services.

Section 831.1212

One commenter suggested that the word "deduct" be changed to "reduce" in § 831.1212(i) (now § 831.1212(h)), which suggestion we have adopted. That section provides that when OPM reinstates an employee's disability annuity, the agency must offset the employee's pay by the amount of annuity allocable to the period of

employment, unless the annuitant is exempted from this requirement under the provisions of 5 U.S.C. 8344(i). The offset begins on the date of OPM's determination of eligibility for reinstatement. The pertinent sentence now provides that: "OPM must reduce any retroactive payment of annuity for a period of employment with an agency before that date by the amount of pay earned during that period."

Miscellaneous

One commenter inquired why language regarding reassignment of Postal Service employees was moved from the definition of "disabled" and "disability" to the definition of "vacant position." The change was solely for the improvement of clarity, and no substantive change was intended.

That commenter also suggested that the regulations would be improved if they required employing agencies to notify employees of the regulatory provisions. We agree that agencies should properly counsel employees. The Federal Personnel Manual includes instructions issued for this purpose, with appropriate references to the regulations.

E.O. 12991, Federal Regulation

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

Regulatory Flexibility Act

I certify that, within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees and retirees.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Patricia W. Lattimore,

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Accordingly, OPM is amending 5 CFR part 831 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

Authority: 5 U.S.C. 8347 * * *

2. Section 831.501 is revised to read as follows:

§ 831.501 Time for filing applications.

Employees or Members who are eligible for retirement must file a retirement application with their agency. Former employees or Members who are eligible for retirement must file a retirement application with OPM. The application should not be filed more than 60 days before becoming eligible for benefits. If the application is for disability retirement, the applicant and the employing agency should refer to subpart L of this part.

§ 831.502 [Removed]

3. Section 831.502 is removed.

§§ 831.503 and 831.504 [Redesignated as §§ 831.502 and 831.503]

4. Sections 831.503 and 831.504 are redesignated as §§ 831.502 and 831.503, respectively.

5. In the newly redesignated § 831.503, paragraph (b)(3)(ii) is revised to read as follows:

§ 831.503 Retirement based on involuntary separation.

* * * * *

(b) * * *

(3) * * *

(ii) Within the employee's commuting area as defined in § 831.1202 of this part, unless geographic mobility is a condition of the employee's employment;

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6. Subpart L of part 831 is revised to read as follows:

Subpart L—Disability Retirement

Sec.
831.1201 Introduction.
831.1202 Definitions.
831.1203 Basic requirements for disability retirement.
831.1204 Filing disability retirement applications: General.
831.1205 Agency-filed disability retirement applications.
831.1206 Evidence supporting entitlement to disability benefits.
831.1207 Withdrawal of disability retirement applications.
831.1208 Termination of disability annuity because of recovery.
831.1209 Termination of disability annuity because of restoration to earning capacity.
831.1210 Annuity rights after a disability annuity terminates.
831.1211 Reemployment of disability annuitants.
831.1212 Reinstatement of disability annuity.
831.1213 Administrative review of OPM decisions.

Subpart L—Disability Retirement

§ 831.120 Introduction.

This subpart sets out the requirements an employee must meet to qualify for disability retirement, how an employee applies for disability retirement, how an agency applies for disability retirement for an employee, when a disability annuity ends, an individual's retirement rights after the disability annuity ends, and the effect of reemployment in the Federal service on a disability annuitant.

§ 831.1202 Definitions.

As used in this subpart—

Accommodation means an adjustment made to an employee's job or work environment that enables the employee to perform the duties of the position. Reasonable accommodation may include modifying the worksite; adjusting the work schedule; restructuring the job; obtaining or modifying equipment or devices; providing interpreters, readers, or personal assistants; and reassigning or retraining the employee.

Basic pay means the pay an employee receives that is subject to civil service retirement deductions. The definition is the same as the definition of "basic pay" under 5 U.S.C. 8331(3).

Commuting area means the geographic area that usually constitutes one area for employment purposes. It includes a population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily from home to work in their usual employment.

Disabled and *disability* mean unable or inability, because of disease or injury, to render useful and efficient service in the employee's current position, or in a vacant position in the same agency at the same grade or pay level for which the individual is qualified for reassignment.

Examination and *reexamination* mean an evaluation of evidentiary material related to the question of disability. Unless OPM exercises its choice of a physician, the cost of providing medical documentation rests with the employee or disability annuitant, who must provide any information OPM needs to make an evaluation.

Medical condition means a health impairment resulting from a disease or injury, including a psychiatric disease. This is the same definition of "medical condition" as in § 339.104 of this chapter.

Medical documentation and *documentation of a medical condition* mean a statement from a licensed physician or other appropriate practitioner that provides information OPM considers necessary to determine an individual's entitlement to benefits under this subpart. Such a statement

must meet the criteria set forth in § 339.104 of this chapter.

Permanent position means an appointment without time limitation.

Physician and *practitioner* have the same meanings given in § 339.104 of this chapter.

Qualified for reassignment means able to meet the minimum requirements for the grade and series of the vacant position in question.

Same grade or pay level means, in regard to a vacant position within the same pay system as the employee currently occupies, the same grade and an equivalent amount of basic pay. A position under a different pay system or schedule is at the "same pay level" if the representative rate, as defined in § 532.401 of this chapter, equals the representative rate of the employee's current position.

Useful and efficient service means (1) acceptable performance of the critical or essential elements of the position; and (2) satisfactory conduct and attendance.

Vacant position means an unoccupied position of the same grade or pay level and tenure for which the employee is qualified for reassignment that is located in the same commuting area and is serviced by the same appointing authority of the employing agency. The vacant position must be full time, unless the employee's current position is less than full time, in which case the vacant position must have a work schedule of no less time than that of the current position. In the case of an employee of the United States Postal Service, a vacant position does not include a position in a different craft or a position to which reassignment would be inconsistent with the terms of a collective bargaining agreement covering the employee.

§ 831.1203 Basic requirements for disability retirement.

(a) Except as provided in paragraph (b) of this section, the following conditions must be met for an individual to be eligible for disability retirement:

(1) The individual must have completed at least 5 years of civilian service that is creditable under the Civil Service Retirement System.

(2) The individual must, while employed in a position subject to the Civil Service Retirement System, have become disabled because of a medical condition, resulting in a service deficiency in performance, conduct, or attendance, or if there is no actual service deficiency, the disabling medical condition must be incompatible with either useful and efficient service or retention in the position.

(3) The disabling medical condition must be expected to continue for at least 1 year from the date the application for disability retirement is filed.

(4) The employing agency must be unable to accommodate the disabling medical condition in the position held or in an existing vacant position.

(5) An application for disability retirement must be filed with the Office of Personnel Management (OPM) before the employee separates from service, or within 1 year thereafter. This time limit can be waived only in certain instances explained in § 831.1204.

(b) A National Guard technician who is retiring under the special provisions of 5 U.S.C. 8337(h) is not required to meet the conditions given in paragraphs (a) (2), (3), and (4) of this section. Instead, the individual must be disabled for membership in the National Guard or for the military grade required to hold his or her position and meet the other eligibility requirements under 5 U.S.C. 8337(h)(2).

§ 831.1204 Filing disability retirement applications: General.

(a) An employee or Member who is retiring on account of disability must file an application for annuity with OPM before separation from the service or within 1 year thereafter. OPM may waive this time limit if the employee or Member was mentally incompetent on the date of separation or within 1 year thereafter; in this case the individual or his or her representative may file the application with OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(b) An application for annuity which is on an inappropriate form, or on an appropriate form inadequately or incompletely executed, and which is received by OPM within 1 year of separation may be accepted as an informal claim for purposes of meeting the timeliness requirement.

(c) An employee's application for disability retirement will not preclude or delay any other appropriate personnel action by the employing agency. However, an agency may properly consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions.

§ 831.1205 Agency-filed disability retirement applications.

(a) *Basis for filing an application for an employee.* An agency must file an application for disability retirement of an employee who has 5 years of civilian Federal service when all of the following conditions are met:

(1) The agency has issued a decision to remove the employee;

(2) The agency concludes, after its review of medical documentation, that the cause for unacceptable performance, attendance, or conduct is disease or injury;

(3) The employee is institutionalized, or the agency concludes , based on a review of medical and other information, that the employee is incapable of making a decision to file an application for disability retirement;

(4) The employee has no personal representative or guardian; and

(5) The employee has no immediate family member who is willing to file an application on his or her behalf.

(b) *Agency procedures.* (1) When an agency issues a decision to remove an employee and not all of the conditions described in paragraph (a) of this section have been satisfied, but the removal is based on reasons apparently caused by a medical condition, the agency must advise the employee in writing of his or her possible eligibility for disability retirement.

(2) If the agency is filing a disability retirement application on the employee's behalf, the agency must inform the employee in writing at the same time it informs the employee of its removal decision, or at any time before the separation is effected, that—

(i) The agency is submitting a disability retirement application on the employee's behalf to OPM;

(ii) The employee may review any medical information in accordance with the criteria in § 294.106(d) of this chapter; and

(iii) The action does not affect the employee's right to submit a voluntary application for retirement under this part.

(3) When an agency submits an application for disability retirement to OPM on behalf of an employee, it must provide OPM with copies of the decision to remove, the medical documentation, and any other documents needed to show that the cause for removal is due to a medical condition. Following separation, the agency must provide OPM with a copy of the documentation of the separation.

(c) *OPM procedures.* (1) OPM will not act on any application for disability retirement filed by an agency on behalf on an employee until it receives the appropriate documentation of the separation. When OPM receives a complete application for disability retirement under this section, it will notify the former employee that it has received the application, and that he or she may submit medical documentation.

OPM will determine entitlement to disability benefits under § 831.1206.

(2) OPM will cancel any disability retirement when a final decision of an administrative authority or court reverses the removal action and orders the reinstatement of an employee to the agency rolls.

§ 831.1206 Evidence supporting entitlement to disability benefits.

(a) *Evidence to support disability retirement application.* (1) Before OPM determines whether an individual meets the basic requirements for disability retirement under § 831.1203, an applicant for disability retirement or the employing agency must submit to OPM the following forms included in Standard Form 2824, "Documentation in Support of Disability Retirement Application:"

(i) Standard Form 2824A—"Applicant's Statement;"

(ii) Standard Form 2824B—"Supervisor's Statement;"

(iii) Standard Form 2824D—"Agency Certification or Reassignment and Accommodation Efforts;" and

(iv) Standard Form 2824E—"Disability Retirement Application Checklist."

(2) Standard Form 2824C—"Physician's Statement" and the supporting medical documentation may be submitted directly to OPM.

(3) The applicant, or the employing agency, must also obtain and submit additional documentation as may be required by OPM to determine entitlement to the disability retirement benefit.

(4) Refusal by the applicant, physician, or employing agency to submit the documentation OPM has determined is necessary to decide eligibility for disability retirement is grounds for disallowance of the application.

(b) *OPM procedures for processing a disability retirement application.* (1) OPM will review the documentation submitted under paragraph (a) of this section in support of an application for disability retirement to determine whether the applicant has met the conditions stated in § 831.1203 of this part. OPM will issue its decision in writing to the applicant and to the employing agency. The decision will include a statement of the findings and conclusions, and an explanation of the right to request consideration under § 831.109 of this part.

(2) OPM may rescind a decision to allow an application for disability retirement at any time if there is an indication of error in the original decision, such as fraud or misstatement of fact, or if additional medical documentation is needed. The written notification will include a statement of the findings and conclusions, and an explanation of the right to request reconsideration under § 831.109 of this part.

(c) *Medical examination.* OPM may offer the applicant a medical examination when it determines that additional medical evidence is necessary to make a decision on an application. The medical evaluation will be conducted by a medical officer of the United States or a qualified physician or board of physicians designated by OPM. The applicant's refusal to submit to an examination is grounds for disallowance of the application.

(d) *Responsibility for providing evidence.* It is the responsibility of the applicant to obtain and submit documentation that is sufficient for OPM to determine whether there is a service deficiency, caused by disease or injury, of sufficient degree to preclude useful and efficient service, or a medical condition that warrants restriction from the critical task or duties of the position held. It is also the responsibility of the disability annuitant to obtain and submit evidence OPM requires to show continuing entitlement to disability benefits.

§ 831.1207 Withdrawal of disability retirement applications.

(a) OPM will honor, without question, an applicant's request to withdraw an employee-filed disability retirement application if it receives the withdrawal request before the employing agency has separated the current employee, or, if the employee has already separated from the service, the withdrawal request is received before the official notice of approval has been issued by OPM. Similarly, OPM will honor, without question, an agency's request to withdraw an agency-filed disability retirement application if it receives the withdrawal request before the employee has separated from the service. Once the request to withdraw the application is accepted, an applicant must reapply to receive any further consideration.

(b) Withdrawal of a disability retirement application does not ensure the individual's continued employment. It is the employing agency's responsibility to determine whether it is appropriate to continue to employ the individual.

(c) OPM considers voluntary acceptance of a permanent position in which the employee has civil service retirement coverage, including a position at a lower grade or pay level, to be a withdrawal of the employee's disability retirement application. The employing agency must notify OPM immediately when an applicant for disability retirement accepts a position of this type.

(d) OPM also considers a disability retirement application to be withdrawn when the agency reports to OPM that it has reassigned an applicant or an employee has refused a reassignment to a vacant position, or the agency reports to OPM that it has successfully accommodated the medical condition in the employee's current position. Placement consideration is limited only by agency authority and can occur after OPM's allowance of the application up to the date of separation for disability retirement. The employing agency must notify OPM immediately if any of these events occur.

(e) After OPM allows a disability retirement application and the employee is separated, the application cannot be withdrawn. However, an individual entitled to a disability annuity may decline to accept all or any part of the annuity under the waiver provisions of 5 U.S.C. 8345(d) or request to be found medically recovered under § 831.1208(e) of this part.

§ 831.1208 Termination of disability annuity because of recovery.

(a) Each annuitant receiving disability annuity from the Fund shall be examined under the direction of OPM at the end of 1 year from the date of disability retirement and annually thereafter until the annuitant becomes 60 years of age unless the disability is found by OPM to be permanent in character. OPM may order a medical or other examination at any time to determine the facts relative to the nature and degree of disability of the annuitant. Failure to submit to reexamination shall result in suspension of annuity.

(b) A disability annuitant may request medical reevaluation under the provisions of this section at any time. OPM will reevaluate the medical condition of disability annuitants age 60 or over only on their own request.

(c) Recovery based on medical documentation. When an examination or reevaluation shows that a disability annuitant has medically recovered from the disability, OPM will terminate the annuity effective on the first day of the month beginning 1 year after the date of the medical examination showing recovery.

(d) Recovery based on reemployment by the Federal Government. Reemployment by an agency at any time before age 60 is evidence of recovery if the reemployment is in a permanent

position at the same or higher grade or pay level as the position from which the disability annuitant retired. The permanent position must be full-time unless the position the disability annuitant occupied immediately before retirement was less than full-time, in which case the permanent position must have a work schedule of no less time than that of the position from which the disability annuitant retired. In this instance, OPM needs no medical documentation to find the annuitant recovered. Disability annuity payments will terminate effective on the first day of the month following the month in which the recovery finding is made under this paragraph.

(e) Recovery based on a voluntary request. OPM will honor a written and signed statement of medical recovery voluntarily filed by a disability annuitant when the medical documentation on file does not demonstrate that the annuitant is mentally incompetent. OPM needs no other documentation to find the annuitant recovered. Disability annuity payments will terminate effective on the first day of the month beginning 1 year after the date of the statement. A disability annuitant can withdraw the statement only if the withdrawal is received by OPM before annuity payments terminate.

(f) When an agency reemploys a recovered disability annuitant at any grade or rate of pay within the 1-year period pending termination of the disability retirement benefit under paragraph (c), (d), or (e) of this section, OPM will terminate the annuity effective on the date of reemployment.

§ 831.1209 Termination of disability annuity because of restoration to earning capacity.

(a) *Restoration to earning capacity.* If a disability annuitant is under age 60 on December 31 of any calendar year and his or her income from wages or self-employment or both during that calendar year equal at least 80 percent of the current rate of basic pay of the position occupied immediately before retirement, the annuitant's earning capacity is considered to be restored. The disability annuity will terminate on the June 30 after the end of the calendar year in which earning capacity is restored. When an agency reemploys a restored disability annuitant at any grade or rate of pay within the 180-day waiting period pending termination of the disability retirement benefit, OPM will terminate the annuity effective on the date of reemployment.

(b) *Current rate of basic pay for the position occupied immediately before retirement.* (1) A disability annuitant's income for a calendar year is compared to the gross annual rate of basic pay in effect on December 31 of that year for the position occupied immediately before retirement. The income for most disability annuitants is based on the rate for the grade and step which reflects the total amount of basic pay (both the grade and step and any additional basic pay) in effect on the date of separation from the agency for disability retirement. Additional basic pay is included subject to the premium pay restrictions of 5 U.S.C. 5545 (c)(1) and (c)(2). A higher grade and step will be established if it results from using either the date of application for disability retirement or the date of reasonable accommodation, as adjusted by any increases in basic pay that would have been effected between each respective date and the date of final separation. Use of these two alternative pay setting methods is subject to paragraph (b)(1) (i) and (ii) of this section. The highest grade and step established as a result of setting pay under the normal method and the two alternative methods is designated as the rate of basic pay for the position occupied immediately before retirement and applies only to restoration to earning capacity decisions. In cases involving use of either of the two alternative pay setting methods, the determination of the rate of basic pay for the position occupied immediately before retirement is made by the employing agency at the time the disability retirement is allowed. OPM must review the rate so determined to establish whether the correct rate has been established, and will inform the employee of the proper rate at the time the disability annuity is awarded. This rate of basic pay becomes the basis for all future earning capacity determinations.

(i) The "date of application for disability retirement" is the date the application is signed by the authorized official of the employing agency immediately before forwarding the application to OPM.

(ii) The "date of reasonable accommodation" is the date of the employing agency's notice of reasonable accommodation to an employee's medical condition (as a result of its review of medical documentation) which results in a reduction in the rate of basic pay. The use of the date of reasonable accommodation to establish the rate of basic pay for the position held at retirement is subject to the following conditions:

(A) The date of the employing agency's notice to provide accommodation is no more than 1 year before the date the disability retirement application is signed by the authorized official in the employing agency immediately before forwarding it to OPM; and

(B) A complete record of the date of the personnel decision, the medical documentation substantiating the existence of the medical condition, and the justification for the accommodation is established in writing and included at the time the agency submits the application for disability retirement. OPM will review the record to determine whether the medical documentation demonstrates that the medical condition existed at the time of the accommodation and warranted the accommodation made.

(2) In the case of an annuitant whose basic pay rate on the date determined under paragraph (b)(1) of this section did not match a specific grade and step in a pay schedule:

(i) For those retiring from a merit pay position, a position for which a special pay rate is authorized (except as provided in paragraph (b)(2)(ii) of this section), or any other position in which the rate of basic pay is not equal to a grade and step in a pay schedule, the grade and step will be established for this purpose at the lowest step in the pay schedule grade that is equal to or greater than the actual rate of basic pay payable. This rule will not be applied when the rate exceeds that of the schedule applicable to the organization from which the individual retired, when there is no existing apposite schedule with grades and steps, or in other organizations which are excluded from coverage of schedules with grades and steps, as in the case of pay systems using pay bands.

(ii) For those retiring with a retained rate of basic pay or from a position for which a special pay rate is in effect but whose rate of basic pay exceeds the highest rate payable in the pay schedule grade applicable to the position held, the grade and step is established for this purpose in the grade in the schedule that is closest to the grade of the position held and within which the amount of the retained pay falls. The step is established for this purpose at the lowest step in that grade which equals or exceeds the actual rate of pay payable.

(iii) When the pay system under which an annuitant retired has been either modified or eliminated since the individual retired, the individual will be treated as if he or she had been employed at their retirement grade and step at the time of the system change, and will be deemed to have been placed under the new system using whatever

rules would have been applicable at that time. This will only apply when a pay system has been abolished or modified, and not when the grade and step of a position has been modified subsequent to retirement by reclassification or other action, in which case the grade and step in effect at the time of retirement will control.

(iv) If using the above rules it is not possible to set a grade and step for computing the current rate of pay, then if possible the current rate of pay will be set using the relative position in the range of pay applicable to the position from which the individual retired. For example, if at the time of retirement the rate of pay was $75,000 in a range from $70,000 to $90,000, for all future determinations, the current rate of pay would be 25% up the new pay range from the bottom. If the new range was $96,000 to $120,000, then the new current rate of pay would be $102,000 ($96,000 plus 0.25 times $24,000 ($120,000 minus $96,000)).

(v) In those cases, such as of some former Congressional staff employees and others whose pay is not set under a formal system, where none of the above guidelines will yield a current rate of pay, OPM will ascertain the current rate of pay after consultation with the former employing organization, or successor organization.

(3) For annuitants retiring from the United States Postal Service, only cost-of-living allowances subject to civil service retirement deductions are included in determining the current rate of basic pay of the position held at retirement.

(c) *Income.* Earning capacity for the purposes of this section is demonstrated by an annuitant's ability to earn post-retirement income in a calendar year through personal work efforts or services. The total amount of income from all sources is used to determine earning capacity. This includes income received as gross wages from one or more employers, net earnings from one or more self-employment endeavors, and deferred income that is earned in a calendar year. In determining an annuitant's income for a calendar year, the following considerations apply:

(1) There are two sources of income: wages and self-employment income. All income which is subject to Federal employment taxes (i.e., social security or Medicare taxes) or self-employment taxes constitutes earned income. In addition, any other income as described in this section also constitutes earned income. The determination of whether a disability annuitant earns wages as an employee of an organization or earns income as a self-employed person is based on the usual common law rules applicable in determining the existence of an employer-employee relationship. Whether the relationship exists under the usual common law rules will be determined by OPM after the examination of the particular facts of each case.

(2) Income earned from one source is not offset by losses from another source. Income earned as wages is not reduced by a net loss from self-employment. The net income from each self-employment endeavor is calculated separately, and the income earned as net earnings from one self-employment endeavor is not reduced by a net loss from another self-employment endeavor. The net incomes from each separate self-employment endeavor are added together to determine the total amount of income from self-employment for a calendar year.

(3) Only income earned from personal work efforts or services is considered in determining earning capacity. All forms of non-work-related unearned income are excluded. Paragraph (f) of this section includes a representative list of the types of unearned income that are not considered.

(4) Income earned in a calendar year may only be reduced by certain self-employment business expenses, as provided in paragraph (e) of this section; job-connected expenses incurred because of the disabling condition, as provided in paragraph (g) of this section; and the return from investment allowance, as provided in paragraph (h) of this section. Once earned, income cannot be reduced by any other means. Thus, income cannot be lowered by such means as leave buy-back provisions, conversion of wages for paid time to leave without pay or a similar non-paid status, reductions in wages attributable to cash shortages or product losses, etc.

(5) For determining annual income from wages or self-employment or both, income is earned in the calendar year the annuitant actually renders the personal work effort or service and either actually or constructively receives the remuneration, except as provided under paragraph (c)(7) of this section. For this purpose, income paid on a regular basis (i.e., on a weekly, bi-weekly, monthly or similar pay period basis) will be deemed earned in the year in which payment is made in the regular course of business.

(6) Deferred income is included as income in the calendar year in which it is constructively received. Income is constructively received when it is credited, set apart, or otherwise made available so that the annuitant may draw upon it at any time, or could draw upon it during the calendar year if the annuitant had given notice of the intent to do so. Deferred income includes all earnings, whether in the form of cash or property or applied to provide a benefit for the employee, which are subject to the disability annuitant's designation or assignment. Usually, the earnings are set aside by a salary-reduction agreement, a deferred compensation arrangement, or the designation of specific earnings amounts towards the purchase of non-taxable employee fringe benefits. Thus, any earnings for which the individual has the opportunity to adjust the amount of income received in a calendar year by controlling the remuneration of voluntarily giving up the right to control the remuneration, regardless of whether a written instrument exists, are income for earning capacity purposes.

(7) The Internal Revenue Code provides exceptions to the general rule on constructive receipt for certain deferred compensation plans which, by their design, defer receipt of income for Federal employment tax purposes as of the later of when services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Even though these special deferred compensation plans defer the constructive receipt of the income for tax purposes to future years beyond the year in which the income is actually earned, the income reflects earning capacity. Therefore, employer contributions and employee payments to these special deferred compensation plans are considered income in the calendar year in which the services are performed, even though the Internal Revenue Code may exclude these contributions and payments from income for tax purposes.

(d) *Wages.* For purposes of earning capacity determinations, the term "wages" means the gross amount of all remuneration for services performed by an employee for his or her employer, unless specifically excluded herein, before any deductions or withholdings.

(1) The name by which the remuneration for services is designated is immaterial. Remuneration includes but is not limited to one-time or recurring—

(i) Base salary or pay; tips; commissions; professional fees; honoraria; bonuses and gift certificates of any type; golden parachute payments; payments for any non-work periods, such as vacation, holiday, or sick pay; pay advances; overtime pay; severance pay; dismissal pay; termination pay; and back pay;

(ii) Deferred income, within the meaning of paragraphs (c) (6) and (7) of this section, or other employer contributions or payments in an arrangement in which the employee has the opportunity (whether exercised or not) to adjust income by recovering the contributions or payments during the calendar year in which earned, for general discretionary income purposes;

(iii) Non-cash wages or payment of in-kind benefits, such as shares of stock in the business, real or personal property, stock in trade, inventory items, goods, lodging, food, and clothing. The valuation for all non-cash wages or other in-kind benefits is determined in a manner consistent with the fair value standards that appear in the Social Security Administration's regulations at 20 CFR 404.1041(d).

(2) Any amount offset or deducted under 5 U.S.C. 8344 is treated as wages if the annuity continues while the annuitant is reemployed by the Federal Government.

(3) As a general rule, remuneration as wages does not include any contribution, payment, benefits furnished, or service provided by an employer in any of the following areas:

(i) The general retirement system established by the employer for its employees, usually either a qualified pension, profit-sharing, stock bonus plan, or a qualified annuity contract plan;

(ii) Medical or hospitalization health benefit plans;

(iii) Life insurance plans;

(iv) Sickness or accident disability pay beyond 6 months of illness, or workers' compensation payments;

(v) The value of meals and lodgings provided at the convenience of the employer;

(vi) Moving expenses;

(vii) Educational assistance programs;

(viii) Dependent care assistance programs;

(ix) Scholarships and fellowship grants;

(x) De minimis fringe benefits, such as items of merchandise given by the employer at holidays which are not readily convertible into cash and courtesy discounts on company products offered not as remuneration for services performed but as a means of promoting good will;

(xi) Qualified group legal services plans;

(xii) Uniforms and tools supplied by the employer, including employer-provided allowances for such items, for the exclusive use by the employee on the job; and

(xiii) Amounts that an employer pays the individual specifically, either as advances or reimbursements, for traveling or other ordinary and necessary expenses incurred, or reasonably expected to be incurred in the employer's business.

(4) However, there are two exceptions to this general rule:

(i) When it is provided under circumstances in which either a salary reduction or deferral agreement is used (whether evidenced by a written instrument or otherwise); or

(ii) When the employee had the opportunity (whether exercised or not) to elect to receive the cash value, whether in the form of money or personal or real property, of the employer-provided amount or service.

(e) *Self-employment income.* (1) Self-employment income is the remuneration that is received as an independent contractor, either as

(i) A sole proprietor of a business or farm;

(ii) A professional in one's own practice; or

(iii) A member of a partnership or corporation, as these terms are defined by the Internal Revenue Code, and regardless of whether the business entity is operated for profit.

(2) The term "net earnings" from self-employment in a business enterprise means the gross revenue to the business endeavor from all sources before any other deductions or withholdings, minus

(i) Allowable business expenses, as provided in paragraph (e)(3) of this section;

(ii) Any job-connected disability expenses, as provided in paragraph (g) of this section; and

(iii) Any return from investment allowance, as provided in paragraph (h) of this section.

(3) Certain expenses of a self-employed business entity may be offset from the gross revenue from all sources of that self-employed business in determining the amount of net earnings for a particular calendar year. Expenses which may be deducted are only those items and costs which are permitted by the Internal Revenue Code for income tax purposes as ordinary and necessary to the operation of the business. However, expenses incurred on behalf of the disability annuitant may not be deducted, regardless of whether they are permitted by the Internal Revenue Code. These expenses that are incurred but cannot be deducted include the costs for wages paid to the individual, interest earnings, guaranteed payments, dividends, employee benefits, pension plans, and salary reduction or deferral plans. Also, self-employed disability annuitants may not deduct the costs of other withdrawals or expenses which are not used solely for business purposes. Examples of items that cannot be deducted if used at all for personal use by the self-employed disability annuitant include personal property items, such as automobiles and boats; real property, such as vacation property or residences; and memberships, dues, or fees for professional associations or public or private organizations or clubs.

(4) Fees paid to an annuitant as a director of a corporation are a part of net earnings from self-employment.

(f) *Income not included.* Other types of income not considered in determining earning capacity include—

(1) Investment income, such as interest or dividends from savings accounts, stocks, personal loans or home mortgages held, unless the disability annuitant receives the return from capital investment in the course of his or her trade or business;

(2) Capital gains from sales of real or personal property that the disability annuitant owns, unless received in the course of his or her trade or business;

(3) Rents or royalties, unless received in the course of his or her trade or business;

(4) Distributions from pension plans, annuity plans, Individual Retirement Accounts (IRA's), Simplified Employee Benefit-IRA's (SEP–IRA's), Keogh Accounts, employee stock ownership plans, profit sharing plans, or deferred income payments that are received by the annuitant in any year after the calendar year in which the funds were contributed to the plan;

(5) Income earned before the commencing date of civil service retirement annuity payments;

(6) Scholarships or fellowships;

(7) Proceeds from life insurance, inheritances, estates, trusts, endowments, gifts, prizes, awards, gambling or lottery winnings, and amounts received in court actions whether by verdict or settlement, unless received in the course of their trade or business;

(8) Unemployment compensation under State or Federal law, supplemental unemployment benefits, or workers' compensation;

(9) Alimony, child support, or separate maintenance payments received;

(10) Pay for jury duty; and

(11) Entitlement payments from other Federal agencies, such as benefits from the Social Security Administration or the Veterans Administration, Railroad Retirement System retirement pay, or military retirement pay.

(g) *Job-connected expenses incurred because of the disabling condition may*

be deducted from income. (1) Job-connected expenses deductible from income for purposes of determining earning capacity are those expenses that are primarily for and essential to the annuitant's occupation or business and are directly connected with or result from the disability for which the disability annuity was allowed.

(2) The determination of whether a job-connected expense may be deducted from income is governed by the following considerations:

(i) The expense must be directly attributable to the disability and must be one which would not have been incurred in the absence of the annuitant working in his or her business or occupation. Expenses incurred for the preservation of the annuitant's health, alleviation of his or her physical or mental discomfort, or other expenses of an employed person cannot be deducted.

(ii) The disability must be of such severity that it requires the annuitant to use special means of transportation, services, or equipment to perform the duties of the occupation or business. Examples of such disabilities include blindness, paraplegia, multiple sclerosis, and cerebral hemorrhage. Claims involving transportation or equipment may be deducted only in the amount normally allowed for business expenses or as depreciation by the Internal Revenue Service for Federal income tax purposes.

(iii) Claims involving services performed by a family member or other individual directly employed by the annuitant may be deducted only if a true employer-employee relationship exists between the annuitant and the employed individual, and the amount claimed as an expense does not exceed the local market rate of payment to individuals who provide similar services. It is the responsibility of the annuitant to provide evidence demonstrating that an employer-employee relationship exists, and what the local market rate is for such services. For the purpose of this paragraph, to establish that a true employer-employee relationship exists, the annuitant must provide evidence that all statutorily mandated employment requirements are met, including (but not limited to) income tax withholdings, FICA tax deductions and payments, and unemployment insurance. If the annuitant fails to provide evidence of the local market rate for such services, payments may be deducted only if the amount claimed does not exceed the Federal minimum hourly rate in effect on December 31 of the calendar year in which claimed. Absent evidence that it is customary and regular practice in the local labor market to work more hours per week, payment may not be deducted for services provided by an individual in excess of 40 hours a week.

(3) A job-connected expense can be deducted only in the calendar year in which paid.

(4) Claims for items used for both personal and job-related purposes may be deducted only by the prorated amount attributable to the job-related use.

(5) A job-connected expense may not be deducted from income from self-employment if the expense has already been deducted as a business expense.

(6) It is the responsibility of the annuitant claiming job-connected expense to provide adequate documentation to substantiate the amount claimed. Adequate documentation will generally include the following information:

(i) Written recommendation of a physician, vocational rehabilitation specialist, occupational health resource specialist, or other similar professional specialist that the retiree should use the transportation, services, or equipment;

(ii) A description of the item and an explanation of its use by the annuitant in the performance of his or her occupation or business;

(iii) A copy of the receipt of purchase, bill of sale, or leasing agreement for the item claimed with the date, duration of the agreement, and agreed upon price clearly specified;

(iv) A complete supporting explanation of how the amount claimed for the job-connected expense has been calculated; and

(v) An explanation of the circumstances and calculation of the prorated cost of the item if used for both personal and business use.

(h) *Return from investment allowance.* A disability annuitant may reduce the net earnings from a self-employed business endeavor (adjusted for any interest paid on borrowed capital) by 6 percent of his or her capital investment in that business, owned or borrowed. The capital investment's value is its fair-market value as of December 31 of the year for which the income is being reported.

(i) *Requirement to report income.* All disability annuitants who, on December 31 of any calendar year, are under age 60 must report to OPM their income from wages or self-employment or both for that calendar year. Each year as early as possible, OPM will send a form to annuitants to use in reporting their income from the previous calendar year. The form specifies the date by which OPM must receive the report. OPM will determine entitlement to continued annuity on the basis of the report. If an annuitant fails to submit the report, OPM may stop annuity payments until it receives the report.

§ 831.1210 Annuity rights after a disability annuity terminates.

(a) An individual is entitled to an immediate annuity when the disability annuity stops because of recovery or restoration to earning capacity if the individual is not reemployed in a position subject to civil service retirement coverage and—

(1) Is at least age 50 when the disability annuity stops and had 20 or more years of service at the time of retirement for disability; or

(2) Had 25 or more years of service at the time of retirement for disability regardless of age.

(b) An individual whose annuity stops because of recovery or restoration to earning capacity and who is not eligible for an immediate annuity under paragraph (a) of this section, is eligible for a deferred annuity upon reaching age 62.

(c) The disability annuity of an individual whose annuity stopped because of recovery or restoration to earning capacity may be reinstated under § 831.1212 of this part.

§ 831.1211 Reemployment of disability annuitants.

(a) An agency may reemploy a disability annuitant in any position for which he or she qualifies. The employing agency must notify OPM of the reemployment, including in the notification the nature of the position, the type of appointment, and the rate of basic pay. The employing agency must give OPM similar notification when—

(1) A reemployed disability annuitant is converted from a temporary or term appointment to a permanent appointment; and

(2) A reemployed disability annuitant with a permanent appointment is promoted to a position at the same grade or pay level as that held at retirement.

(b) When a disability annuitant whom OPM has found recovered from disability, or restored to earning capacity, is reemployed while still entitled to disability annuity, OPM will terminate the annuity effective on the date of reemployment.

(c) When a disability annuitant who has not been found recovered from disability or restored to earning capacity is reemployed, the employing agency must offset the pay of the disability annuitant by the amount of annuity allocable to the period of reemployment, unless the annuitant is exempted from

this requirement under the provisions of 5 U.S.C. 8344(i).

(d) OPM may review the notification of reemployment and order a reevaluation under § 831.1208 of this part, as it finds appropriate. In connection with the reevaluation process, the employing agency and/or the employee may submit medical documentation.

(e) When a reemployed disability annuitant is found recovered from disability or restored to earning capacity, OPM will terminate the annuity effective on the first day of the month following the month in which the recovery or restoration finding is made, notify the agency of its finding, and instruct the agency to cease reducing pay by the amount of annuity allocable to the period of reemployment. If the appointment is subject to retirement deductions, OPM will instruct the agency to commence retirement deductions.

(f) A disability retirement annuity awarded to a former National Guard technician under the provisions of 5 U.S.C. 8337(h), in addition to being subject to § 831.1209 of this part, will terminate when—

(1) An agency hires the annuitant; or

(2) The annuitant declines an offer of employment with an agency that is in the same commuting area and at the same grade or pay level as the position from which the annuitant retired.

§ 831.1212 Reinstatement of disability annuity.

(a) When a disability annuity stops, the individual must again prove that he or she meets the eligibility requirements in order to have the annuity reinstated.

(b) When a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of medical evidence (§ 831.1208(b)), is not reemployed in a position subject to civil service retirement coverage, and, based on the results of a current medical examination, OPM finds that the individual's medical condition has worsened since the finding of recovery and that the original disability on which retirement was based has recurred, OPM will reinstate the disability annuity. The right to the reinstated annuity begins with the date of the medical examination showing that the disability recurred.

(c) OPM will reinstate the disability annuity of a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of Federal reemployment (§ 831.1208(c)) when—

(1) The results of a current medical examination show that the disabling medical condition that was the basis of the disability retirement continues to exist; and

(2) Within 1 year after the date of reemployment, this medical condition has again caused the individual to be unable to provide useful and efficient service, and the employee has been—

(i) Separated and not reemployed in a position subject to civil service retirement coverage; or

(ii) Placed in a position that results in a reduction in grade or pay below the grade from which the individual retired, or in a change to a non-permanent position. The right to the reinstated annuity begins with the date of the medical examination showing that the disabling medical condition continues to exist, but not earlier than the first day after separation, or the effective date of the placement in the position which results in a reduction in grade or pay or change to a non-permanent position.

(d) When a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of a voluntary request (§ 831.1208(e)), is not reemployed in a position subject to civil service retirement coverage, and, based on the results of a current medical examination, OPM finds that the disability has recurred, OPM will reinstate the disability annuity. The right to the reinstated annuity begins with the date of the medical examination showing that the disability recurred, but not earlier than 1 year before the date the request for reinstatement is received by OPM.

(e) When a disability annuitant whose earning capacity has been restored but who is not reemployed in a position in which he or she is subject to civil service retirement coverage, and who (except in the case of a National Guard technician whose annuity was awarded under 5 U.S.C. 8337(h)), has not recovered from the disability for which retired, loses his or her earning capacity, as determined by OPM, before reaching age 62, OPM will reinstate the disability annuity. The reinstated annuity is payable from January 1 of the year following the calendar year in which earning capacity was lost. Earning capacity is lost if, during any calendar year, the individual's income from wages or self-employment or both is less than 80 percent of the current rate of basic pay of the position held at retirement.

(f) A reinstated annuity is the same type as the original annuity and is paid at the rate of annuity to which the annuitant was entitled on the date his or her disability annuity was last discontinued.

(g) Reinstatement of the disability annuity ends the right to any other annuity based on the same service, unless the annuitant makes a written election to receive the other annuity instead of the disability annuity.

(h) When OPM reinstates an employee's disability annuity, the agency must offset the employee's pay by the amount of annuity allocable to the period of employment, unless the annuitant is exempted from this requirement under the provisions of 5 U.S.C. 8344(i). The offset begins on the date of OPM's determination of eligibility for reinstatement. OPM must reduce any retroactive payment of annuity for a period of employment with an agency before that date by the amount of pay earned during that period.

(i) When an individual's annuity is terminated upon reemployment (subject to subchapter III of chapter 83, title 5, United States Code), OPM must determine the individual's future annuity rights under the law in effect at the date of his or her subsequent separation. If, upon separation from such reemployment, the individual does not meet the eligibility requirements under subchapter III of chapter 83, title 5, United States Code, for title to annuity based on such separation, OPM will resume payment of the terminated annuity at the rate last payable, unless payment is otherwise barred.

§ 831.1213 Administrative review of OPM decisions.

The right to administrative review of an initial decision of OPM is set forth in § 831.109 of this part. The right to appeal a final decision of OPM to the Merit Systems Protection Board is set forth in § 831.110 of this part.

[FR Doc. 93–23091 Filed 9–21–93; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–7]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding new portions of Los Angeles and Orange Counties, CA, and an area in San Bernardino County, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective September 15, 1993. Consideration will be given only to comments received on or before November 22, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–7. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations), and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Santa Clara, Orange, and San Diego Counties, CA, from the list of quarantined areas. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, and August 3, 1993 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that additional infestations of Medfly have been discovered in the Rosemead area of Los Angeles County, CA, in the Westminster area of Orange County, CA, and in the Ontario area of San Bernardino, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly finding described above, we are amending § 301.78–3 by expanding the area which extends through Los Angeles and Orange Counties with the addition of an area of approximately 21 square miles in Los Angeles County and an area of approximately 66 square miles in Orange County; and, we are designating as quarantined an area comprised of approximately 72 square miles in Los Angeles and San Bernardino Counties. The new quarantined areas are as follows:

Los Angeles County

That portion of Los Angeles County in the Rosemead area bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 605 and State Highway 60; then, west along State Highway 60 to its intersection with Interstate Highway 710; then, north along Interstate Highway 710 to its intersection with Interstate Highway 10; then, east along Interstate Highway 10 to its intersection with Interstate Highway 605; then, south along Interstate Highway 605 to the point of beginning.

Orange County

That portion of Orange County in the Westminster area bounded by a line drawn as follows: Beginning at the intersection of Katella Avenue and Valley View Street; then, south along Valley View Street to its intersection with Bolsa Chica Road; then, south along Bolsa Chica Road to its intersection with Bolsa Chica Street; then, south along Bolsa Chica Street to its intersection with Los Patos Avenue; then, southeast from this intersection along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve Boundary; then, southeast along the Bolsa Chica Ecological Reserve Boundary to its intersection with Ellis Avenue; then, east along this Ellis Avenue to its intersection with Edwards Street; then, south along Edwards Street to its intersection with Garfield Avenue; then, east along Garfield Avenue to its intersection with North Golden West Street; then, south along North Golden West Street to its intersection with Yorktown Avenue; then, east along Yorktown Avenue to its intersection with Main Street; then, south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then, north along Fairview Road to its intersection with Fairview Street; then, north along Fairview Street to its intersection with Garden Grove Boulevard; then, west along Garden Grove Boulevard to its intersection with Haster Street; then, north along Haster Street to its intersection with Chapman Avenue; then, west along Chapman Avenue to its intersection with West Street; then, north along West Street to its intersection with Katella Avenue; then, west along Katella Avenue to the point of beginning.

Los Angeles and San Bernardino Counties

That portion of the counties in the Ontario area bounded by a line drawn as follows: Beginning at the intersection of College Way and State Highway 30 (Base Line Road); then, east along State Highway 30 to its intersection with Carnelian Street; then, south along Carnelian Street to its intersection with Vineyard Avenue; then, south along Vineyard Avenue to its intersection with Holt Boulevard; then, west along Holt Boulevard to its intersection with Grove Avenue; then, south along Grove Avenue to its intersection with Mission Boulevard; then, southeast along Mission Boulevard to its intersection with Vineyard Avenue; then, southeast along Vineyard Avenue to its intersection with Riverside Drive; then, west along Riverside Drive to its intersection with Walker Avenue; then,

south along Walker Avenue to its intersection with Eucalyptus Avenue; then, west along Eucalyptus Avenue to its intersection with State Highway 83 (Euclid Avenue); then, south along State Highway 83 to its intersection with Kimball Avenue; then, west along Kimball Avenue to its intersection with El Prado Road; then, northwest along El Prado Road to its intersection with Central Avenue; then, southwest along Central Avenue to its intersection with State Highway 71; then, northwest along State Highway 71 to its intersection with Garey Avenue; then north along Garey Avenue to its intersection with College Way; then, northeast along College Way to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule affects the interstate movement of regulated articles from the Rosemead area of Los Angeles County, CA, the Westminster area of Orange County, CA, and the Ontario area of Los Angeles and San Bernardino Counties, CA. There are approximately 961 small entities that could be affected, including 526 retail/wholesale fruit sellers, 204 nurseries, 8 distributor/wholesalers, 1 farmers' market, 41 growers, 2 packers, 3 processors, 6 community gardens, 166 mobile vendors, and 4 swapmeets.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement and the sale of these articles would not be affected by this interim regulation.

The effect on those few small entities that do move regulated articles interstate from parts of the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under "FOR FURTHER INFORMATION CONTACT".

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas is amended by revising the description for Los Angeles and Orange Counties and by adding an area in Los Angeles and San Bernardino Counties immediately afterward, as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

Los Angeles and Orange Counties. That portion of the county in the Rosemead, Artesia, Pico Rivera, Walnut Park, Covina, Griffith Park, Jefferson Park, Hancock Park, Inglewood, Alhambra, Pasadena and Duarte areas beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City limits to its intersection with the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then east along Rosecrans Avenue to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with Carson Street; then east on Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Valley View Street; then, south along Valley View Street to its intersection with Bolsa Chica Road; then, south along Bolsa Chica road to its intersection with Bolsa Chica Street; then, south along Bolsa Chica Street to its intersection with Los Patos Avenue; then, southeast from this intersection along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve boundary; then, southeast along the Bolsa Chica Ecological Reserve boundary to its intersection with Ellis Avenue; then, east along Ellis Avenue to its intersection with Edwards Street; then, south along Edwards Street to its intersection with Garfield Avenue; then, east along Garfield Avenue to its intersection with North Golden West Street; then, south along North Golden West Street to its intersection with Yorktown Avenue; then, east along Yorktown Avenue to its intersection with Main Street; then, south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then, north along Fairview Road to its intersection with Fairview Street; then, north along Fairview Street to its intersection with Garden Grove Boulevard; then, west along Garden Grove Boulevard to its intersection with Haster Street; then, north along Haster Street to its intersection with Chapman Avenue; then, west along Chapman Avenue to its intersection with West Street; then, north along West Street to its intersection with Katella Avenue; then, west along Katella Avenue to its intersection with Western Avenue; then north on Western Avenue to its intersection with Commonwealth Avenue; then east on Commonwealth Avenue to its intersection with Beach Boulevard; then north on Beach Boulevard to its intersection with La Mirada Boulevard; then northwest and north on La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with the Whittier City Limits; then northwest along the Whittier City Limits to its intersection with Turnbull Canyon Road; then north from this intersection along an imaginary line to the intersection of Interstate Highway 605 and State Highway 60; then northeast along Interstate Highway 605 to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Francisquito Avenue; then southeast along Francisquito Avenue to its intersection with Hacienda Boulevard; then southwest along Hacienda Boulevard to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to its intersection with the Forest Lawn Memorial Park, Covina Hills boundary; then northeast along the boundary to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north from the intersection along an imaginary line to its intersection with the Angeles National Forest boundary; then west along the boundary to the point of beginning; except that the portion of Los Angeles County bounded by a line drawn as follows is not within the area under quarantine: Beginning at the intersection of State Highway 60 and Interstate Highway 710; then west along State Highway 60 to its intersection with Interstate Highway 10; then west along Interstate Highway 10 to its intersection with Broadway; then northeast along Broadway to its intersection with Olympic Boulevard; then northwest along Olympic Boulevard to its intersection with State Highway 110; then northeast along State Highway 110 to its intersection with Bishops Road; then southeast along Bishops Road to its intersection with North Broadway; then east along North Broadway to its intersection with Interstate Highway 5; then south along Interstate Highway 5 to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 710; then south along Interstate Highway 710 to the point of beginning.

Los Angeles and San Bernardino Counties. That portion of the county in the Ontario area bounded by a line drawn as follows: Beginning at the intersection of College Way and State Highway 30 (Base Line Road); then, east along State Highway 30 to its intersection with Carnelian Street; then, south along Carnelian street to its

intersection with Vineyard Avenue; then, south along Vineyard Avenue to its intersection with Holt Boulevard; then, west along Holt Boulevard to its intersection with Grove Avenue; then, south along Grove Avenue to its intersection with Mission Boulevard; then, southeast along Mission Boulevard to its intersection with Vineyard Avenue; then, south along Vineyard Avenue to its intersection with Riverside Drive; then, west along Riverside Drive to its intersection with Walker Avenue; then, south along Walker Avenue to its intersection with Eucalyptus Avenue; then, west along Eucalyptus Avenue to its intersection with State Highway 83 (Euclid Avenue); then, south along State Highway 83 to its intersection with Kimball Avenue; then, west along Kimball Avenue to its intersection with El Prado Road; then, northwest along El Prado Road to its intersection with Central Avenue; then, southwest along Central Avenue to its intersection with State Highway 71; then, northwest along State Highway 71 to its intersection with Garey Avenue; then north along Garey Avenue to its intersection with College Way; then, northeast along College Way to the point of beginning.

* * * * *

Done in Washington, DC, this 15th day of September 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-23127 Filed 9-21-93; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 93N-0235]

Administrative Practices and Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; updating of procedural regulations.

SUMMARY: The Food and Drug Administration (FDA) is amending its procedural regulations to update the list of sections of the Federal Food, Drug, and Cosmetic Act (the act) and other laws that afford a person who would be adversely affected by an administrative action an opportunity for a public hearing. This action reflects the enactment of recent legislation.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Fletcher Campbell, Jr., Office of the General Counsel (GCF-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3235.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations that list FDA proceedings to promulgate regulations and issue orders that are subject to an opportunity for a formal evidentiary public hearing. This list appears in § 10.50 (21 CFR 10.50). The agency is responding to new statutory provisions by amending the list in § 10.50 of those matters that give rise to an opportunity for formal evidentiary public hearings under 21 CFR part 12 to include: (1) only those actions for the amendment or repeal of any definitions and standards established under section 401 of the act (21 U.S.C. 341) for dairy products or maple sirup; (2) section 306 of the act (21 U.S.C. 335a) concerning debarment, debarment period and consideration, termination of debarment under section 306(d)(3) of the act, suspension and termination of suspension; and (3) until the effective date of future regulations establishing a new procedure (21 CFR part 17) for civil money penalties, sections 303(b) and (f) and 307 of the act (21 U.S.C. 333 and 337) and sections 351 and 354(h) of the Public Health Service Act (42 U.S.C. 262 and 263b(h)), concerning civil money penalties. This temporary measure concerning civil money penalties is necessary so that FDA does not have to delay implementing this enforcement tool until final promulgation of a new part 17, which, as proposed in the **Federal Register** of May 26, 1993 (58 FR 30680), is specifically tailored to the imposition of administrative civil money penalties. Part 12 procedures, though not ideally suited for civil money penalties adjudication, are usable for this purpose on a temporary basis.

These amendments reflect the most recent legislation and changes to the agency's procedures based on the above-cited statutory provisions. Because these amendments are nonsubstantive and merely conform the agency's regulations to statutory changes, notice-and-public-comment procedures and a delayed effective date are unnecessary (5. U.S.C. 553(b)(B) and (d)).

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: Secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 21 U.S.C. 41-50, 141-149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 5 U.S.C. 551-558, 701-706; 28 U.S.C. 2112.

2. Section 10.50 is amended by revising paragraph (c)(1) and by adding paragraphs (c)(20) and (c)(21) to read as follows:

§ 10.50 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.

* * * * *

(c) * * *

(1) Section 401 on any action for the amendment or repeal of any definition and standard of identity for any dairy product (including products regulated under parts 131, 133, and 135 of this chapter) or maple sirup (regulated under § 168.140 of this chapter).

* * * * *

(20) Section 306 on debarment, debarment period and considerations, termination of debarment under section 306(d)(3), suspension, and termination of suspension.

(21) Until the effective date of a final rule adding part 17 to this chapter governing civil money penalties, sections 303(b), 303(f), and 307 of the act and sections 351(d)(2)(B) and 354b(h) of the Public Health Service Act on civil money penalties.

Dated: September 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-23109 Filed 9-21-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 101

[Docket No. 93N-0075]

RIN 0905-AC48

Food Labeling; Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food labeling regulations to exempt food that purports to be a beverage that contains fruit or vegetable juice from the

requirement that the label of the food bear a statement on the information panel as to the percentage of juice contained in the food. The exemption is for 1 year. These foods will not have to bear a percent juice declaration until May 8, 1994. This action responds to requests from industry for such an exemption on the grounds that compliance with this requirement by May 8, 1993, will cause such great costs to the industry as to be impracticable and result in unfair competition.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5007.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2897), FDA published a final rule amending the food labeling regulations to establish in § 101.30 (21 CFR 101.30) requirements for label declaration of the percentage of juice in foods that purport to be beverages containing fruit or vegetable juice. FDA also revised the existing common or usual name regulation for diluted fruit or vegetable juice beverages in § 102.33 (21 CFR 102.33). In addition, the agency revoked the common or usual name regulation for noncarbonated beverage products that contain no fruit or vegetable juice, § 102.30 (21 CFR 102.30). This final rule was part of FDA's ongoing rulemaking on juice beverages. It also responded to the Nutrition Labeling and Education Act of 1990 (1990 amendments) (Pub. L. 101–535), which amended section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) to provide that foods that purport to be beverages containing vegetable or fruit juice must bear a statement with appropriate prominence on the information panel of the label of the total percentage of such fruit or vegetable juice contained in the food.

In the final rule, FDA established May 8, 1993, as the effective date for the percent juice labeling requirements (§ 101.30) and May 8, 1994, as the effective date of the common or usual name provisions for juice products (§ 102.33). May 8, 1994, was also the effective date for most of the other food labeling regulations published in the **Federal Register** of January 6, 1993, in response to the 1990 amendments including mandatory nutrition labeling.

After publication of the final rule, FDA received several requests from industry to provide a temporary exemption from the May 8, 1993, effective date for percent juice labeling. One of the requests included information obtained in an industry survey on the costs and other effects that would result from the effective date for percent juice labeling. Other requests contained similar information on the costs and problems associated with complying with the effective date.

The agency reviewed the information and tentatively concluded that a temporary exemption was warranted. Such an exemption would allow manufacturers sufficient time to redesign their labels to comply with the new juice labeling requirements and to add nutrition labeling at the same time, thereby reducing the costs and the unfair competitive aspects of the earlier May 8, 1993, effective date.

II. The Proposal

In the **Federal Register** of April 7, 1993 (58 FR 18057), the agency proposed to amend § 101.30 by adding a new paragraph (m) which would exempt juice beverages from the requirement for label declaration of the percentage of juice until May 8, 1994. The agency proposed that the exemption would apply to all products that were labeled before May 8, 1994.

FDA tentatively concluded that such an action would reduce the unfair competitive effects of the regulation and would allow all segments of the beverage industry to compete on an equitable basis. Further, the agency stated in the proposal (58 FR 18057 at 18061) that it did not believe that the delay in effective date would result in a significant reduction in consumer benefits to be derived from this regulation. Thus, FDA tentatively concluded that a temporary exemption from the May 8, 1993, effective date under section 403(i) of the act based on impracticability and unfair competition is warranted.

Because of the imminence of the May 8, 1993, effective date, FDA stated in the proposed rule that, if adopted, the temporary exemption would become effective on the date of publication of the final rule in the **Federal Register**. Interested persons had until May 7, 1993, to submit comments.

III. Comments

In response to the April 7, 1993, proposal, FDA received 24 letters, containing one or more comments, from trade associations, juice processors, food manufacturers and distributors, and a State agency. All of the comments supported the proposed 1-year exemption from the percent juice labeling requirements. The comments maintained that the exemption would result in substantial cost savings and would enable the industry to avoid massive noncompliance because of a lack of capacity of package and label suppliers to provide sufficient quantities of new labels by the 1993 effective date. They stated that the exemption would also allow manufacturers of juice beverages to remain competitive with manufacturers of other beverages who would not be required to bear the cost of relabeling their products twice in 1 year, once for percentage juice declaration and then again for mandatory nutrition information labeling.

Based upon its review of the comments and on other available information, FDA concludes that a 1-year exemption under section 403(i) of the act from the requirements of percent juice labeling on beverages that purport to contain fruit or vegetable juice, based on impracticability and unfair competition, is warranted. Thus, as proposed, FDA is amending § 101.30 to provide an exemption from percentage juice declaration until May 8, 1994. All juice products that are labeled on or after that date will be subject to the percentage juice declaration requirement.

The exemption will become effective on the date of publication of this final rule in the **Federal Register**. FDA finds that there is good cause to waive the 30-day delayed effective date because of the need to clarify as quickly as possible the obligation of firms with respect to the percent juice declaration requirement.

IV. Economic Impact

FDA has examined the economic implications of this final rule to provide an exemption from the May 8, 1993, effective date of the percent juice labeling regulation in § 101.30 according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96–354).

FDA noted in the proposed rule that providing for the exemption from the requirement for a period of 1 year, until May 8, 1994, would reduce the costs of label changes significantly. Manufacturers will be able to coordinate these label changes with other label changes, such as mandatory nutrition labeling which also become effective on May 8, 1994. In the proposal, the agency determined that the incremental costs for label declaration of the percentage of juice to be $52 million. However, FDA tentatively concluded that the cost that manufacturers of juice products would incur under the 1-year exemption until

May 8, 1994, would be reduced to $1 million. FDA has not received any comments or new information that would alter its determination.

Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART—101 FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.30 is amended by adding new paragraph (m) to read as follows:

§ 101.30 Percentage juice declaration for foods purporting to be beverages that contain fruit or vegetable juice.

* * * * *

(m) Products purporting to be beverages that contain fruit or vegetable juices are exempted from the provisions of this section until May 8, 1994. All products that are labeled on or after that date shall comply with this section.

Dated: August 31, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93-23181 Filed 9-21-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Labor.

ACTION: Administrative variance from final rules; request for comments.

SUMMARY: This document sets forth an administrative variance being adopted by the Department of Labor as an interim measure for updating, on a one-time basis, determinations of prevailing wages and fringe benefits issued for Federal service contracts under the McNamara-O'Hara Service Contract Act. Public comment on this variance is requested.

DATES: This variance is effective September 22, 1993. Comments are due on or before October 4, 1993.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219-5122. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219-8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The McNamara-O'Hara Service Contract Act of 1965 (SCA), as amended, 41 U.S.C. 351 *et seq.*, provides that contracts entered into by agencies of the Federal and District of Columbia governments that are in excess of $2,500 which are principally for the furnishing of services in the United States through the use of service employees shall contain provisions specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees engaged in performing work under such contracts, as determined by the Department of Labor to be prevailing in the locality where the work is performed. Prevailing wage determinations issued under SCA are based for the most part on Area Wage Surveys conducted by the Department of Labor's Bureau of Labor Statistics (BLS), which are typically conducted on a biennial basis and provide information on wages by Metropolitan Statistical Area (MSA) and occupational classification.

BLS surveys conducted over the past year would ordinarily be used to update SCA wage determinations as each survey is received. Under this process, the wages paid to service workers are based on wage determinations that reflect the most current prevailing wage information, which typically results in adjusted wage rates at the time newly competed contracts commence or when contract options or contract extensions are exercised for new periods of performance. However, due to the complexities and additional data included in many of these new BLS surveys, and other circumstances, the Wage and Hour Division has not been able to complete its required analyses of many such surveys to enable updates to be accomplished on a locality-by-locality basis for all existing wage determinations potentially affected by the new BLS area surveys. Therefore, without taking extraordinary measures, as set forth below, the Department will be unable to provide employees with wage increases consistent with SCA's statutory intent.

Section 4(b) of the SCA authorizes the Secretary to provide reasonable limitations and allow reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act in special circumstances where such action is necessary and proper in the public interest or to avoid the serious impairment of Government business and is in accord with the remedial purpose of the Act to protect prevailing labor standards.

Accordingly, the Department intends to vary the normal procedure for updating certain wage determinations that have not already been updated by BLS area surveys in the current year by adjusting the existing locality-based prevailing wage rates by the BLS-determined Employment Cost Index (ECI) for June 1993, which reflects a national prevailing increase in wages and salaries for civilian workers over the previous year of 2.8 percent. The use of the overall 2.8 percent increase in wage levels will be limited as a temporary, interim measure until subsequent updates of existing wage determinations are accomplished as a result of completing the analyses of occupational wage rates reported in the BLS surveys that have been conducted during the past year. Pursuant to this variance, the wage rates adopted in existing wage determinations for various

classes of service employees, excluding those already updated by BLS area surveys in the current year and those issued pursuant to section 4(c) of the Act that are based on collective bargaining agreements, are to be increased by 2.8 percent on a one-time basis.

Pursuant to section 4(b) of the SCA and § 4.123 of the SCA Regulations, 29 CFR part 4, the Department of Labor hereby adopts a variance to section 2(a) of the Act and Regulations, 29 CFR part 4, including §§ 4.51 and 4.53, to permit temporary updating of SCA wage determinations for the upcoming cycle of procurements in fiscal year 1994, which variance the Secretary of Labor finds to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purpose of the Act to protect prevailing labor standards.

Under § 4.123 of Regulations, 29 CFR part 4, variations of general applicability and legal effect promulgated under section 4(b) of the SCA are published in the **Federal Register**. This document provides for an administrative variance of temporary effect affecting SCA wage determinations. Moreover, notice-and-comment rulemaking procedures may be waived when an agency for good cause finds that such procedure is impracticable or contrary to the public interest. Given the large number of contracts subject to the SCA which are due updated wage determinations before October 1, 1993, and recognizing that insufficient time exists to update such wage determinations on a timely basis by October 1, 1993, based on the existing BLS area wage surveys that have not yet been analyzed, the Department finds that notice and comment is both impracticable and contrary to the public interest. Public comment is nevertheless invited on this action and will be considered in any subsequent decisions to modify the application of the variance.

Executive Order 12291

This administrative variance relating to agency procedures for updating SCA wage determinations does not constitute a major rule within the meaning of Executive Order 12291 and does not, therefore, require the preparation of a regulatory impact analysis. SCA wage determinations are ordinarily updated based on BLS area surveys. The difference in the determined amounts based on BLS area surveys and the BLS-determined ECI national rate of 2.8 percent would not, in any event, result in:

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

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

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

Regulatory Flexibility Act

The Department has determined that this administrative variance relating to agency procedures for updating SCA wage determinations is not a rule under the Regulatory Flexibility Act that will have a significant economic impact on a substantial number of small entities. The variance only temporarily modifies existing procedures for updating prevailing SCA wage determinations, which will be overtaken by the completion of analyses of BLS area surveys and subsequent revision of affected wage determinations. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Signed in Washington, DC, on this 20th day of September 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93-23390 Filed 9-21-93; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1222 and 1230

RIN 3095-AA22

Micrographic Records Management

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: NARA is revising its micrographic records management regulations to update micrographic standards, to establish agency micrographic program responsibilities, to modify coverage of temporary records, and to clarify inspection provisions. This rule was developed during a review to identify incomplete or outdated provisions in NARA regulations. This regulation will affect Federal agencies.

EFFECTIVE DATE: October 22, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Call Mary Ann Hadyka or Nancy Allard on 202-501-5110.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on December 2, 1992 (57 FR 57042). Comments were received from a Federal agency, a micrographic industry association, and two companies that manufacture micrographic products. A discusion of these comments follows:

All four commenters expressed concern over the proposal to eliminate aperture cards as a format for permanent and unscheduled records. The Federal agency believed that it would be costly and impractical to refilm records that were already in aperture card format and urged that the ban not be applied to records in existence before the final rule is promulgated. The association noted that in many aperture card applications, no 35mm roll film is created because the aperture card camera creates an aperture card, not roll film. Addressing NARA's concern that the paper stock and adhesive used in aperture cards could adversely affect the microfilm image, the two micrographic companies stated that aperture cards meeting the requirements in ANSI IT9.2-1991 would not harm microfilm.

After reviewing the specifications in ANSI IT9.2-1991, we have decided to modify § 1230.12(d)(1)(i) to allow aperture cards that meet ANSI IT9.2-1991 to be used for permanent and unscheduled records.

One commenter had three additional recommendations. The first recommendation was to incorporate in part 1230 provisions for audits and correction cycles to ensure compliance with the regulation. NARA regulations at 36 CFR part 1220, subpart C provide for both NARA and internal agency evaluations of records management programs, including the micrographics program. The second recommendation

was to require agencies to register with NARA the title of the person responsible for managing micrographic records within the agency. This requirement is contained in § 1222.20(b)(1) which was part of the proposed rule. We do not believe it is necessary to restate the requirement in part 1230. The third recommendation was that NARA fund studies to obtain empirical data on the issue of the proper relative humidity for extended term storage. We are continuing to review the issue raised in the proposed rule: whether lowering the relative humidity of storage areas where older microfilm is stored to the level specified in the standard would adversely affect such film. We do not plan to fund further studies at this time because other research on the "best" relative humidity has concluded that determining the proper relative humidity is a complex decision based on such variables as the use characteristics of the holdings (items kept in cold/dry conditions ideal for chemical stability are highly susceptible to physical damage from handling due to their higher degree of brittleness under these conditions) and the trade-offs between increased chemical stability vs. costs and practicality vs. potential adverse physical changes to older, deteriorated film materials.

In addition to the modification to § 1230.12(d)(1)(i) to allow aperture cards that meet the ANSI IT9.2–1991 standard for film enclosures, we have made other minor changes to the proposed rule. We have restored the ANSI/AIIM MS32–1987 filming standard for aperture card format and an updated ANSI/AIIM MS41–1990 standard for aperture cards to the list of publications incorporated by reference in § 1230.3. The citation for the standard ANSI IT9.1–1991 has been corrected to read ANSI/NAPM IT9.1–1992 throughout the regulation. Section 1230.22(a)(1) has been clarified to cover all microforms scheduled to be transferred to the National Archives; the previous wording did not clearly include microform copies in instances where both the microform and another format are scheduled for transfer to the National Archives. Section 1230.26(a) has been reworded to reflect that unscheduled records do not have scheduled transfer dates. All other provisions of the proposed rule are adopted in this final rule as proposed.

This is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. In accordance with the Regulatory Flexibility Act, I hereby certify that this rule will not have a significant impact on small entities.

List of Subjects

36 CFR Part 1222

Archives and records.

36 CFR Part 1230

Archives and records, Incorporation by reference, Micrographics.

For the reasons set forth in the preamble, chapter XII of title 36 of the Code of Federal Regulations is amended as follows:

PART 1222—CREATION AND MAINTENANCE OF RECORDS; ADEQUATE AND PROPER DOCUMENTATION

1. The authority citation for part 1222 continues to read as follows:

Authority: 44 U.S.C. 2904, 3101, and 3102.

2. In § 1222.20, paragraph (b)(1) is revised to read as follows:

§ 1222.20 Agency responsibilities.

* * * * *

(b) * * *

(1) Assign to one or more offices of the agency the responsibility for the development and implementation of agencywide programs to identify, develop, issue, and periodically review recordkeeping requirements for all agency activities at all levels and locations and for all media, including paper, microform, audiovisual, cartographic, and electronic records; and notify the Office of Records Administration (NI), National Archives and Records Administration, Washington, DC 20408 of the assignment.

* * * * *

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

3. The authority citation for part 1230 continues to read as follows:

Authority: 44 U.S.C. 2907, 3302, and 3312.

4. Section 1230.1 is revised to read as follows:

§ 1230.1 Scope of part.

This part provides standards for using micrographic technology in the creation, use, storage, inspection, retrieval, preservation, and disposition of Federal records.

5. Section 1230.3 is revised to read as follows:

§ 1230.3 Publications incorporated by reference.

(a) *General.* The following publications cited in this section are hereby incorporated by reference into Part 1230. They are available from the issuing organizations at the addresses listed in this section. They are also available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register.**

(b) *American National Standards Institute (ANSI and International (ISO) standards.* ANSI and ISO standards cited in this part are available from the American National Standards Institute, 11 West 42nd St., New York, NY 10036.

ANSI/NAPM IT9.1–1992, American National Standard for Imaging Media (Film)—Silver-Gelatin Type—Specifications for Stability.

ANSI IT9.2–1991, American National Standard for Imaging Media—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.

ANSI IT9.11–1991, American National Standard for Imaging Media—Processed Safety Photographic Film—Storage.

ANSI IT2.19–1990, American National Standard for Photography—Density Measurements—Geometric Conditions for Transmission Density.

ANSI/ISO 5/3–1984, ANSI PH2.18–1985, Photography (Sensitometry)—Density Measurements—Spectral Conditions.

(c) *Association of Information and Image Management (AIIM) Standards.* The following AIIM standards are available from the Association of Information and Image Management, 1100 Wayne Avenue, suite 1100, Silver Spring, MD 20910. AIIM standards that are identified as Federal Information Processing Standards (FIPS) are also available from the address shown in paragraph (d).

ANSI/AIIM MS1–1988, Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control. (FIPS 82).

ANSI/AIIM MS5–1991, Microfiche. (FIPS 54–1).

ANSI/AIIM MS14–1988, Specifications for 16mm and 35mm Roll Microfilm. (FIPS 54–1).

ANSI/AIIM MS19–1987, Recommended Practice for Identification of Microforms.

ANSI/AIIM MS23–1991, Practice for Operational Procedures/Inspection and Quality Control of First-generation, Silver Microfilm of Documents.

ANSI/AIIM MS32–1987, Microrecording of Engineering Source Documents on 35mm Microfilm.

ANSI/AIIM MS41–1988, Unitized Microfilm Carriers (Aperture, Camera, Copy, and Image Cards).

ANSI/AIIM MS43–1988, Recommended Practice for Operational Procedures/Inspection and Quality Control for Duplicate Microforms of Documents and From COM.

ANSI/AIIM MS45–1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

ANSI/ISO 3334–1991, ANSI/AIIM MS51–1991, Micrographics—ISO Resolution Test Chart No. 2—Description and Use.

(d) *National Institute of Standards and Technology (NIST) publications.* The following publication is available from the National Institute of Standards and Technology, Office of Standard Reference Materials, Rm. B311 Chemistry, Gaithersburg, MD 20899.

NIST–SRM 1010a, Microcopy Resolution Test Chart (ISO Test Chart No. 2), certified June 1, 1990.

6. In § 1230.4, the definitions of *Archival storage conditions* and *Long-term Film* are removed, the definitions of *Background density* and *Computer-assisted retrieval (CAR) system* are added in alphabetical order, and the definition of *Archival microfilm* is revised to read as follows:

§ 1230.4 Definitions.

* * * * *

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20(a). Such film must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1992.

Background density. The opacity of the area of the microform not containing information.

Computer-assisted retrieval (CAR) system. A records storage and retrieval system, normally microfilm-based, that uses a computer for indexing, automatic markings such as blips or bar codes for identification, and automatic devices for reading those markings and, in some applications, for transporting the film for viewing.

* * * * *

7. Subparts B, C, and D are redesignated as subparts C, D, and E, respectively, and a new subpart B, consisting of new § 1230.7, is added to read as follows:

Subpart B—Program Requirements

§ 1230.7 Agency responsibilities.

The head of each Federal agency must ensure that the management of microform records incorporates the following elements:

(a) Assigning responsibility to develop and implement an agencywide program for managing all records on microform media and notifying the National Archives and Records Administration (NI), Washington, DC 20408 of the name and title of the person assigned the responsibility.

(b) Integrating the management of microform records with other records and information resources management programs of the agency.

(c) Incorporating microform records management objectives, responsibilities, and authorities in pertinent agency directives and disseminating them throughout the agency as appropriate.

(d) Establishing procedures for addressing records management concerns, including recordkeeping and disposition requirements, before approving new microform records systems or enhancements to existing systems.

(e) Ensuring that adequate training is provided for the managers and users of microform records.

(f) Developing and securing NARA approval of records schedules covering microform records, and ensuring proper implementation of the schedule provisions.

(g) Ensuring that computerized indexes associated with microform records, such as in a computer-assisted retrieval (CAR) system, are scheduled in accordance with part 1234 of this chapter.

(h) Reviewing the agency's program periodically to ensure compliance with NARA standards in this part for the creation, storage, use, inspection, and disposition of microform records.

8. In § 1230.12, paragraphs (d)(1)(i) and (d)(2) are revised to read as follows:

§ 1230.12 Preparatory steps prior to filming.

* * * * *

(d) * * *

(1) * * *

(i) *Source documents.* The formats described in ANSI/AIIM MS14–1988 must be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio no greater than 1:24 is recommended for typewritten or correspondence types of documents. See ANSI/AIIM MS23–1991 for determining the appropriate reduction ratio and format for meeting the image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in ANSI/AIIM MS19–1987, Table 1 are mandatory, the aperture card format "D Aperture" shown in ANSI/AIIM MS41–1988, Figure 1, must be used. The components of the aperture card, including the paper and adhesive, must conform to the requirements of ANSI IT9.2–1991. The 35mm film used in the aperture card application must conform to film designated as LE500 in ANSI/NAPM IT9.1–1992.

* * * * *

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the appropriate formats and reduction ratios prescribed in ANSI/AIIM MS5–1990 must be used as specified for the size and quality of the documents being filmed. See ANSI/AIIM MS23–1991 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

* * * * *

§ 1230.14 [Amended]

9. In the list below, for each paragraph in § 1230.14 indicated in the left column, the references indicated in the middle column are removed and the references indicated in the right column are added in their place:

Paragraph	Remove	Add
1230.14(c)	ANSI IT9.1–1989.	ANSI/NAPM IT9.1–1992.
	ANSI/AIIM MS23–1983.	ANSI/AIIM MS23–1991.
1230.14(d)(1)(i)	ANSI/AIIM MS23–1983.	ANSI/AIIM MS23–1991.
	ANSI/ISO 3334–1989.	ANSI/ISO 3334–1991.
1230.14(d)(2) ..	ANSI/AIIM MS23–1983.	ANSI/AIIM MS23–1991.
	ANSI/ISO 5/2–1985.	ANSI IT2.19–1990.

10. In § 1230.14, paragraphs (a) and (b) are revised to read as follows:

§ 1230.14 Film and image requirements for permanent records and unscheduled records.

(a) *Application.* The following standards apply to the microfilming of permanent records where the original paper record will be destroyed or otherwise disposed of. Systems that produce original permanent records on microfilm with no paper originals, such as computer output microfilm (COM), must be designed so that they produce microfilm which meets the standards of this section. Unscheduled records from systems such as COM must also meet the standards of this section. Prior NARA approval of a SF 115 is required before unscheduled paper records are disposed of after microfilming.

(b) *Film stock standards.* Only polyester-based silver gelatin type film that conforms to ANSI/NAPM IT9.1–

1992 for LE 500 film must be used in all applications.

* * * * *

10. Section 1230.16 is revised to read as follows:

§ 1230.16 Film and image requirements for temporary records, duplicates, and user copies.

(a) *Temporary records with a retention period over 99 years.* Agencies must follow the film and image requirements in § 1230.14.

(b) *Other temporary records.* Agencies must select an appropriate film stock that meets agency needs for temporary microforms to be kept for less than 100 years and ensures the preservation of the microforms for their full retention period. NARA does not require use of particular standards for processing microfilm of such temporary records; agencies may consult appropriate ANSI standards or manufacturer's instructions.

11. Section 1230.20 is revised to read as follows:

§ 1230.20 Storage.

(a) *Permanent and unscheduled records.* The extended term storage conditions specified in ANSI IT9.11–1991 and ANSI IT9.2–1991 are required for storing permanent and unscheduled microform records, except that the relative humidity of the storage area must be a constant 35% RH, plus or minus 5%. Non-silver copies of permanent or unscheduled microforms must not be stored in the same storage area as silver gelatin originals or duplicate copies.

(b) *Temporary records.* Temporary microform records must be stored under conditions that will ensure their preservation for their full retention period. Agencies may consult ANSI IT9.11–1991 and ANSI IT9.2–1991 to determine appropriate storage conditions; however, NARA does not require adherence to this standard for temporary records.

12. In § 1230.22, paragraphs (a)(1), (a)(4)(i), and (a)(5) are revised, paragraph (a)(6) is removed, paragraphs (a)(7) and (a)(8) are redesignated paragraphs (a)(6) and (a)(7), and newly redesignated paragraph (a)(7) is revised to read as follows:

§ 1230.22 Inspection.

(a) *Permanent and unscheduled records.*

(1) Master films of permanent records microfilmed in order to dispose of the original records, master films of permanent records originally created on microfilm, and other master films scheduled for transfer to the National Archives, must be inspected by the agency creating the film when the films are 2 years old and, until they are transferred to a Federal records center or to the National Archives, every 2 years thereafter. The inspection must be made in accordance with ANSI/AIIM MS45–1990.

* * * * *

(4) * * *

(i) An inspection for aging blemishes following ANSI/AIIM MS45–1990;

* * * * *

(5) An inspection report must be prepared, and a copy must be furnished to NARA in accordance with § 1230.26(b). The inspection report must contain:

(i) A summary of the inspection findings, including:

(A) A list of batches by year that includes the identification numbers of microfilm rolls and microfiche in each batch;

(B) The quantity of microforms inspected;

(C) An assessment of the overall condition of the microforms;

(D) A summary of any defects discovered, e.g., redox blemishes or base deformation; and

(E) A summary of corrective action taken.

(ii) A detailed inspection log created during the inspection that contains the following information:

(A) A complete description of all records inspected (title; roll or fiche number or other unique identifier for each unit of film inspected; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(B) The date of inspection;

(C) The elements of inspection (see subparagraph (a)(4) of this section);

(D) Any defects uncovered; and

(E) The corrective action taken.

* * * * *

(7) Inspection must be performed in an environmentally controlled area in accordance with ANSI/AIIM MS45–1990.

* * * * *

13. Section 1230.24(a) is revised to read as follows:

§ 1230.24 Use of permanent or unscheduled microform records.

(a) The silver gelatin original microform or duplicate silver gelatin microform created in accordance with § 1230.14 of this part (archival microform) must not be used for reference purposes. Duplicates must be used for reference and for further duplication on a recurring basis or for large-scale duplication, as well as for distribution of records on microform. Agency procedures must ensure that the archival microform remains clean and undamaged during the process of making a duplicating master.

* * * * *

14. Section 1230.26(a) is revised to read as follows:

§ 1230.26 Disposition of microform records.

* * * * *

(a) The silver gelatin original (or duplicate silver gelatin microform created in accordance with § 1230.14) plus one microform copy of each permanent record microfilmed by an agency, must be transferred to an approved agency records center, the National Archives of the United States, or to a Federal records center, at the time that the records are to be transferred in accordance with the approved records disposition schedule, SF 258, or other authorization for transfer. Non-silver copies must be packaged separately from the silver gelatin original or silver duplicate microform copy and labeled clearly as non-silver copies.

* * * * *

Dated: August 24, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–23147 Filed 9–21–93; 8:45 am]

BILLING CODE 7515–01–W

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG54

Veterans Education; Flight Training

AGENCY: Department of Veterans Affairs.

ACTION: Interim final regulations with request for public comment.

SUMMARY: These amended regulations permit pilot flight training pursuant to 14 CFR part 61, conducted in flight simulators to be approved for purposes of VA (Department of Veterans Affairs) administered education benefits when such training is authorized by the FAA (Federal Aviation Administration). These regulations also provide for approval of solo flight training for such education benefits purposes, as authorized by the Veterans Benefits Act of 1992.

EFFECTIVE DATE: The amendments to §§ 21.4263(g)(1), 21.4263(g)(4), 21.4263(g)(4)(i) and new paragraph (h)(1)(iii) of § 21.4263 are effective September 30, 1990. All other

amendments to the regulations included here are effective October 1, 1992. Comments must be received on or before October 22, 1993. Comments will be available for public inspection until November 1, 1993.

ADDRESSES: All written comments concerning these proposed regulations should be addressed to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 1, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–233–2092.

SUPPLEMENTARY INFORMATION: To ensure that flight training would achieve the end of qualifying the individual for employment in the aviation industry, VA regulation § 21.4263 has long restricted approval training in two ways: (1) The entity providing the training must have a pilot school or provisional pilot school certificate issued by the FAA under part 141, 14 CFR (§ 21.42639g)); and (2) the training being offered must meet the FAA requirements of either part 141, in the case of pilots, or part 63, in the case of flight crew members other than pilots (§ 21.4263(g)(3)(ii)). Thus, the individual is assured of the quality of the training and its ability to enable him or her to meet FAA standards for an appropriate certificate or rating in areas relevant to commercial aviation.

Traditionally, the training authorized by the FAA for these purposes largely has been training in which the individual learning to pilot an aircraft, for example, must amass certain hours of actual in-flight operation of the aircraft to be flown. However, particularly in the area of modern commercial air travel, large aircraft used cannot be economically operated for training purposes and, even if so used, would not expose the trainee to all of the operation circumstances likely to arise in actual use over time. As a substitute, modern technology has created flight simulators which, at considerably less expense, can provide superior training to persons seeking to become commercial airline pilots. These devices can simulate flight scenarios which only occur infrequently in actual flight operation and, thus, afford each student the opportunity to experience such events and respond.

VA notes that current aviation industry practice makes extensive use of flight simulators for training, particularly in training new commercial airline pilots to operate the large jet aircraft used by the major commercial airlines. VA also notes that this practice is recognized by the FAA which, by a grant of exemption, permits qualified entities to offer substantial portions of flight training for pilots under part 61, 14 CFR, via simulator. Moreover, VA believes that students who receive such flight training via simulators are provided skills that enhance success in obtaining a job in the field of aviation with the major air carriers. Thus, permitting the approval of VA education benefits for flight simulators should, under such circumstances, increase the number of veterans who obtain the higher skilled and higher paying jobs in aviation.

The amendments contained herein are intended to conform VA rules to FAA rules and practice in regard to similar training. However, merely amending the portion of the VA rule dealing with the nature of the training to include the simulator training authorized under appendix A, part 61, 14 CFR, would not fully achieve the objective since many of the entities receiving a Grant of Exemption letter to use simulators for training under the part are not certified as either pilot or provisional pilot schools under part 141 as required by § 21.4263(g). Therefore, VA is amending its definition of "flight school" to include entities known as air carriers and flight training centers, whether or not certified under part 141, which have received a Grant of Exemption letter from the FAA to offer training via simulator under part 61 in lieu of the real-time training otherwise required. Such exemptions are only authorized by the FAA when simulator training is deemed to be an appropriate substitute. The grant of exemption reflects FAA recognition both that the entity offering the simulator training is providing instruction similar in quality to that provided by schools certificated under Part 141 and that the training is acceptable for purposes of obtaining a pilot certification or rating.

Since most major airlines now consider simulator training a prerequisite to employment as a pilot of large commercial aircraft, VA believes that approving such training for VA educational assistance program purposes will enhance the opportunity for veterans-trainees to qualify for such employment. Without VA education benefits, veterans may be denied access to this training and the competitive advantage it gives to obtaining employment in the aviation industry.

A second issue is addressed in these amendments. The Veterans Benefits Act of 1992, Public Law 102–568, contains a provision which now allows eligible veterans and servicemembers to receive educational assistant allowance for pursuing solo flight training. Therefore, these amendments contain provisions governing such flight training.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because those provisions governing solo flight training affect only individuals. While the amended regulations governing flight training in a flight simulator will directly affect some small entities, VA does not believe that they will affect a substantial number of them. Most of the schools or entities which now will be able to seek approval are under the control of the major airlines. These airlines would not qualify as small entities. Furthermore, the economic impact on the few small entities that would qualify to seek approval for additional training would be positive since there may be additional veterans who would pursue the courses offered by those small entities. VA does not think that this would be a significant economic impact since the number of veterans enrolling in any course would probably be small.

VA finds that the Administrative Procedures Act allows a retroactive effective date for these amended regulations. The amended regulations governing flight training in flight simulators contain only liberalizing provisions which relieve a restriction

imposed on the approval of flight courses.

Furthermore, the department is aware that although the regulations did not permit approval of courses offered pursuant to 14 CFR part 61 some courses have been approved due to a misunderstanding as to the nature of some of these courses and some veterans have recieved educational assistance for pursuing them. Since, in these cases, FAA-approved training of the kind covered by these regulations was provided based on administrative approval of the courses, VA believes it appropriate that this promulgation of regulations also ratify such course approvals. Accordingly, VA is making the amendments to §§ 21.4263(g)(1), 21.4263(g)(4), 21.4263(g)(4)(i) and the new paragraph 21.4263(h)(1)(iii) effective September 30, 1990, which is the same as the effective date for the earliest of these approvals.

The Department of Veterans Affairs finds that good cause exists for making the amendments to remaining regulations, like the provisions of law they implement, retroactively effective on October 1, 1992.

It is necessary to implement these provisions of law as soon as possible. These provisions are intended to achieve a benefit of the individual. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of these provisions of law; and might result in the denial of a benefit to someone who is entitled to it.

VA also finds that good cause exists for making these amended regulations final with a request for public comment rather than first including them in a Notice of Proposed Rulemaking. VA believes that it would be contrary to the public interest to delay the implementation of these amended regulations, not only because a few of these courses have already been approved, but also because the department recognizes the importance of veterans being trained in courses which will allow them to reach their vocational objectives. Not to make these amended regulations final would deprive a significant segment of an industry of the opportunity to train veterans under the educational programs VA administers.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposal are 64.120, 64.124 and 12.609.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 18, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart D is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.4263 paragraphs (g)(3), (g)(2), (g)(1) and the introductory text of paragraph (g) are redesignated paragraphs (g)(4), (g)(3), (g)(2) and (g)(1) respectively; newly redesignated paragraphs (g)(1), (g)(4) introductory text and (g)(4)(ii) are revised; paragraph (h)(1) is revised; paragraphs (h)(3)(i) and (h)(3)(ii) are revised; paragraph (h)(4)(i) introductory text is revised and paragraph (h)(4)(iii) and its authority citation are added; and the introductory text of paragraph (i) is revised to read as follows:

§ 21.4263 Flight training—38 U.S.C. chapter 30 and 10 U.S.C. chapter 106.

* * * * *

(g) *Requirements for approval.* (1) For the purposes of this part, a flight course may be approved only if it is offered by a flight school. A flight school is a school or entity which meets one of the following sets of requirements.

(i) The FAA has issued the school or entity either a pilot school certificate or a provisional pilot school certificate specifying each course the school is approved to offer under 14 CFR part 141. Thus, a military aero club, air carrier or institution of higher learning with the proper certificate is a flight school.

(ii) The entity is either a Flight Training Center or an Air Carrier which does not have a pilot school or provisional pilot school certificate issued by the FAA under 14 CFR part 141, but pursuant to a Grant of Exemption letter issued by the FAA, is permitted to offer pilot training by a flight simulator instead of by use of actual aircraft.

* * * * *

(4) Except as provided in paragraph (g)(3) of this section, no private pilot, student pilot, recreational pilot or test course may be approved by the appropriate State approving agency. Other flight courses of a flight school may be approved if the school has submitted a written application and the State approving agency determines that all of the following requirements are met:

* * * * *

(ii) The course meets the requirements of 14 CFR parts 63 or 141, and is offered by a flight school described in paragraph (1)(i) of this section; or meets the requirements of 14 CFR part 61 and is offered in whole or in part by a flight simulator pursuant to a grant of exemption letter issued by the FAA to the flight school offering the course.

* * * * *

(h) *Hourly limitations.* * * *

(1) *Flight or flight simulator instruction.* Except as provided in paragraph (h)(4) of this section, the maximum number of hours of flight instruction or flight simulator instruction which may be approved for a flight course shall not exceed the number determined by this paragraph.

(i) The maximum number of hours of solo flight instruction shall not exceed the minimum number of hours required for the course provided by FAA regulations.

(ii) The maximum number of hours of dual flight instruction shall not exceed the lesser of—

(A) The number of hours of dual flight instruction in the course outline approved by the FAA, or

(B) 120% of the minimum number of hours of dual flight instruction required for the course by FAA regulations.

(iii) The maximum number of approvable hours for a course offered in whole or in part by flight simulator may not exceed the number of hours in the FAA-approved outline.

(Authority: 38 U.S.C. 3032(f), 3231(f); 10 U.S.C. 2131(g))

* * * * *

(3) *Preflight briefings and postflight critiques.* * * *

(i) If these hours are on the FAA-approved outline, the maximum number of hours of preflight briefings and postflight critiques shall not exceed the number of hours on the outline exclusive of the preflight briefings and post-flight critiques which are attributable to solo flying hours that exceed the minimum number of solo flying hours for the course in 14 CFR part 141.

(ii) If these hours are not on the FAA-approved outline, they may not be

approved unless the State approving agency finds that the briefings and critiques are an integral part of the course and do not precede or follow solo flying hours which exceed the minimum number of solo flying hours for the course in 14 CFR part 141. The maximum number of hours of preflight briefings and postflight critiques which may be approved for these courses may not, when added together, exceed 25 percent of the approved hours of flight instruction.

(Authority: 38 U.S.C. 3002, 2452(b); 10 U.S.C. 2131)

(4) *Waiver of limitation in approvable course hours.* (i) Flight schools that wish to have a greater number of hours of dual flight instruction approved than are permitted by paragraph (h)(l)(ii) of this section, may seek an administrative review of their approval by the Director, Education Service. Requests for such a review should be made in writing to the Director of the VA facility having jurisdiction over the flight school. The request should—

* * * * *

(iii) The limit on the number of hours of solo flight instruction found in paragraph (h)(1)(i) of this section may not be waived.

(Authority: 38 U.S.C. 3032(f), 3231(f); 10 U.S.C. 2131(g))

(i) *Charges.* The appropriate State approving agency shall approve charges for tuition and fees for each flight course exclusive of charges for tuition and fees for solo flying hours which exceed the maximum permitted under paragraph (h)(l)(i) of this section and for preflight briefings and postflight critiques which precede or follow the excess solo hours.

* * * * *

[FR Doc. 93–22964 Filed 9–21-93; 8:45 am]
BILLING CODE 8320-01-U-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–4698–9]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 of the Code of Federal Regulations (40 CFR part 272) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of State statutes and regulations that EPA will enforce under RCRA section 3008. Thus, EPA intends to incorporate by reference the Wisconsin authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference EPA's approval of recent revisions to Wisconsin's program.

DATES: This document will be effective November 22, 1993 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on this action must be received by the close of business October 22, 1993. The incorporation by reference of certain Wisconsin statutes and regulations was approved by the Director of the Federal Register as of November 22, 1993, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Margaret Millard, Wisconsin Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 77 West Jackson Boulevard, HRM–7J, Chicago, Illinois 60604, (312) 353–1440.

FOR FURTHER INFORMATION CONTACT: Margaret Millard, Wisconsin Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 77 West Jackson Boulevard, HRM–7J, Chicago, Illinois 60604, (312) 353–1440.

SUPPLEMENTARY INFORMATION:

Background

Effective April 24, 1989, and May 29, 1990, EPA incorporated by reference Wisconsin's then authorized hazardous waste program (see 54 FR 7422 and 55 FR 11910). Effective April 24, 1992, (see 57 FR 15029) EPA granted Wisconsin additional authorization. In this notice, EPA is incorporating the currently authorized State hazardous waste program in Wisconsin.

EPA provides both notice of its approval of State programs in 40 CFR part 272, and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Wisconsin.

Revisions to Wisconsin's and other State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. The incorporation by reference of Wisconsin's authorized program in subpart YY of part 272 is intended to enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. For a fuller explanation of EPA's incorporation by reference of Wisconsin's authorized hazardous waste program, see 54 FR 7422 (February 21, 1989).

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decision already made to authorize Wisconsin's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

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

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Environmental Protection, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: August 9, 1993.

David A. Ullrich,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Section 272.2500, State Authorization, is removed.

3. Section 272.2501 is revised to read as follows:

§ 272.2501 Wisconsin State administered program; final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b): Wisconsin has final authorization for the following elements as submitted to EPA in Wisconsin's base program application for final authorization which was approved by EPA effective on January 31, 1986. Subsequent program revision applications were approved effective on June 6, 1989, January 22, 1990, and April 24, 1992.

State Statutes and Regulations

(a) The Wisconsin statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(1) EPA Approved Wisconsin Statutory Requirements Applicable to the Hazardous Waste Management Program, (dated August 9, 1993).

(2) EPA Approved Wisconsin Regulatory Requirements Applicable to the Hazardous Waste Management Program (dated August 9, 1993).

(b) The following statutes and regulations concerning State enforcement, although not incorporated by reference for enforcement purposes, are part of the authorized State program:

(1) Wisconsin Statutes, Volume 1, §§ 19.21; 19.31; 19.32(2) and (5); 19.35(3) and (4); 19.36; 19.37(1) and (2); Wisconsin Statutes, Volume 3, §§ 144.69–144.72; 144.73–144.74; 144.76(2) and (3); Wisconsin Statutes Volume 4, §§ 227.07; 227.09; 227.14; 227.51; and Wisconsin Statutes, Volume 5, § 803.09 (1985–86).

(2) Wisconsin Administrative Code, Volume 1, § NR: 2.19; 2.195(1); and 2.195(5) (effective April 1, 1984); Wisconsin Administrative Code, Volume 12, § NR: 680.06(12) (effective March 1, 1991).

4. Appendix A to part 272, State Requirements, is amended by revising the Appendix heading and adding the center heading "Missouri" above the listing, and adding in alphabetical order "Wisconsin" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

MISSOURI

* * * * *

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The statutory provisions include: Wisconsin Statutes, Volume 3, Sections: 144.01; 144.43–433; 144.44 (except 144.44(4)(a)); 144.441(1)–(2); 144.441(3) (b), (f), and (g); 144.441(4) (a) and (c)–(g); 144.441(6); 144.442(1), (4)–(11); 144.443; 144.444; 144.60–144.63; and 144.64 (2)–(3) (except for 144.64(2)(e)(1)).

The regulatory provisions include: Wisconsin Administrative Code, Volume 12, § NR 600.01–600.04(2); 600.06; 600.3–600.11; 605.02; 605.04–605.11; Appendix II, III, IV and V; 610.01–610.09(2); 615.01–615.13(2)(b); 620.01; 620.04–620.10(3); 620.14; 625.04(4); 625.05(1)–625.07(7)(c)12; 625.12(1) and (2); 630.02; 630.04–630.40(3)(c); 635.02; 635.05–635.16(17)(d); 635.17(1), (2) and (3); 640.02; 640.06(2)(b); 640.09–640.22(22); 645.04–645.14; 645.17(1)(a)(1)–645.17(1)(a)3.e; 650; 655.02; 655.05–655.13(13); 660.02; 660.08–660.20(2); 665.02; 665.05(1)–665.10(2); 670.06–670.11(2)(d)3; 675.01–675.30(6); 680.01–680.51(5); 685.02; 685.05–685.08(13)(b).

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40 CFR Part 300

[FRL–3718–7]

RIN 2050–AC35

Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today amending the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"). Today's final rule implements the requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA)) and includes certain additional requirements that EPA finds to be appropriate. CERCLA describes procedures that must be observed when a response action under CERCLA involves off-site management of CERCLA hazardous substances, pollutants or contaminants (hereinafter referred to as "CERCLA wastes") resulting from CERCLA decision documents signed after the enactment of SARA (i.e., after October 17, 1986). This rule also makes these procedures applicable to off-site management of CERCLA wastes resulting from CERCLA decision documents signed before the enactment of SARA. Prior to this rule, EPA managed the off-site transfer of CERCLA wastes according to the May 1985 off-site policy (published in the **Federal Register** on November 5, 1985), as revised November 13, 1987 (OSWER Directive No. 9834.11).

DATES: Effective: The final rule is effective October 22, 1993.

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

ADDRESSES: The official record for this rulemaking is located in the Superfund Docket, U.S. Environmental Protection Agency (OS–245), 401 M Street SW., room 2427, Washington, DC 20460 (202/260–3046) and is available for public inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The docket number is 121–POS.

FOR FURTHER INFORMATION CONTACT: Ellen Epstein, RCRA Enforcement Division, Office of Waste Programs Enforcement (OS–520), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone (202) 260–4849, or the RCRA Superfund Hotline (800) 424–9346 (or (703) 920–9810 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority
II. Introduction
III. Background
IV. Discussion of Final Rule
A. Applicability
1. CERCLA Wastes Affected
i. Laboratory Samples
ii. LDR Residues
iii. Clarification on Subsequent Transfers of CERCLA wastes
2. Actions Affected
i. Enforcement Activities
ii. Actions under CERCLA Section 120
iii. Federally-permitted releases
iv. Definition of Site
3. RCRA Section 7003 Actions
4. Removals
5. Pre-SARA v. Post-SARA Actions
B. Determining Acceptability
1. State Role
2. EPA's Role
3. Disputes between States and EPA

4. No Cooperative Agreement Requirement
5. Facility Acceptability Status
C. Determining Acceptability—Compliance Criteria
1. Inspection Requirements
2. Receiving Unit
3. Facility
4. Relevant Violations
5. Minimum Technology Requirements (MTRs)
6. Facilities Operating Under a RCRA Exemption and Non-RCRA Facilities
D. Determining Acceptability-Releases
1. Identifying Releases
2. De Minimis Releases
3. Releases to the Air
4. Other Releases
E. Notification of Acceptability
1. Management Options for Loss of Acceptability
2. Potential Unacceptability
F. Review Procedures
1. Agency Response Time
2. Notification of Immediate Unacceptability
3. Potentially Responsible Parties
G. Due Process Issues
1. Potential Loss of Business
2. Payment of Penalties
3. Review of Determination Decision
4. Review Procedures
5. Notification of Decisions
H. Re-evaluation of Unacceptability
1. Thresholds/Enforceable Agreements
2. Corrective Action/Controlled Releases
3. Releases and Regaining Eligibility
4. Regaining Physical Compliance at Treatment and Storage Facilities
I. Implementation
J. Manifest Requirements
V. Regulatory Analysis
A. Regulatory Impact Analysis
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
VI. Supplementary Document

I. Authority

Sections 104(c)(3), 105, and 121(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. 9604(c)(3), 9605, 9621(d)(3)); section 311(c)(2) of the Clean Water Act (33 U.S.C. 1321(c)(2)); Executive Order 12580 (52 FR 2923, January 29, 1987); and Executive Order 12777 (56 FR 54757, October 22, 1991).

II. Introduction

Today's final rule amends the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, by adding a new § 300.440. The May 1985 off-site policy (50 FR 45933–45937 (November 5, 1985)), as revised by the Procedures for Implementing Off-site Response Actions of November 13, 1987 (OSWER Directive No. 9834.11), (hereinafter known as the "Off-site Policy"), is superseded by this rule.

The purpose of this off-site regulation is to avoid having CERCLA wastes from CERCLA-authorized or -funded response actions contribute to present or future environmental problems by directing these wastes to management units determined to be environmentally sound. Congress and EPA have always believed that a CERCLA cleanup should be more than a relocation of environmental problems, and have attempted to ensure the proper treatment and disposal of CERCLA wastes removed from a CERCLA site. EPA believes that the process set out in this rule for ensuring that CERCLA wastes are transferred only to properly-permitted facilities that have no relevant violations or uncontrolled releases, assures that the receipt of CERCLA waste will not pose adverse effects on the environment.

The off-site regulation should help prevent the aggravation of conditions at problem sites and reduce the government's and the Superfund's potential liability by establishing criteria governing the off-site transfer of CERCLA wastes from CERCLA-authorized or -funded response actions. The rule should also help to ensure that off-site transfer decisions are made in an environmentally sensible manner, consistent with sound public policy and business practices.

The requirements of this rule are integral components of the "selection of remedial action" provision in CERCLA section 121, and their proper application will help to ensure that response actions selected are protective of human health and the environment (consistent with CERCLA section 121(b)(1) and, more generally, with section 104(a)(1)).

Today's final rule implements the requirements of section 121(d)(3) of CERCLA, which provides that in the case of any CERCLA response action involving the off-site transfer of any hazardous substance, pollutant, or contaminant (CERCLA waste), that CERCLA waste may only be placed in a facility that is in compliance with the Resource Conservation and Recovery Act (RCRA) (or other applicable Federal law) and applicable State requirements. CERCLA requires that for "land disposal facilities," there may be no transfer of CERCLA wastes to a unit with releases, and any releases at other units must be controlled.

Although CERCLA section 121(d)(3) applies compliance criteria to all facilities, it applies "release" criteria only to RCRA subtitle C land disposal facilities. EPA believes, as a matter of policy, that some release criteria should also be applied to all facilities that receive CERCLA wastes from CERCLA authorized or funded response actions, including RCRA treatment, storage, and permit-by-rule facilities, and any non-RCRA subtitle C facilities (such as subtitle D facilities or facilities permitted to receive hazardous substance wastes under the Toxic Substances Control Act (TSCA)) [1]. The Agency believes that such a step will further the protection of human health and the environment, and the development of a sound and consistent public policy; it would also serve to further the goals reflected in CERCLA section 121(d)(3).

Similarly, although SARA section 121(b) provides that CERCLA section 121 (and thus section 121(d)(3)) applies to actions arising from post-SARA decision documents only,[2] EPA believes that it is logical and appropriate to apply this rule to CERCLA wastes resulting from two other categories of similar cleanup actions: those authorized under CERCLA before the enactment of SARA, and those performed under the National Contingency Plan pursuant to section 311 of the Clean Water Act (for non-petroleum products). Accordingly, this rule applies to a number of situations in addition to those expressly set out in section 121(d)(3) of CERCLA.

Today's final rule establishes the criteria and procedures for determining whether facilities are acceptable for the off-site receipt of CERCLA waste from CERCLA-authorized or -funded response actions and outlines the CERCLA wastes and actions affected by the criteria. It establishes compliance criteria and release criteria, and establishes a process for determining whether facilities are acceptable based on those criteria. The rule leaves the final decision of off-site acceptability with EPA, after providing the opportunity for, and encouraging, substantial consultation with the State in which the off-site facility is located.

[1] A TSCA permitted facility's acceptability to receive CERCLA wastes is also based on compliance and release findings. As with a RCRA facility, the compliance finding at a TSCA facility hinges on the absence of relevant violations at or affecting the receiving unit. The release finding for a TSCA facility is based on the presence or absence of environmentally significant releases anywhere at the facility (i.e., not just at the receiving unit). Such releases must be addressed by corrective action under a State or Federal program.

[2] Section 121(b)(1) of SARA provides that the requirements of CERCLA section 121 shall not apply to any remedial action for which the Record of Decision ("ROD") was signed, or the consent decree lodged, before the date of enactment of SARA. SARA Section 121(b)(2) provides that if an ROD was signed, or consent decree lodged, within the 30-day period after enactment of SARA, the remedial action should comply with CERCLA section 121 to the maximum extent practicable.

The final rule outlines the State's role in the off-site acceptability determination and ensures that States will remain active participants in the decisionsmaking process. The rule also establishes procedures for notification of unacceptability, appeals of unacceptability determinations, and re-evaluation of unacceptability determinations.

Under the rule, the policy of applying off-site requirements to actions taken under section 7003 of the Solid Waste Disposal Act, as amended by RCRA, is discontinued.

III. Background

From the beginning of the CERCLA program, Congress has mandated that CERCLA wastes be treated, stored, and disposed of in an environmentally sound manner. Section 104(c)(3) of CERCLA, as originally enacted in 1980, required States to ensure the availability of a hazardous waste disposal facility in compliance with RCRA subtitle C for receipt of hazardous waste from Fund-financed remedial actions.

In January 1983, EPA issued Guidance on the Requirements for Selecting an Off-Site Option in a Superfund Response Action. This first guidance on the off-site transfer of CERCLA wastes required a facility inspection and that all major violations at the facility be corrected in order for the facility to receive CERCLA wastes from remedial or removal actions. EPA's May 1985 "Procedures for Planning and Implementing Off-Site Response Actions" (50 FR 45933) detailed the criteria for evaluating the acceptability of facilities to receive CERCLA wastes.

The NCP, revised in November 1985 (40 CFR part 300), incorporated requirements for off-site receipt of CERCLA waste. The NCP, at 40 CFR 300.68(a)(3), required that facilities have permits, or other appropriate authorization to operate, in order to be acceptable for receiving off-site CERCLA waste.

SARA reaffirmed the rationale embodied in CERCLA section 104(c)(3) and the May 1985 Off-site Policy. Section 121(d)(3) of CERCLA, as added by SARA, explicitly provides that in the case of any CERCLA "removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant off-site," such transfer shall only be to a facility operating in compliance with the Solid Waste Disposal Act (as amended by RCRA and the Hazardous and Solid Waste Amendments (HSWA)), or, where applicable, the Toxic Substances Control Act (TSCA), or other applicable Federal law, and all applicable State requirements. The section also requires that receiving units at land disposal facilities have no releases of hazardous wastes or hazardous constituents and that any releases from other units at a land disposal facility be controlled by a RCRA corrective action program.

Finally, EPA issued revised procedures for implementing off-site response actions on November 13, 1987, as a memorandum from J. Winston Porter, Assistant Administrator for Solid Waste and Emergency Response, to the EPA Regional Administrators (OSWER Directive No. 9834.11) (the "Off-site Policy"). These procedures, which were effective immediately, provided guidance on complying with the SARA requirements, updated the 1985 Off-site Policy, and provided detailed procedures for issuing and reviewing unacceptability determinations.[3]

The Agency proposed amendments to the NCP on November 29, 1988 (53 FR 48218) to implement the requirements of CERCLA section 121(d)(3), and to add certain appropriate requirements contained in the Off-site Policy. EPA received over 75 specific comments on the proposed rule and has carefully analyzed those comments and made changes as appropriate in promulgating today's rule. Today's final rule (the "Off-site Rule") implements and codifies the requirements contained in CERCLA section 121(d)(3), and incorporates many provisions of the Off-site Policy. Specific responses to the comments received are set out below, or in the "Comment-Response Document" to this rule, which is available from the Superfund Docket.

IV. Discussion of Final Rule

The Off-site Rule generally provides that a facility used for the off-site management of CERCLA wastes must be in physical compliance with RCRA or other applicable Federal and State laws. In addition, the following criteria must be met:

- Units receiving CERCLA wastes at RCRA subtitle C facilities must not be releasing any hazardous wastes, hazardous constituents or hazardous substances;
- Receiving units at subtitle C land disposal facilities must meet minimum technology requirements;
- All releases from non-receiving units at land disposal facilities must be addressed by a corrective action program prior to using any unit at the facility; and
- Environmentally significant releases from non-receiving units at Subtitle C treatment and storage facilities, and from all units at other-than-Subtitle C facilities, must also be addressed by a corrective action program prior to using any unit at the facility for the management of CERCLA wastes.

The Rule provides procedures for EPA to notify the facility if EPA determines that the facility is unacceptable. It also provides an opportunity for the owner/operator to discuss the determination with the appropriate government official, and if still unsatisfied, to obtain a review of the determination by the Regional Administrator.

The following discussion of today's rule describes the new § 300.440 requirements and responds to public comments received on the proposal. Two major changes have been made from the proposed rule as a result of the comments received: (1) EPA—not the States—will make the final determinations as to whether off-site facilities are "acceptable" under this rule to receive CERCLA wastes, with States being active participants during the decision-making process, and (2) the distinction between criteria for CERCLA wastes resulting from pre- and post-SARA decision documents has been removed. These changes, as well as other comments received on the proposed rule, are discussed below.

A. Applicability

1. CERCLA Wastes Affected

i. Laboratory samples. The proposed rule provided that the transfer of CERCLA site samples to an off-site laboratory for characterization would not be subject to the rule based on the small size of lab samples, the need for prompt and frequent laboratory analysis, and the high level of confidence that lab samples—due to their value to the sending facility—will be properly handled (53 FR 48220). Several commenters contended that the exemption should be enlarged, such that off-site requirements would also not apply to sample shipments from labs to ultimate disposal or treatment facilities. The commenters argued that requiring labs to segregate the small volumes of CERCLA wastes sent to labs for analysis for separate handling under the Off-site Rule would be burdensome, and unnecessary to protect public health. A number of commenters also questioned the wisdom of preventing labs from sending tested samples back to the site, as is common practice. EPA has evaluated these comments, and agrees that it is not necessary to require transfer of lab sample CERCLA wastes from labs to meet the full requirements

[3] For additional discussion on the background of this rule, see the proposed rule at 53 FR 48219–20 (November 29, 1988).

of this rule for reasons discussed above and in the preamble to the proposed rule. However, today's rule is predicated on the principle that CERCLA actions should not contribute to existing environmental problems, and that materials generated from CERCLA actions should be transferred only to environmentally sound facilities. Thus, EPA does not believe it is appropriate for labs to routinely send CERCLA waste samples back to CERCLA sites. Accordingly, EPA has identified two options for the proper disposal of lab-tested samples of CERCLA wastes. The Agency believes that these options, included in the final rule, respond to commenters' concerns that unnecessary obstacles not be placed in the way of lab testing, while ensuring that CERCLA wastes are handled in an environmentally-sound manner.

First, labs may send the tested samples and their residues to an appropriate facility (i.e., they may treat it as material not subject to this rule and transfer it to any facility that may legally accept such wastes); the Agency expects that the vast majority of the materials sent to labs from CERCLA sites will be handled under this first option. Second, the lab may return the CERCLA waste sample to the site from which the sample came if the Remedial Project Manager (RPM) or On-Scene Coordinator (OSC) agrees to assume responsibility for the proper management of the sample and gives permission for the sample to be returned to the site.

One commenter requested that a similar exemption be applied to CERCLA wastes sent off-site for treatability studies. The commenter reasoned that information on treatability is valuable, resulting in a high confidence level that these CERCLA wastes will be properly handled and managed, and that treatability studies promote treatment rather than disposal of CERCLA wastes; treatment is a preferred waste management option under CERCLA. Finally, the RCRA program has exempted treatability study wastes from most hazardous waste management requirements.

EPA agrees with the commenter that an exemption from this rule for treatability CERCLA wastes is appropriate, and that it is consistent with the approach taken in the final rule for Identification and Listing Hazardous Waste Treatability Studies Sample Exemption (53 FR 27290, July 19, 1988). Thus, those hazardous wastes at a CERCLA site that are being sent off-site for treatability studies and that meet the requirements for an exemption from RCRA under 40 CFR 261.4(e), are also exempt from today's rule. CERCLA wastes, residues and other materials that are not RCRA hazardous wastes resulting from treatability studies are subject to the same disposal options as materials from lab characterization samples. Again, EPA believes that this approach will help to facilitate prompt site cleanups while ensuring that CERCLA wastes are managed in an environmentally-sound manner. Non-RCRA hazardous wastes that are being sent off-site for treatability studies and that are below the quantity thresholds established in the Treatability Studies Sample Exemption Rule are similarly exempt from the requirements of the Off-site Rule.

ii. LDR residues. One commenter objected to applying the requirements of the rule to transfers from a CERCLA site of CERCLA waste residues meeting treatment standards established by the land disposal restrictions (LDRs), believing that these residues no longer posed a hazard. EPA maintains that RCRA hazardous wastes or waste residues meeting LDR treatment standards are still considered hazardous under RCRA, unless they no longer exhibit a characteristic of hazardous waste, or if appropriate, are delisted. Moreover, even if a CERCLA waste meeting LDR treatment standards is found not to be a RCRA hazardous waste, it may still be CERCLA waste. Under today's rule, CERCLA waste that is not a RCRA hazardous waste may be sent to other than a RCRA subtitle C facility for disposal (if that facility meets the requirements of the rule), e.g., a RCRA subtitle D landfill. EPA believes that the rule as it stands should not prove burdensome and that it should be relatively easy to find capacity for such CERCLA wastes. Therefore, the final rule does not exempt CERCLA waste residues meeting LDR treatment standards when they are transferred from the CERCLA site.

iii. Clarification on Subsequent Transfers of CERCLA Wastes. The prior comment raises the related issue of how the Off-site Rule applies to subsequent transfers of CERCLA waste. When a CERCLA waste is to be transferred off-site as part of a CERCLA funded or authorized cleanup, the contract implementing the decision document should identify the final disposition point for the CERCLA waste (i.e, the final treatment or disposal facility), and any intermediate facilities that will store or pre-treat the wastes (e.g., waste brokers, blenders). All such facilities would be required to be acceptable under the final rule.

Once the CERCLA waste is finally disposed of off-site, or treated off-site to BDAT levels or in the absence of BDAT, treated to substantially reduce its mobility, toxicity, or persistence, it is no longer considered a CERCLA waste and subsequent transfers of the waste would not be regulated under this rule. However, if residues derived from the treatment of the CERCLA waste are RCRA hazardous wastes, they must be managed as such under RCRA.

2. Actions Affected

i. Enforcement Activities. EPA would like to clarify and respond to several commenters' questions concerning which enforcement activities are affected by today's rule. The Off-site Rule applies only to those actions being taken under a CERCLA authority or using CERCLA funds. These include actions taken under section 104, CERCLA consent agreements, decrees (including special covenants under section 122(f)(2)(A)), Records of Decisions (RODs), section 106 orders, and actions taken under pre-authorization CERCLA decision documents. State response actions conducted under a CERCLA cooperative agreement, are also subject to the off-site requirements.

Actions which would not trigger the off-site requirements include notification of a spill of a reportable quantity under CERCLA section 103, cleaning up a site using only State authority and State funds (whether or not the site is listed on the Superfund National Priorities List (NPL)), and conducting a voluntary cleanup involving government oversight (e.g., by the U.S. Coast Guard), unless under CERCLA or a CERCLA order or decree.

In one commenter's example, if a PRP has taken a voluntary response action (not under a CERCLA order and without CERCLA funds), that action is not subject to the Off-site Rule; thus, in a cost recovery action under CERCLA section 107(a)(4)(B), the PRP may demonstrate action "consistent with the NCP" without having to show compliance with the Off-site Rule requirements.

ii. Actions under CERCLA section 120. The proposed rule states that the requirements of this rule do apply to all Federal facility actions under CERCLA, including those taken by EPA and/or another Federal agency under CERCLA sections 104, 106, and 120 (53 FR 48220). One commenter objected to applying this rule to Federal facilities, arguing that this was not equitable because the rule covers private party actions at NPL sites only. The commenter asked that the rule only be applied to EPA-funded or Federal-

agency-lead CERCLA actions taken at NPL sites.

In response, EPA does take CERCLA actions at private facilities that are not on the NPL (e.g., enforcement actions and removals) and these actions are subject to the Off-site Rule when they are conducted under CERCLA authority or using CERCLA money. Consistent with CERCLA 120(a), EPA does not believe it is appropriate to treat CERCLA actions at non-NPL Federal facilities differently. Thus, if a Federal agency plans to transfer CERCLA wastes off-site from a Federal facility under a CERCLA authority or with CERCLA funds (as compared to being transferred under another statutory authority), the Federal agency may transfer CERCLA wastes only to facilities found to be acceptable under this rule. Federal facilities may transfer CERCLA wastes off the CERCLA site to treatment, storage or disposal units on the same Federal property, but only if the other units (and the larger Federal facility or installation) meet the requirements of this rule.

iii. *Federally-permitted releases.* In the proposed rule, the Agency stated that Federally-permitted releases should not be routinely included within the concept of "release" for the purposes of section 121(d)(3). For "Federally-permitted releases," as defined in NCP, § 300.5 (1990 ed.) and CERCLA section 101(10), the government has specifically identified the types and levels of hazardous substances that may safely and appropriately be released (e.g., a NPDES water discharge permit), and it would not make sense to find a facility unacceptable based on the existence of such an authorized and planned release. Of course, unauthorized releases that are being studied, cleaned up, or controlled under a corrective action portion of a permit, would not be considered to be "Federally permitted" for the purposes of this rule.

The Agency further stated in the proposed rule that although Federally permitted releases would not routinely be considered to be a "release" for the purpose of acceptability under this rule, if the permitted release comes to constitute a threat to human health and the environment, the release can and should be considered under this rule (53 FR 48224).

One commenter argued that EPA should not limit the exemption for Federally-permitted releases. If a permit is not sufficiently protective it should be altered, rather than determining that the facility is unacceptable under the Off-site Rule. If the Agency were to decide not to fully exempt Federally-permitted releases from this rule, the commenter asked EPA to narrow the limitation from "threat" to "significant threat," and to clarify circumstances under which a release is considered a threat.

EPA agrees that permits that are not sufficiently protective should be upgraded. However, upgrading of permits may not address past contamination and the upgrading may take time to accomplish. Thus, until such permits are upgraded, or until the threat to human health and the environment is otherwise addressed (e.g., through a corrective action order), EPA will not send CERCLA wastes to such facilities and thereby contribute to an unsound environmental situation. Similarly, EPA believes it is appropriate to cease sending CERCLA wastes to facilities with Federally-permitted releases if a threat to human health or the environment is posed by the release. This approach is consistent with Agency policy and the goals of CERCLA section 121(d)(3). It also maintains consistency with practices under the NCP in its handling of Federally-permitted releases. For example, the Agency lists certain sites on the NPL where an "observed release" has been documented, even if that release was Federally permitted and was within regulatory limits (47 FR 31188, July 16, 1982; 48 FR 40665, September 8, 1983).

iv. Definition of site. One commenter requested a definition of the term "site" (in order to understand what is "off-site"), and asked that the definition include property in the immediate vicinity of the cleanup.

In the recent revisions to the NCP, 55 FR 8840 (March 8, 1990), EPA defined "on-site" to include all suitable areas in very close proximity to the contamination necessary for implementation of the response action, 40 CFR 300.400(e)(1) (1990); this additional space would be available for treatment systems that require considerable area for construction, and for staging areas. Areas not covered by this definition come, by extension, within the definition of "off-site."

EPA believes it is essential for the sound operation of the CERCLA program to define "on-site" and "off-site" in a concerted manner. Were EPA not to apply the general definition of "on-site" to this rule, an anomalous situation would result in which CERCLA wastes transferred to the "on-site," proximate area used for implementation, would constitute an off-site transfer. Moreover, such transfers might be disallowed in many cases where the non-receiving unit (the "waste portion" of the site) had releases that were not yet controlled for purposes of the Off-site Rule.

3. RCRA Section 7003 Actions

EPA received three comments on the proposal not to extend this rule to cover cleanup actions carried out under RCRA section 7003 (53 FR 48221). All three commenters agreed with EPA that the rule should not apply to off-site disposal associated with RCRA section 7003 actions. Therefore, the Agency will not require RCRA section 7003 actions to comply with the off-site requirements as part of this CERCLA rulemaking.

4. Removals

Three commenters supported the proposed rule's exemption from the regulation for emergency removal actions in situations posing a significant threat (53 FR 48220). One of these commenters asked EPA to extend the exemption to remedial actions taken in situations of immediate and significant threat. Two commenters asked that the language be modified to confirm that private parties, as well as government entities, are eligible for the exemption.

EPA believes that an exemption for emergency removals is appropriate, and should also apply to emergencies occurring during remedial actions (e.g., occurrence or substantial threat of occurrence of fire or explosion); the final rule reflects that change. However, the Agency does not believe it is appropriate to allow private parties to use the emergency exemption without obtaining approval from a CERCLA On-Scene Coordinator (OSC). This prior approval requirement will avoid the possibility of a responsible party abusing the emergency exemption in order to use unacceptable off-site facilities which may be less environmentally sound. Note that the Off-site Rule only applies to private parties engaged in response actions that are funded or ordered under CERCLA.

Another commenter stated that it was not clear what criteria the OSC should use to determine that a facility in noncompliance with the rule can be used for off-site disposal.

EPA believes that the OSC should weigh, to the extent practicable: exigencies of the situation; the availability of alternative receiving facilities; and the reasons for the primary facility's unacceptability, their relation to public health threats, and the likelihood of a return to compliance. In some situations (e.g., fire, explosion), it may be necessary to remove materials off-site before an off-site facility's acceptability may even be reviewed.

5. Pre-SARA v. Post-SARA Actions

In the proposed rule, EPA explained the evolution of a system under which

different off-site requirements were applied to CERCLA wastes, depending upon whether the CERCLA decision document was signed pre- or post-SARA (53 FR 48220). One commenter argued for eliminating the confusing distinctions between pre- and post-SARA CERCLA wastes. Although the statute applies only to post-SARA decision documents, the commenter saw no reason why these requirements could not be extended to CERCLA wastes from pre-SARA decision documents, particularly given the ambiguity of the May 1985 off-site policy. Several other commenters supported simplifying the Rule generally.

EPA agrees that eliminating the different criteria for CERCLA wastes from pre- and post-SARA decision documents would simplify the understanding and implementation of the rule. The Agency's experience with the revised Off-site Policy (since 1987) has been that the dual system is confusing, and potentially subject to inconsistent interpretation. The original reason for having different requirements for CERCLA wastes from pre- vs. post-SARA decision documents was to avoid disrupting contracts and actions already in place at the time SARA (and section 121(d)(3)) were enacted. However, in response to the commenter's suggestion, EPA has surveyed the existing pre-SARA ROD contracts and the acceptability status of facilities currently receiving CERCLA wastes from pre-SARA actions. The information gathered indicates that few if any CERCLA waste transfers resulting from pre-SARA decision documents would be disrupted by application of the newer criteria.[4] Indeed, most facilities receiving CERCLA waste already meet both the pre- and post-SARA criteria, in order to be acceptable to receive all CERCLA waste. The elimination of separate standards for CERCLA wastes from pre-SARA decision documents would be neither burdensome nor disruptive. Therefore, in the final rule, CERCLA wastes from pre-SARA actions and CERCLA wastes from post-SARA actions are treated the same.

B. Determining Acceptability

In its November 29, 1988, **Federal Register** notice, EPA proposed, and requested comment on, allowing States that were authorized to carry out the corrective action portions of RCRA, to make off-site acceptability determinations for RCRA subtitle C facilities within their respective jurisdictions. The Agency noted that the "States often have the most direct responsibility over the potential receiving facilities * * *, and thus may be in the best position to make the findings required under the Off-site Rule." (53 FR 48221) However, at the same time, EPA noted that retaining the off-site decision in the EPA Regional Offices would offer the advantages of "more easily assuring consistent application of the rule, and avoiding conflicts between the Region and the State regarding the acceptability of a facility." (53 FR 48222) Thus, the Agency specifically requested comment on whether qualifying States should make off-site acceptability determinations, or whether EPA Regions should exercise that decision-making authority.

EPA received eight specific comments on the State decision-making issue. Six of the comments objected to allowing States to make the off-site determinations, based on the need for national consistency and concerns that some States might use the off-site authority to prohibit the receipt of out-of-state CERCLA wastes. Two of these six commenters added that States should be allowed to make acceptability determinations only if they agree to follow the notice and re-qualification procedures that apply to EPA. A seventh commenter (a State) criticized the proposed approach on the grounds that it would effectively deny any input on the acceptability determination from most States, since most States are not authorized to carry out corrective action under RCRA; the commenter recommended that States be given at least 30 days to comment on a proposed decision before the facility is notified of the final acceptability status. A second commenting State suggested that the agency inspecting the facility for RCRA compliance should make the off-site acceptability determination; however, it added that "it appears obvious that it should be a joint determination."

The Agency also received four comments on a related point—the difficulty of receiving ready access to a list of acceptable facilities.[5] In effect, these comments indicate that it has been difficult for the public to quickly and accurately determine what facilities are acceptable under even the present Off-site Policy, under which one need check with only ten regional off-site contacts. EPA has reviewed this comment in light of the issue of whether States should make final off-site determinations, and has concluded that the problem identified by the commenters would grow dramatically if the public were required to verify off-site acceptability with up to fifty State contacts. Further, allowing the State to make off-site acceptability determinations as proposed would not eliminate the need for the EPA Regional contacts; a State could not make determinations for other Federal programs, such as the Toxic Substances Control Act (TSCA). Thus, the public would be required to check with State contacts and EPA Regional contacts in order to determine which facilities are acceptable to receive certain types of CERCLA wastes. The prospect of requiring interested parties to check acceptability status with all fifty states (for portions of RCRA) and all ten EPA Regions (for other portions of RCRA, and TSCA, etc.) would place an unreasonable burden on the people who need to locate acceptable capacity.

Based on a careful review of all the comments received on the proposed rule, as well as a review of the Agency's experience to date in implementing the Off-site Policy, EPA still believes that it is essential for the off-site acceptability process to take into account the important role of the States in making compliance findings (and, in some States, release findings) under RCRA; however, the comments received and EPA's experience also demonstrate a strong need for national consistency, and for facilitating timely public access to acceptable capacity. Thus, while the basic approach and structure of the rule remains unaltered, the Agency is making several important changes in the language of the rule, in order to help make States active participants in off-site determinations, while at the same time preserving final off-site determination authority within EPA.

1. State Role

The off-site acceptability determination for a facility is based, in large part, on a compliance finding and a release finding. Authorized States may make the initial compliance findings for those parts of the program for which they are authorized. If a State finds a violation at a unit of a facility, EPA will evaluate the finding for "relevance" under the rule (e.g., whether the violation occurred at the receiving unit and thus is "relevant" under the rule; "relevant" is discussed in more detail in section IV.C.4 of this preamble). If the

[4] A Memorandum summarizing the information collected is included in the docket of this rule.

[5] Several commenters suggested that the present system of having ten EPA regional contacts should be replaced by a more easily implemented system under which one consolidated list would be made available to the public. However, the Agency recognizes that it would be impossible to publish a list of acceptable facilities nationwide (or even regionally), as the off-site status of facilities is constantly changing, and any such list would be outdated before it was distributed.

Agency concludes that the violations are relevant, it will issue an initial determination of unacceptability, meaning that the facility will be unacceptable to receive CERCLA wastes in 60 days unless EPA finds that the facility is operating in physical compliance with applicable law at that time.

If a State is authorized to carry out the corrective action authorities of RCRA sections 3004 (u) and (v), it may also make initial findings regarding releases at the facility. Again, EPA will evaluate such findings and, if it finds the releases are relevant under the rule, will issue an initial determination that the facility will be unacceptable in 60 days unless EPA finds that there are no uncontrolled releases at the facility at that time.

In order to further increase the States' role throughout the process, the Agency will also take the following steps:

- Encourage the free exchange of information between States and EPA Regional offices concerning violations and releases at facilities;
- Afford States the opportunity to participate in all meetings with EPA and the facility owner/operator regarding the facility's acceptability;
- Provide States with copies of all initial and final unacceptability determinations as soon as they are issued;
- Provide States with the opportunity to call for additional meetings with Regional officials to discuss the off-site acceptability of a facility, and whether a facility has returned, or can return, to compliance within the 60-day review period; and
- Provide in the rule that if the State disagrees with the EPA Region's determination (after the informal conference), it may obtain review of that decision by the Regional Administrator.

2. EPA's Role

Where a State does not have authority to carry out portions of the RCRA program, EPA will make the initial compliance and/or release findings. In addition, EPA will make the compliance and release finding with respect to applicable regulations under other Federal Statutes (e.g., TSCA). EPA may also make findings at facilities where the State has programmatic authority, as a supplement to State oversight. (However, in such cases, the Agency expects most findings to be made by the States.) Further, as noted above, EPA will evaluate all initial findings of violations or releases to determine whether they are "relevant" under today's rule.

Although States will make many of the initial RCRA findings for off-site unacceptability determinations, EPA will retain the ultimate decision-making authority for all off-site determinations, including those at RCRA facilities. EPA Regional Offices, having collected information on the compliance and release status of a RCRA facility, and having consulted with the State in which the facility is located, will be responsible for determining whether a facility is operating in compliance with applicable law (and thus has no relevant violations) at the end of the 60-day period, and whether there are any uncontrolled relevant releases at the end of the 60-day period; if EPA finds that the relevant violations or releases alleged in the initial notice are supported by the facts and are continuing, the unacceptability determination will take effect, as provided below. The Regions will also be responsible for keeping up-to-date records of those RCRA facilities that are acceptable and those that are not. As discussed above, these steps will help to ensure national consistency in off-site decisions, and will facilitate timely public access to off-site acceptability information.

The Agency believes it is appropriate for EPA to retain the final authority for making off-site acceptability determinations. Because CERCLA cleanups are generally ordered or funded by EPA, the off-site determination is, in effect, EPA's business decision as to where CERCLA wastes under the Agency's control should be sent.

It is also important that EPA issue the final, consolidated acceptability determinations in order to retain control over, and help fulfill, the Agency's programmatic responsibilities. In order to plan CERCLA cleanup actions on reliable schedules, and proceed with them quickly, EPA needs to resolve off-site issues relatively quickly, and make alternative contracts and plans as appropriate. As the proposed rule explained, this was a major reason for the establishment of a 60-day period in which to discuss acceptability with the relevant parties. EPA is also sensitive to the need to afford owner/operators a reasonable opportunity to contest the violation/release finding, or to return to compliance, within this 60-day review period.

3. Disputes Between States and EPA

EPA intends to issue initial unacceptability determinations in cases where States have made initial findings of violations or releases that EPA finds are relevant under the final rule; thus, States may play a major role in initiating the off-site review process. EPA Regional officials, officials from the State in which the off-site facility is located, and representatives of the facility owner/operator will then have the opportunity to meet during the 60-day review period to discuss: (1) The basis for the finding of a violation or release, (2) the relevance of the violation/release under the Off-site Rule, and (3) what steps are necessary for the facility to return to compliance or control releases within the 60-day review period (or whether sufficient steps have already been taken). After the informal conference with the owner/operator, at which the State may be present, EPA will notify the State of its program level determination; the Agency will decide whether the initial finding of a relevant violation or release was supported by the facts, and whether the violation or release is continuing (or has been controlled). If the State (or the owner/operator) disagrees with the decision by the EPA Regional staff, it may obtain a review of the decision by the EPA Regional Administrator.

EPA expects that in most cases, there will be no dispute between it and the State over these issues. However, the Agency recognizes that there may be instances where disagreements could arise with the State, or where the Agency must act independently. Following are three major examples of situations where a disagreement might occur between State and EPA officials.

First, there may be instances where the State is unable or unwilling to meet with EPA and the affected facility within the 60-day period (e.g., where the case is in litigation and the State chooses not to meet separately with one potentially responsible party). Similarly, EPA must act in certain situations without full participation from the State, such as during emergency cleanup actions. In such cases, in order to fulfill its mandates to accomplish planned CERCLA cleanups and to administer the Off-site Rule, the EPA Region may need to meet with the owner/operator independently to resolve the compliance or release problems expeditiously.

Second, a State may disagree with certain findings committed to the discretion of the Agency under the Off-site Rule, such as the finding that a violation or release is (or is not) "relevant" under the rule, or that a facility has (or has not) taken adequate steps to resolve a violation or control a release. Such findings are integral parts of the off-site determination, and must be consistently applied to facilities regulated under RCRA, TSCA, or other applicable laws. The Agency believes that in the interest of national

consistency, it is appropriate for EPA to retain the final decision-making authority in these areas. However, as with all Off-site Rule issues, the States will be invited to discuss these issues with EPA, and will be afforded an opportunity to obtain review of such decisions with the Regional Administrator.

Third, there may be isolated cases where EPA and the State disagree on the initial finding of violation or release. (This could generally be expected to arise during the review period, as EPA plans to initiate the off-site review process where the State makes a finding that EPA determines is relevant under the rule.) In such cases, EPA will consult with the State, and the State may request additional meetings with the Agency. However, in order to fulfill its obligations under the statute, EPA must have the ability to make an independent assessment of the facility's status at the end of the 60-day period to determine if the facility is currently operating in compliance and/or has any uncontrolled relevant releases, for the limited purpose of the Off-site Rule. These judgments do not prevent the State from pursuing an enforcement action for past violations, or even arguing that violations are continuing.

It is important to note that the question of whether or not a unit is operating in compliance, or has returned to physical compliance, is an issue separate and distinct from the question of whether an enforcement action for past violations is appropriate. The statute clearly focuses the acceptability determination on present compliance: CERCLA wastes "shall only be transferred to a facility operating in physical compliance with" RCRA or other applicable law (CERCLA section 121(d)(3)). Thus, where a facility has returned to compliance and, where appropriate, changed its operations to prevent recurrence, the facility "is operating" in compliance and should not be unacceptable under the Off-site Rule simply because a complaint for past violations is still pending.[6]

4. No Cooperative Agreement Requirement

Under the proposed rule, EPA had suggested allowing States that were authorized to carry out RCRA corrective action to make the off-site determinations if they were found to be capable, under a CERCLA Core Cooperative agreement, of carrying out certain functions. Because the Agency has decided to retain the authority to make the final determination, and use State findings as a basis for the initial determinations, there is no longer a need for States to enter into such agreements for the purpose of the Off-site Rule.

5. Facility Acceptability Status

Section 300.440(a)(4) of the proposed rule (53 FR 48232) stated that "[a] facility is acceptable until the responsible Agency notifies the facility otherwise"; the scope of this section needs to be clarified. For facilities that have already been notified that they are acceptable under the rule (or the preceding policy), the facility would remain acceptable until EPA determines otherwise according to the provisions of final rule § 300.440(d). This allows both receiving facilities and CERCLA site managers adequate time to respond to new circumstances. By contrast, the language quoted above was not meant to apply to facilities for which EPA has never made a determination of acceptability under this rule (or the preceding policy), and at which CERCLA wastes are not likely to be in transit; for such facilities, EPA believes that affirmative determinations of "compliance" and "control of releases" are necessary before a facility may be deemed acceptable for the receipt of CERCLA wastes, consistent with the language of CERCLA § 121(d)(3).[7] Final rule § 300.440(a)(4) has been revised to clarify this point.

C. Determining Acceptability-Compliance Criteria

1. Inspection Requirements

Section 300.440(c)(1) of the proposed rule provided that a facility "must have received an appropriate facility compliance inspection within six months prior to receiving CERCLA waste" (53 FR 48232). Three commenters expressed concern that a receiving facility, which would otherwise be in compliance, could be penalized because of the failure of the regulatory agency to conduct inspections at the required frequency. One of these commenters objected to being penalized for EPA or State tardiness, and believed that the rule suggested that EPA could not conduct an inspection during the 60-day period following a Notice of Unacceptability.

EPA continues to believe that periodic inspections to update information on facilities receiving CERCLA wastes are important to the effective implementation of this rule, and the Agency will address the recommended frequency of inspections in guidance. The Agency notes that inspections are already carried out under a number of regulatory programs, such as RCRA. EPA agrees that the absence of an inspection six months prior to the receipt of CERCLA waste (or the absence of a CME or O&M inspection for RCRA land disposal facilities within one year prior to the receipt of CERCLA wastes) should not in itself be grounds for unacceptability, unless the facility refused to allow an inspection to be performed. The requirement for updating inspections within a defined time frame has thus been eliminated from final rule § 300.440(c). (Of course, as discussed above, final rule § 300.440(a)(4) maintains the requirement for an affirmative determination of acceptability when a facility first seeks to receive CERCLA wastes under this rule, and this may involve a compliance and release inspection.) In response to the last comment, EPA would like to clarify that the language in the proposal was not meant to suggest that EPA could not, if appropriate, conduct an inspection during the 60-day review period.

2. Receiving Unit

Several commenters supported the definition of "receiving unit" as that unit which directly received the waste in question (53 FR 48222). This definition remains the same in the final rule.

3. Facility

Three commenters supported the proposed definition of "facility" (53 FR 48222); however, one commenter questioned the concept of facility-wide violations that could render the entire facility unacceptable, rather than just the violating unit. The commenter asked for a clear and precise example of both unit-specific and facility-wide violations.

Examples of facility-wide violations include the failure to have or comply with the facility's waste pre-acceptance procedures, waste analysis plan, contingency plan, financial

[6] Of course, in some cases, the violation cannot be undone and may be argued to be a "continuing violation." EPA has already addressed this case by providing a mechanism for returning to compliance by resolving the violation, including penalties and any enforcement actions brought by EPA. See proposed rule at 53 FR 48229, November 29, 1988; *see also* discussion below, at section IV.C.4, and IV.H.4.

[7] Although EPA will meet with the owner/operators of such facilities during the 60-day period after a relevant release or violation is found, the Agency does not believe that it would be appropriate to accord a 60-day period of acceptability to such facilities, where the available information indicates non-compliance or uncontrolled releases, and no disruption to on-going CERCLA cleanups would be occasioned by the finding. Final rule section 300.440(d)(3) has been revised to clarify this point.

responsibility requirements, and the closure plan. Criminal violations also create a lack of confidence in a facility's ability to handle waste at any unit, and thus may also be considered "facility-wide." Unit-specific violations include failure to comply with the design and operating requirements.

4. Relevant Violations

Numerous commenters asked for clarification concerning the definition of relevant violations, as set out in the proposed rule (53 FR 48223–48232), and more precise guidance regarding what constitutes a relevant violation. Many commenters also had suggestions on what the definition of relevant violation should include.

One commenter suggested that relevant violations be limited to violations that pose a threat to the physical integrity of the disposal unit; EPA finds this suggestion unacceptable. The environmental laws and regulations contain many requirements, all of which have been determined to be important to assuring the protection of the environment. For example, financial assurance requirements and ground-water monitoring are critical to a facility's safe operation, although neither involves a present threat to the physical integrity of the disposal unit. The legislative history specifically refers to excluding only minor paperwork violations when determining whether a facility is in compliance. H. Rept. 962, 99th Cong., 2nd sess. at 248 (1986). The statute specifies that the facility must be operating in compliance with RCRA (or, where applicable, with TSCA or other applicable law) and all applicable State requirements. Therefore, it would not be reasonable for EPA to offer broad generic exclusions, like those proposed by commenters, for "isolated instances of noncompliance," violations which do not threaten human health and the environment, or violations that are not of an "ongoing nature." These suggestions are not consistent with the mandate of the statute. Further, these types of relatively minor violations may often be resolved within the 60-day review period, before a determination of unacceptability would take effect at the violating facility. The definition of relevant violation from the proposed rule is retained without change (Section 300.440(b)(1)(ii).) In general, EPA believes that relevant violations will generally be Class I violations by high priority violators (HPVs). Guidance for determining what is a Class I violation or HPV can be found in the Revised RCRA Enforcement Response Policy (OSWER Directive No. 9900.0–1A). Criminal violations (after the issuance of an indictment) are also generally relevant violations.[8]

One commenter asked the Agency to delete the word "include" from the first sentence of the discussion of relevant violation in § 300.440(b)(1)(ii), as it implies that matters not listed in the section may also be included as relevant violations. The Agency has decided to retain the word "include" in the final rule, as deleting the word could unnecessarily limit the Agency's discretion in making determinations regarding what constitutes a relevant violation under the rule. Although EPA has attempted to describe the type of violation that would be deemed relevant, it cannot foresee all possible circumstances. EPA will evaluate findings of violation and determine if they are relevant under the rule on a case-by-case basis; parties will have an opportunity to discuss that decision with EPA during the 60-day period for the review of the unacceptability determination.

Another commenter maintained that the prohibition on relevant violations should apply to the entire facility, rather than just the unit(s) receiving the waste.

EPA has decided to continue to limit the application of relevant violation criteria to the receiving unit except in cases where the violation affects the entire facility. As explained in the proposed rule, EPA believes that this interpretation is consistent with Congressional intent that response actions be designed to ensure that no new environmental problems are created; this goal is accomplished by sending CERCLA wastes only to units that are in compliance with applicable Federal and State requirements (and at which releases are controlled). See 53 FR 48223–48224. In addition, this interpretation furthers the Congressionally-mandated preference for treatment by allowing the use of incinerators and alternative treatment technologies even if there is some violation elsewhere on the property. See 53 FR 48222–23. At the same time, the release criteria do apply to non-receiving units, and ensure that CERCLA wastes will not be sent to facilities where significant, uncontrolled releases are occurring at any unit.

Another commenter objected to requiring facilities to meet any requirements, other than compliance with a RCRA permit. In response, the rule does not impose any direct requirements on RCRA facilities; it simply provides that CERCLA wastes may not be transferred to a RCRA facility that is out of compliance or that has uncontrolled releases. Congress specifically recognized that leaks at RCRA facilities might not constitute violations, and thus a requirement to control releases was added. See 53 FR 48219–48220 (proposed rule).

Finally, one commenter asked EPA to clarify what an applicable State environmental law was and who (EPA or the State) has the final say over whether a particular environmental law is applicable.

EPA, after conferring with the State, will determine what State and Federal laws are applicable, and if the facility is operating in compliance with those laws. In most cases, EPA expects to reach consensus with the State as to a facility's compliance with State requirements. However, EPA will make its own independent determination on a facility's return to compliance for the purpose of the Off-site Rule. EPA emphasizes that a facility will be deemed acceptable under the rule if it demonstrates to EPA's satisfaction that it is operating in compliance with applicable laws and has addressed all relevant releases. EPA can be satisfied that a facility has returned to physical compliance with State law even if there is an outstanding State enforcement action. The only situation in which off-site acceptability will be conditioned upon resolution of all legal actions is where the violation cannot be "undone." For example, if a facility had incinerated wastes not specified in its permit, or disposed of unpermitted wastes in a manner that to require their removal would cause harm, EPA will not require recovery of the waste as a condition for returning to acceptability; however, in such cases EPA would not consider the facility to have returned to compliance until certain steps were taken, such as the payment of penalties, thus removing any economic advantage the facility may have enjoyed during the period of violation. See 53 FR 48229. (A similar approach may be appropriate for facilities with criminal violations; the payment of penalties, institution of new training procedures, and other such steps may be necessary in order to restore confidence that the facility can again safely handle CERCLA wastes.) Conversely, a facility that had been out of compliance with ground-water monitoring or financial assurance requirements, but that had brought the ground-water monitoring system back into physical compliance or met its financial assurance obligations could be considered to have returned to physical compliance even if legal actions were

[8] See the proposed rule, 53 FR 48224; Off-site Policy, at p. 16; and Memorandum from Bruce M. Diamond, "Off-site Policy Implementation Issues," (August 29, 1988).

outstanding or penalties had not been paid.

"Physical compliance" does not include being in compliance with a schedule to return to physical compliance.

5. Minimum Technology Requirements (MTRs)

EPA received conflicting comments on the proposal to require a RCRA Subtitle C land disposal unit to comply with the more rigorous minimum technical requirements of RCRA § 3004(o) in order to be acceptable to receive RCRA hazardous wastes from a CERCLA cleanup (53 FR 48224). EPA believes that this requirement is appropriate in order to assure that CERCLA waste that are RCRA hazardous wastes remain safely disposed of in the future. HSWA established minimum technology standards for new land disposal facilities (i.e., facilities commencing construction after Nov. 8, 1984). These standards are more stringent than the requirements for existing (i.e., pre-1984) land disposal facilities because Congress considered existing requirements to be inadequate to prevent hazardous waste from entering the environment. Of course, waivers from MTRs are allowed if the owner/operator can show that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste constituent into the ground water or surface water at least as effectively as the required liners and leachate collection system. (40 CFR 264.301) An MTR unit is less likely to have future problems than a non-MTR unit, and therefore the requirement that receiving RCRA Subtitle C land disposal units must meet MTRs is consistent with Congressional intent not to send CERCLA wastes to land disposal units that may leak.

6. Facilities Operating Under a RCRA Exemption and Non-RCRA Facilities

One commenter suggested that a facility operating under a RCRA exemption should still have to meet certain conditions, such as justifying the exemption, obtaining all necessary permits, and passing an inspection. EPA agrees that facilities subject to a RCRA exemption are still covered by the Off-site Rule. CERCLA wastes may be transferred to such a facility only if the facility is operating in compliance with applicable law (which for some facilities operating under a RCRA exemption may still include some provisions of RCRA), has obtained all necessary permits (if any), and has controlled any environmentally significant releases. EPA will rely upon information developed during inspections in making such determinations. These requirements were specifically set out in the proposed rule for other-than-RCRA-facilities, and remain in the final rule as requirements (53 FR 48225–26; proposed §§ 300.440(b)(1), 300.440(b)(2)(D)).

D. Determining Acceptability-Releases

1. Identifying Releases

For all RCRA Subtitle C facilities, a facility-wide investigation (e.g., a RCRA Facility Assessment (RFA) or a Preliminary Assessment/Site Investigation (PA/SI)) by the responsible Agency is necessary to determine if a release has occurred, or if there is a substantial threat of release, prior to its initial use for the receipt of off-site CERCLA wastes. (Once a facility has been found to be acceptable, it remains acceptable until EPA notifies the facility otherwise, as provided in § 300.440(a)(4) of the rule.) If a release has been identified outside the scope of such an investigation, completion of the investigation is not necessary prior to issuing a notice of unacceptability or initiating a corrective action program (in such situations, the corrective action program should be designed to include a facility-wide investigation). Although the performance of a facility-wide investigation is no longer discussed in the rule (see proposed rule § 300.440 (c)(2)), it remains an important part of the off-site evaluation program.

One commenter objected to including "substantial threat of a release" in the definition of release (53 FR 48224), claiming that this exceeds EPA's statutory authority.

Although CERCLA section 121(d)(3) does not specifically state whether or not a "substantial threat of release" is intended to be covered by the terms of the provision, EPA believes that the inclusion of substantial threats is consistent with the intent of the section that CERCLA wastes be transferred only to environmentally-sound facilities, and that they not add to environmental problems. Where there is a substantial threat of a release, e.g., a crack in a containment wall, the transfer of CERCLA wastes to the site would not be environmentally sound.

Even if the statute is not read to compel this result, EPA believes it is a sound one as a matter of policy under CERCLA. It is within the Agency's authority to respond to both releases and "substantial threats of release" under CERCLA section 104. It would be inconsistent with the purposes of CERCLA sections 104 and 121(d)(3) and the goal of protecting health and the environment, for EPA to transfer CERCLA wastes to facilities where a substantial threat of release has been identified, and thus where the threshold for a CERCLA response action has been met. The general position that both "releases" and "substantial threats of releases" are serious causes of concern is reflected in the definition of "release" in the NCP revisions (40 CFR 300.5), which states that for the purposes of the NCP, release also means threat of release.

Three commenters questioned the criteria EPA will use to determine whether a release exists. One commenter asked EPA to provide more specific criteria for when the Agency may find a site to be unacceptable based on a relevant release, while two other commenters asked that determinations of unacceptability be grounded on very firm evidence, using objective criteria.

In evaluating releases and threatened releases, the Agency believes that it should rely on all available information, including information on the design and operating characteristics of a unit. The determination that there is a release (including a substantial threat of a release) may be made based on sampling results or may be deduced from other relevant information. For instance, as discussed in the proposed rule at 53 FR 48225, a broken dike may be evidence of a release (or of a substantial threat of release). In order to protect public health and the environment, and prevent CERCLA cleanups from contributing to future problems, the Agency needs to consider relevant information in addition to sampling data.

However, EPA does not have "unfettered discretion" in this regard, contrary to the comments of one party. The Agency will first make findings based on available information; the owner/operator will then have 60 days to offer evidence to the contrary if the facility disagrees with the Agency's findings. Finally, if the owner/operator disagrees with EPA's final decision, it may request a review by the Regional Administrator.

The final rule, therefore, will continue to allow the Agency to make release determinations based on information other than sampling data.

2. *De Minimis* Releases

In the proposal, the Agency interpreted the concept of release in section 121(d)(3) not to include *de minimis* releases (53 FR 48224). Several commenters supported the *de minimis* exemption, but disputed the narrow

scope of the exemption. One commenter argued that only those releases that pose a threat to human health and the environment should render a facility ineligible. Two commenters disagreed with the example of a non-*de minimis* release between landfill liners, and asked EPA to correct this misunderstanding when issuing the final rule, by stating that accumulations of liquids between the liners are not "releases into the environment."

The statute directs EPA not to transfer CERCLA wastes to a unit of a land disposal facility that is releasing "any" hazardous waste, or constituent thereof, into the environment (CERCLA section 121(d)(3)(A)), and to control "all such releases" from non-receiving units (section 121(d)(3)(B)). Contrary to the suggestion of the first commenter, the language of the statute does not provide that "only releases that pose a threat to human health and the environment" should render a land disposal facility unacceptable under the Off-site Rule. As explained in the proposed rule, 53 FR 48219–48220, Congress was very concerned about leaking land disposal units, and set out in section 121(d)(3) a very stringent standard for the transfer of CERCLA wastes to such units. (The Agency has greater discretion for setting a standard for units that were not addressed by the statute.)

EPA recognized, however, that there are releases of such a minor nature as to be considered "*de minimis*," or of such a trifling nature that the law does not take notice of them. *See Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979); Black's Law Dictionary (4th ed.), West Publishing, 1968, at p. 482. EPA considers a *de minimis* release as substantially less than a release that poses a threat to human health and the environment. Releases will be considered to be *de minimis* only in exceptional cases. To aid the public, the Agency has attempted to identify some examples: releases to the air from the temporary opening and closing of bungs, and emissions of non-toxic and non-regulated substances from units not otherwise subject to Federal or State permits.[9] *De minimis* releases will be exempt from the definition of release.

However, as two of the commenters noted, one example in the proposed rule was incorrect: "releases" between liners. The accumulation of liquid between liners that are controlled by leachate collection systems does not involve a release to the environment; thus the presence of leachate between liners will not necessarily make a unit unacceptable.

3. Releases to the Air

Two commenters stated that until the promulgation of regulations for the control of air emissions from hazardous waste management units (under RCRA section 3004(n)), it is impossible to tell what releases are normal during hazardous waste management operations. Thus, they argued that air releases should not be considered as a basis for unacceptability under the Off-site Rule at this time.

In response to the comments, EPA agrees that standards do not yet exist for differentiating between acceptable releases to the air and air releases that may pose a threat to human health and the environment. Because almost all liquids evaporate or volatilize, air releases of some kind may be expected at almost every site, making a "no release to air" standard unrealistic. Indeed, the statute does not restrict the use of units with releases to the air. See section 121(d)(3)(A). Thus, as a matter of policy, air emissions not otherwise permitted that result from hazardous waste management units will be considered releases under this rule only if they exceed the standards promulgated under RCRA section 3004(n)(when they have been promulgated). However, until the section 3004(n) rule is final, air emissions from such units will be considered releases where they are found to pose a threat to human health and the environment. Similarly, air emissions that are not covered by RCRA section 3004(n) standards will be considered releases under this rule only where they are found to pose a threat to human health or the environment.

4. Other Releases

One commenter was concerned that releases from non-receiving units at RCRA Subtitle C land disposal facilities could result in unacceptability of the entire facility. Specifically, the commenter stated that § 300.440(b)(2)(B) could preclude the use of an incinerator at a land disposal facility where a non-receiving unit has a release. The commenter agreed with prohibiting the use of a land disposal unit in a land disposal facility with a leaking non-receiving unit, because there are likely to be similar problems with other units. The commenter argued that these problems have no relation to incinerators.

The legislative history (see, e.g., 53 FR 48219–48220), shows that Congress was very concerned about releases to the land. That concern was reflected in the statute by providing special statutory requirements for the transfer of any hazardous substance or pollutant or contaminant from a CERCLA site to a land disposal facility. By providing that EPA may not use land disposal facilities with uncontrolled releases at non-receiving units, the statute suggests that EPA should not, through CERCLA cleanups, do business with facilities that have leaking land disposal units. Sending CERCLA wastes to facilities at which relevant releases have been controlled avoids adding to environmental problems, and furthers the Congressional policy to reward only the best facilities with CERCLA contracts.

The fact that the receiving unit may be an incinerator does not change this analysis. The environmental damage from leaking units is still present. Further, unlike receiving units at a land disposal facility which must eliminate all releases, non-receiving units need only "control" their releases in order to be acceptable, a reasonable step to require before deeming the facility acceptable to receive the government's CERCLA waste. Finally, as RCRA regulations make clear, the presence of a single land disposal unit makes a facility a land disposal facility (see proposed rule, 53 FR 48225); therefore, where an incinerator is part of a facility with land disposal units, the final rule still requires compliance with the release requirements for land disposal facilities in order for the incinerator to be acceptable to receive CERCLA wastes.

E. Notification of Acceptability

1. Management Options for Loss of Acceptability

Two commenters asked EPA to discuss the ramifications on a cleanup contract if the disposal facility becomes unacceptable during a remedial action. They also asked that claims from a contractor be made an eligible cost of the action.

Loss of acceptability during a response action constitutes an implementation problem that will be handled on a case-by-case basis through the contracting process with the individual facility. EPA does not believe that this needs to be addressed in the rule. There are, however, several points to note.

[9] One commenter misread language in the preamble to the proposed rule (53 FR at 48224) as saying that *de minimis* releases are "any releases that do not adversely effect public health or the environment" rather than merely minimal releases—with no adverse effect—like those set out in the examples in the preamble. To the extent the prior language was confusing, it is clarified by the discussion in this preamble statement.

In most cases, there will be a 60-day review period before the initial notice of unacceptability takes effect. The facility may use this time to take steps to return to acceptability, and thereby avoid disruption of the remedial action. This 60-day time period was also provided to afford the lead agency the opportunity to arrange for alternative disposal capacity (if the remedy will not be completed within the 60 days, or the facility is not expected to return to compliance in 60 days) (53 FR 48227). Second, the issue of who should bear added costs stemming from a facility's loss of acceptability must be a matter of contract negotiation between the parties. Finally, the Regional Administrator does have the discretion to extend the 60-day period if all factors, such as a lack of available alternative disposal capacity and a low threat to human health and the environment, so warrant.

2. Potential Unacceptability

One commenter asked for clarification in both the preamble and the rule on the relationship between the initial notice of potential unacceptability and the ability of a facility to continue to receive CERCLA wastes for 60 days after the notice of unacceptability (§ 300.440(d)(3)). In addition, the commenter believed that a determination of unacceptability should be published in the **Federal Register**.

The receipt of an initial notice of potential unacceptability does *not* usually render a facility unacceptable unless or until the final determination has been made and takes effect (usually 60 days after the initial notice, or after an alternative time period as provided under § 300.440 (d)(8) or (d)(9)) (53 FR 48227). As discussed earlier, a facility for which EPA has never made a determination of unacceptability will not be afforded a 60 day period of acceptability after the initial notice. Note that in exceptional cases, unacceptability notices can be made immediately effective. See 53 FR 48227–48228. EPA will not publish unacceptability notices in the Federal Register; because of the ability of a facility to take steps to return to compliance at any time, acceptability status is dynamic, and many such notices will be out of date before they get published. In addition, such a publication requirement would obligate EPA to publish in the **Federal Register** notices of when facilities returned to compliance; the effort involved would be significant (with little assurance of being timely), and could detract from more important Agency business. Rather, EPA maintains an up-to-date record of the acceptability status of commercial facilities in each Region. This information is available to parties directly involved in locating sites for disposal, and to the interested public, from the "Regional Off-Site Contact" in each Regional Office. A list of these coordinators and their telephone numbers is included as Appendix I to this preamble, and updated lists will be available from the Superfund Hotline and Superfund docket.

F. Review Procedures

1. Agency Response Time

Two commenters asked EPA to identify a specific time frame for Agency review of a facility's return to acceptability status, and a specified response time for review of unacceptability determinations by the Regional Administrator (the commenter suggested that the appeal to the RA should be completed within the 60-day review period).

EPA does not believe it is feasible or appropriate to establish a specific time frame within which it must respond to a facility's request to return it to acceptability (whether that request comes within the 60 day review period or after a final determination of unacceptability has been issued). Although the Agency is committed to making every effort to respond to such requests as quickly as the case allows, the Agency cannot allow its priorities to be driven by artificial deadlines. Further, if the Agency were not able to verify a facility's alleged return to compliance by a required date, and in fact the company had not returned to compliance, CERCLA wastes would be transferred to unacceptable facilities, in violation of CERCLA section 121(d)(3). Companies that are unacceptable must bear some responsibility for their status; EPA will attempt to evaluate a return to acceptability as promptly as practicable.

As to the comment that the appeal to the Regional Administrator should always conclude within the 60-day review period, EPA notes that the statute establishes a critical mandate: the Agency shall not send CERCLA wastes to unacceptable facilities. The Agency has already provided a reasonable period for review and comment after an initial finding of violation, during which time the facility will have an opportunity to meet with Regional officials. As an added protection, EPA has provided a right to appeal the staff-level decision to the Regional Administrator, who will issue a decision as soon as possible. However, EPA cannot allow this process to routinely continue indefinitely, and it cannot violate Congress' clear direction not to send CERCLA wastes to facilities with relevant violations or releases. For the reasons set out at 53 FR 48227, the Agency believes that a 60-day review period is a reasonable compromise among competing interests. Of course, the Regional Administrator has the discretion to extend the 60-day period, if appropriate, depending on the factors in the case. In deciding whether to extend the 60-day period, the Regional Administrator should, for example, consider the need to proceed with the cleanup expeditiously and the nature of the violations or releases found at the facility (i.e., the potential danger in continuing to send wastes to the site), against the adequacy of the record developed at the staff level and the due process concerns of the facility.

2. Notification of Immediate Unacceptability

In the proposed rule, EPA stated that "in case of either an extension or immediate unacceptability, the facility should be notified as quickly as possible" (53 FR 48228). One commenter asked that in cases where immediate unacceptability is triggered, the owner/operator be notified within 24 hours.

The Agency will make every effort to notify a facility as soon as possible after a finding of immediate unacceptability. In many cases, this may be within a 24-hour period. The Agency notes as well that in serious safety or emergency situations, it may be appropriate to make a finding of unacceptability effective in less than 60 days, although immediate unacceptability is not required. The rule has been changed to reflect this fact.

3. Potentially Responsible Parties

One commenter asked EPA to ascertain whether a determination of unacceptability might have an impact on removal or remedial actions being conducted by potentially responsible parties (PRPs). The commenter maintained that a representative of the PRPs should be allowed to attend any conference held on the determination of unacceptability.

A determination of unacceptability may have an impact on PRP actions if those actions are being conducted pursuant to a CERCLA authority or using CERCLA funds (e.g., a mixed funding case); in such a case, off-site transfers of CERCLA wastes would be required to comply with this rule.

EPA does not believe that it is necessary to invite PRPs to participate in its deliberation on acceptability determinations (although EPA may do so in appropriate cases). The effect of

acceptability determinations on PRPs involved in CERCLA actions is limited to determining where they can transport their waste. The parties most knowledgeable about the facility's status—the owner/operator, EPA and the State—already participate. The possible need for some PRPs to make alternative arrangements for transport of a CERCLA waste is not a direct element of an acceptability determination.

G. Due Process Issues

1. Potential Loss of Business

One commenter asserted that the Off-site Rule may infringe on the constitutionally protected interests of private parties; specifically, the commenter argued that the "opportunity" to compete for business is denied whenever EPA determines that a facility is unacceptable. Such decisions have a negative impact on a company's reputation, further subjecting them to a potential loss of business, and therefore, these decisions must be made within the confines of the due process clause.

As noted in the preamble to the proposed rule (53 FR 48226), EPA agrees that facilities with valid RCRA permits are authorized to receive certain types of wastes and have the opportunity to compete for those wastes, but it does not create the right to receive any particular waste shipments, from the government or any other party. EPA is, at the same time, sensitive to the company's concerns that EPA's process for deciding which facilities to use must be a fair one. Thus, Congress has established the parameters for that decision-making process (i.e., no shipments to violating or leaking facilities), and has required a minimal procedural process. In implementing the Congressionally mandated scheme, this rule sets out a 60-day period for a meeting with Regional and State officials, an opportunity for comment, a decision by the appropriate Regional Waste Management Division, and then the opportunity for appeal to the Regional Administrator. The final rule makes review by the EPA Regional Administrator available to the State and the receiving facility owner/operator, as compared to a discretionary matter left up to the Regional Administrator.

EPA has made every effort to establish procedural protection for affected facilities that will ensure that off-site acceptability determinations are made in a careful and consistent manner. The Agency believes adequate due process protection has been provided. With regard to the comment of a negative impact from the off-site determination, EPA addressed this issue in the proposed rule (53 FR 48226–48227). An EPA decision not to use a facility is simply a response to, and recognition of the finding of a violation or release. The facility must accept some responsibility for its actions (or inactions) and negative impacts which may result.

2. Payment of Penalties

A commenter charged that off-site determinations are a means of forcing the payment of penalties and of forcing an owner/operator to forego the right to appeal corrective action orders or permit provisions; the commenter argued that payment of a penalty should be irrelevant to whether the facility has corrected the violation. Further, the commenter asked that the burden in § 300.440(e) for establishing acceptability during challenges to corrective action decisions, should be reversed to provide that a facility is acceptable during the period of an appeal, unless EPA (rather than the facility) can demonstrate that interim measures are inadequate and that other corrective action measures are necessary to protect human health and the environment.

As stated earlier in this preamble (section IV.C.4), the question of whether or not a facility has returned to physical compliance with applicable laws is generally separate and distinct from the question of whether penalties may be appropriate for past violations; a company's right to appeal any penalties associated with underlying violations is unaffected in most cases. However, EPA has identified one major exception to this rule. Where a violation cannot physically be "undone" (or the Agency has determined that it is safer to leave waste in place), one can argue that the receiving unit is "tainted," and that the violation is a continuing one. In order to avoid such a harsh result, EPA has provided that in such cases, the facility may be said to have returned to physical compliance after any required steps have been taken to prevent recurrence of the violation, and any outstanding penalties to EPA have been paid (see 53 FR 48229). EPA needs assurance that there will be no repetition of the violation, and the payment of a penalty helps provide that needed assurance. In effect, it is the preventive measure plus the penalty that "corrects" the violation in these cases. Thus, the Off-site Rule is not "forcing" the payment of penalties; in most cases, such payment is not required to achieve acceptability. Where physical compliance is not technically achievable, or would be extremely difficult to achieve (e.g., excavating entire landfills or draining entire surface impoundments at great risk to workers or the environment), the Agency has provided another avenue for correcting violations.

Similarly, EPA is not "forcing an owner/operator to forego the right to an appeal." Congress has directed EPA to clean up Superfund sites expeditiously, and at the same time not to send CERCLA wastes to sites that are in violation of applicable laws or that have uncontrolled relevant releases. Thus, the Agency must make these latter determinations promptly, while allowing the owner/operator a reasonable right to review. EPA believes that the 60-day review period with access to two levels of decisionmakers, as provided under this rule, represents such a balance. However, withholding decisions during months and years of administrative and judicial challenge would not allow the Agency to comply with its statutory mandate, and would encourage dilatory appeals. (See discussion at 53 FR 48228.)

On the appeal issue specifically, EPA has gone even further, providing an additional mechanism for an owner/operator to be considered acceptable during interruptions in corrective action to control releases due to the need to pursue permit modifications. Although the statute conditions acceptability on the "control" of releases, and no corrective action will be on-going under the permit or order during corrective action appeals or permit modifications, EPA will consider the facility acceptable if the Agency is satisfied that sufficient interim corrective action steps are underway, or if it is convinced that no corrective action is needed during the interim period. Thus, a facility wishing to remain acceptable and wishing to appeal may do both. Contrary to a commenter's suggestion, this burden is properly on the owner/operator, if it wishes to remain acceptable during the period of its permit modification appeal. After a certain point, the Agency must be able to get on with its business of cleaning up sites.

3. Review of Determination Decisions

One commenter argued that the procedures set out in the proposed rule for review of off-site unacceptability determinations (53 FR 48227) would not promote consistency in decisionmaking, which a district court found to be a serious flaw in the original Off-site Policy. The commenter requests the right to an expeditious review by an impartial decisionmaker (someone other than the person who originally made the decision), and a right to review of EPA Regional decisions by EPA Headquarters (preferably the General Counsel).

EPA believes that it has established a system of review which will promote consistency in decisionmaking. The procedures to be applied are clearly set out, and will be overseen by coordinators in the ten EPA Regions. The Agency intends to provide training and guidance to these coordinators in order to assure consistent applications. The consistency problem identified by the district court and cited by a commenter, stemmed from implementation of the May 1985 Off-site Policy, which was dramatically more limited in scope and procedures than this final rule. Procedures for notice and opportunity to comment by affected facilities were added by the revised Off-site Policy in November 1987, and those procedures are being expanded by this rule. Moreover, the fact that such procedures will now be legally enforceable regulations—as compared to policy guidance—adds to the certainty that the procedures will be consistently followed.

The request for expeditious review by an impartial decisionmaker, other than the person who originally made the decision, is satisfied by the provision in the final rule for appeal to the Regional Administrator. The Regional Administrator is not involved in the day-to-day compliance and release findings of the Regional Waste Management Divisions, and does not make the initial acceptability determination based on the meetings with the owner/operator within 30 days of the notice letter. Rather, the Regional Administrator supervises all operations of the Region, and is available to hear appeals from those decisions, if requested.

It has been EPA's experience under the revised Off-site Policy that Regional Administrators do not rubber-stamp staff recommendations on off-site acceptability, and have overruled or remanded such recommendations in appropriate cases. The courts have further stated that Agency decisionmakers are presumed to be unbiased. *See Withrow* v. *Larkin*, 421 U.S. 35, 47 (1975).

4. Review Procedures

One commenter argued that the informal conference and written comment procedure (described at 53 FR 48227) is not sufficient for review, and suggested using the procedures proposed in 40 CFR 32.312 (d) and (e) (52 FR 39202, Oct. 20, 1987). This refers to proposed regulations for Debarment and Suspension under EPA Assistance, Loan, and Benefit Programs, which provide for an informal hearing without formal rules of evidence or procedure; opportunity to appear with counsel, submit documentary evidence, and present and confront witnesses; and a transcript of the proceedings to be made available to the respondent.

The more complex debarment procedures are not appropriate for the Off-site Rule. The review procedures set out by EPA under the Off-site Rule already provide for an informal hearing, opportunity to appear with counsel, and submission of documentary evidence. EPA does not believe it is appropriate or necessary to call and confront witnesses in order to determine if the facility's operations reveal relevant violations or releases. Moreover, a key distinction between the two sets of rules is that acceptability is within the control of the owner/operator; unlike a disbarment for a set period of up to three years, unacceptability status may be terminated once the facility returns to physical compliance or controls relevant releases.

The informal procedures set out in the Off-site Rule are also consistent with the purpose and terms of the statute. CERCLA requires swift action in these cases; the use of procedures provided in this rule allow relatively quick action, while providing due process. Further, the procedures go well beyond those required in the statute (simple "notification") *and* those suggested in the Conference report on SARA ("an opportunity to meet informally," and "post-determination dispute resolution procedures" for release determinations). (See 53 FR 48227.)

EPA notes that only one commenter suggested that the rule's review procedures were inadequate.

5. Notification of Decisions

The proposal, at 53 FR 48227, provides that the Agency will inform the owner/operator "in writing" of its decision after the informal conference and review of comments. EPA thus agrees with the comment that the basis for all decisions should be clearly articulated in writing. EPA also agrees that owner/operators should receive responses to their major comments on the acceptability decision. Regions will specify in notices of unacceptability why a facility or unit has been found unacceptable, and in post-conference decisions why a final unacceptability determination has been made. Such steps will also facilitate the review by the Regional Administrator, who may limit review to the underlying record.

H. Re-Evaluation of Unacceptability

1. Thresholds/Enforceable Agreements

One commenter asked for a clarification on the threshold that will render a facility inappropriate for accepting waste.

The criteria for determining when a facility crosses the threshold into unacceptability are described in § 300.440(b). In short, for a facility to be acceptable to receive CERCLA wastes, it must have no relevant violations under applicable law, and it must control all relevant releases (and, for certain categories of facilities, eliminate all relevant releases at the receiving units). EPA will determine whether these criteria have been met based on regular inspections.

The commenter also objected to the requirement that a Federal facility must control relevant releases under an "enforceable agreement" in order to be acceptable to receive CERCLA wastes (53 FR 48229). The commenter noted that there may be fully-permitted units at Federal installations that could safely accept CERCLA wastes; however, these units will be unavailable because of the presence of releases elsewhere on the installation that are part of a facility-wide investigation, but not under an enforceable agreement. Thus, agencies would be forced to use facilities off the Federal property for receipt of CERCLA waste, adding to costs and delay.

Congress clearly stated that CERCLA wastes should *not* be transferred to leaking units at land disposal facilities or to land disposal facilities with leaking non-receiving units that are not being "controlled." EPA maintains that an enforceable agreement is necessary to ensure that such releases are controlled, and to ensure the continued implementation of a corrective action program approved by EPA or, when appropriate, the State. EPA sees no reason why Federal facilities should be treated differently from private parties (see CERCLA section 120(a)). Although it might be easier for some Federal facilities to use active RCRA units on their property to receive CERCLA wastes, they may only do so if those units meet the conditions set forth in this rule. The requirement to have relevant releases at non-receiving units controlled by an enforceable agreement may be satisfied through a permit (e.g., the corrective action portion of the RCRA permit), or consent agreement (e.g., an interagency agreement under CERCLA section 120), both of which are available to Federal facilities.

2. Corrective Action/Controlled Releases

One commenter agreed that a facility with a corrective action program in place should be considered acceptable, and supported the broader definition of what constitutes a corrective action program (proposed § 300.440(f)(3)(iii)), including the use of equivalent State authorities.

The final rule continues to provide that corrective action programs must be performed under a RCRA order or permit, or under another appropriate authority if the release is at an other-than-RCRA subtitle C facility. EPA cautions, however, that provisions in State orders or permits issued by States not authorized for HSWA corrective action are generally not acceptable to satisfy this requirement at RCRA facilities. (See 53 FR 48229.) The major exception to this is when States authorized for the base RCRA program have issued a valid permit requiring corrective action for releases from regulated units to the ground water (pursuant to 40 CFR 264.100).

One commenter objected to considering a release at a non-receiving unit to be "controlled" based simply on the issuance of an order or permit; the commenter claimed that in such cases, an owner/operator would not be required to show that the release is actually under control, as called for in the statute.

For purposes of this rule, EPA is considering releases from non-receiving units "controlled" when an enforceable order or permit to study the problem has been issued. The Agency believes that once a facility is under such an enforceable order or permit or agreement, the situation is "under control." (If action is necessary to protect human health and the environment during the term of the study, interim measures may be required.) The situation will be considered under control unless or until the order, permit, or agreement is violated or the document needs to be modified to proceed to the next phase of action. Provided the owner/operator is taking positive action and remains in compliance with the terms specified in an order or permit, the facility may remain acceptable.

In addition, investigations can often take a long time to complete, and most waste treatment, storage and disposal facilities have at least minor releases from non-receiving units; thus, requiring facilities to complete corrective measures before being considered acceptable could severely limit acceptable off-site management options, effectively reducing the available capacity to nothing.

Requiring the owner/operator to physically eliminate the release at non-receiving units in order to be acceptable would also go beyond the strict terms of the rule to "control" releases. Further, it would be a particularly harsh result given the statute's requirement to control "any" release at a land disposal facility. By encouraging facilities to begin studying and eliminating releases, this rule furthers the control of leaking units. Further, by requiring such work to be conducted under an enforceable order or corrective action permit, EPA has the ability to ensure that the required steps are carried out expeditiously.

3. Releases and Regaining Eligibility

One commenter challenged as too inflexible the provision in the proposed rule (53 FR 48229) that requires the elimination of all releases from a receiving unit in order to regain acceptability. The commenter argued that requiring elimination to the extent technically feasible and to a level which poses no threat to human health and the environment, would be more realistic.

In response, *de minimis* releases from receiving units are already exempted from the rule. EPA believes that any further relaxation of the no-release standard for receiving units at RCRA facilities is against the intent of the statute which states that waste may only be transferred to a land disposal unit that "is not releasing *any* hazardous waste, or constituent thereof, into the groundwater or surface water or soil." Congress simply does not want CERCLA wastes sent to leaking RCRA land disposal units. See 53 FR 48219. EPA believes that the same standard should apply to receiving units at RCRA treatment and storage facilities. See 53 FR 48225.

4. Regaining Physical Compliance at Treatment and Storage Facilities

In the preamble to the proposed rule, at 53 FR 48229, EPA discussed how a facility could return to compliance after the facility had been found to be unacceptable based on a relevant violation. One commenter supported two of the three conditions under which a unit will be considered to have regained physical compliance, but disagreed with the contention that, "in most cases, physical compliance cannot be regained until all legal proceedings, (etc.) are resolved." The commenter charged that final resolution of disputes regarding what legal consequences should flow from a violation are irrelevant to the question of whether a unit can safely handle hazardous waste.

This issue has already been largely addressed in this preamble statement at section IV.C.4 ("Relevant Violations") and section IV.G.2 ("Payment of Penalties"). Final resolution of legal proceedings (including payment of penalties) is not a pre-condition to regaining acceptability where the facility can, in effect, undo the violation (e.g., remove improperly disposed waste) and thereby return to physical compliance. However, resolution of penalties and of EPA legal proceedings are generally pre-conditions to regaining acceptability in those cases where a violation cannot be undone. (See examples in the discussion of Relevant Violations, C.4.) In those cases, (especially where a decision has been made to leave wastes in place in a land disposal unit), the Agency is allowing a physical compliance determination to be made despite what some might see as a forever-ongoing violation. For such cases, the Agency has a need for greater certainty that every action has been taken that can be taken to assure that the violation will not recur. In effect, it is the taking of required preventative measures and the payment of the penalty that "corrects" the violation in these cases.

I. Implementation

Three commenters suggested that in order to facilitate implementation of this rule, EPA should establish a national data base or other mechanism so that off-site contacts and their staff can easily tell which facilities, nationwide, are in compliance with the Off-Site Rule. With such a listing system, EPA and other Agencies could readily know or access a list of approved off-site disposal facilities. One of these commenters also asked EPA to develop a more formalized list which reports which facilities have significant violations under applicable Federal and State laws or regulations.

It has been EPA's experience that off-site acceptability status changes frequently and is difficult to usefully reduce to a published list. Thus, the Agency believes that the only way to ensure up-to-date, accurate information is to continue to rely on the ten Regional Off-Site Contacts (ROCs). The Agency does not believe that it is an unreasonable burden to require interested parties to make one to several phone calls to determine the acceptability status of facilities near a given site or with specialized capacity. The Regional Off-Site Contacts will maintain up-to-date information on the

acceptability of facilities within their Region.

However, in order to ensure that the information is readily available, EPA will strongly encourage the maintenance of a back-up contact for use when the primary Off-Site Contact is unavailable. EPA will keep a copy of the ROCs in the Superfund docket and with the RCRA/CERCLA Hotline (a list is also included as Appendix I to this preamble, although it will obviously become outdated in the future, and interested parties should consult with the sources named for revised lists).

Due to the dynamic nature of the acceptability determinations, EPA has no plans at this time to publish a national list of acceptable (or unacceptable) units. The Agency believes that such lists could serve more as a source of misinformation (or out-of-date information) than reliable information. EPA's recognition of the dynamic nature of acceptability is reflected in the Agency's policy that an off-site facility does not need to be acceptable to bid on accepting waste from a CERCLA clean-up, but must be acceptable under this rule to be awarded such a contract.

In order to avoid problems resulting from contractors whose designated receiving facilities become unacceptable under this rule, agencies and PRPs may want to provide for back-up or alternative facilities in their contracts.

J. Manifest Requirements

One commenter objected to the statement in the preamble to the proposed rule (53 FR 48230) that limits the requirement to file a "Uniform Hazardous Waste Manifest" form to CERCLA wastes that are also RCRA wastes; the commenter asked that the requirement cover all types of wastes.

The preamble simply noted that already existing manifest requirements under RCRA must be met. There is no manifest requirement under CERCLA, and this rule does not establish an independent tracking system for CERCLA wastes. Compliance with the rule is assured through inspections, and enforcement of contract provisions.

V. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus whether the Agency must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's rule is not major because it simply codifies an Agency policy that has been in effect since May of 1985 and largely mirrors a revision of that policy that has been in effect since November of 1987. As discussed in the preamble to the proposed rule (53 FR 48230–48231), this rule contains criteria that EPA will use to determine where it will send waste from Superfund cleanups, but does not regulate or otherwise impose any new requirements on commercial waste handlers. Acceptability under this rule is largely based on compliance with applicable regulations the Agency already enforces. As a result of today's rule some facilities may choose to initiate corrective action sooner than if they waited for the corrective action conditions in their final operating permit pursuant to RCRA 3004 (u) and (v). However, regardless of the requirements of this rule, under the authority of section 3008(h) of RCRA, EPA already compels corrective action at RCRA interim status facilities with known or suspected releases. The rule, then, should not result in increased long-term costs to the commercial waste handling industry.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, at the time an Agency publishes any proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Today's final rule describes procedures for determining the acceptability of a facility for off-site management of CERCLA wastes. It does not impose significant additional requirements or compliance burdens on the regulated community. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

VI. Supplementary Document

APPENDIX I.—REGIONAL OFF-SITE CONTACTS (ROCs)

Region	Primary contact/phone	Backup contact/phone
I	Lynn Hanifan, (617) 573–9662.	Austine Frawley, (617) 573–1754.
II	Greg Zaccardi, (212) 264–9504.	Joel Golumbek, (212) 264–2638.
III	Sarah Caspar, (215) 597–1857.	Naomi Henry, (215) 597–8338.
IV	Edmund Burks, (404) 347–7603.	John Dickinson, (404) 347–7603.
V	Gertrud Matuschkovitz, (312) 353–7921.	Uylaine McMahon, (312) 886–4445.
VI	Ron Shannon, (214) 655–2282.	Joe Dougherty, (214) 655–2281.
VII	Gerald McKinney, (913) 551–7816.	David Doyle, (913) 551–7667.
VIII	Terry Brown, (303) 293–1823.	George Dancik, (303) 293–1506.
IX	Diane Bodine, (415) 744–2130.	Gloria Brownley, (415) 744–2114.
X	Ron Lillich, (206) 553–6646.	Kevin Schanilec, (206) 553–1061.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substance, Hazardous waste, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 14, 1993.

Carol M. Browner,

Administrator.

40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES CONTINGENCY PLAN

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

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Section 300.440 is added to part 300 to read as follows:

§ 300.440 Procedures for planning and implementing off-site response actions.

(a) *Applicability.* (1) This section applies to any remedial or removal action involving the off-site transfer of any hazardous substance, pollutant, or

contaminant as defined under CERCLA sections 101 (14) and (33) ("CERCLA waste") that is conducted by EPA, States, private parties, or other Federal agencies, that is Fund-financed and/or is taken pursuant to any CERCLA authority, including cleanups at Federal facilities under section 120 of CERCLA, and cleanups under section 311 of the Clean Water Act (except for cleanup of petroleum exempt under CERCLA). Applicability extends to those actions taken jointly under CERCLA and another authority.

(2) In cases of emergency removal actions under CERCLA, emergency actions taken during remedial actions, or response actions under section 311 of the Clean Water Act where the release poses an immediate and significant threat to human health and the environment, the On-Scene Coordinator (OSC) may determine that it is necessary to transfer CERCLA waste off-site without following the requirements of this section.

(3) This section applies to CERCLA wastes from cleanup actions based on CERCLA decision documents signed or consent decrees lodged after October 17, 1986 ("post-SARA CERCLA wastes") as well as those based on CERCLA decision documents signed and consent decrees lodged prior to October 17, 1986 ("pre-SARA CERCLA wastes"). Pre-SARA and post-SARA CERCLA wastes are subject to the same acceptability criteria in § 300.440(b) (1) and (2).

(4) EPA (usually the EPA Regional Office) will determine the acceptability under this section of any facility selected for the treatment, storage, or disposal of CERCLA waste. EPA will determine if there are relevant releases or relevant violations at a facility prior to the facility's initial receipt of CERCLA waste. A facility which has previously been evaluated and found acceptable under this rule (or the preceding policy) is acceptable until the EPA Regional Office notifies the facility otherwise pursuant to § 300.440(d).

(5) Off-site transfers of those laboratory samples and treatability study CERCLA wastes from CERCLA sites set out in paragraphs (a)(5) (i) through (iii) of this section, are not subject to the requirements of this section. However, those CERCLA wastes may not be transferred back to the CERCLA site unless the Remedial Project Manager or OSC assures the proper management of the CERCLA waste samples or residues and gives permission to the laboratory or treatment facility for the samples and/or residues to be returned to the site.

(i) Samples of CERCLA wastes sent to a laboratory for characterization;

(ii) RCRA hazardous wastes that are being transferred from a CERCLA site for treatability studies and that meet the requirements for an exemption for RCRA under 40 CFR 261.4(e); and

(iii) Non-RCRA wastes that are being transferred from a CERCLA site for treatability studies and that are below the quantity threshold established at 40 CFR 261.4(e)(2).

(b) *Acceptability criteria.* (1) *Facility compliance.* (i) A facility will be deemed in compliance for the purpose of this rule if there are no relevant violations at or affecting the unit or units receiving CERCLA waste:

(A) For treatment to standards specified in 40 CFR part 268, subpart D, including any pre-treatment or storage units used prior to treatment;

(B) For treatment to substantially reduce its mobility, toxicity or persistence in the absence of a defined treatment standard, including any pre-treatment or storage units used prior to treatment; or

(C) For storage or ultimate disposal of CERCLA waste not treated to the previous criteria at the same facility.

(ii) Relevant violations include significant deviations from regulations, compliance order provisions, or permit conditions designed to: ensure that CERCLA waste is destined for and delivered to authorized facilities; prevent releases of hazardous waste, hazardous constituents, or hazardous substances to the environment; ensure early detection of such releases; or compel corrective action for releases. Criminal violations which result in indictment are also relevant violations. In addition, violations of the following requirements may be considered relevant:

(A) Applicable subsections of sections 3004 and 3005 of RCRA or, where applicable, other Federal laws (such as the Toxic Substances Control Act and subtitle D of RCRA);

(B) Applicable sections of State environmental laws; and

(C) In addition, land disposal units at RCRA subtitle C facilities receiving RCRA hazardous waste from response actions authorized or funded under CERCLA must be in compliance with RCRA section 3004(o) minimum technology requirements. Exceptions may be made only if the unit has been granted a waiver from these requirements under 40 CFR 264.301.

(2) *Releases.* (i) Release is defined in § 300.5 of this part. Releases under this section do not include:

(A) *De minimis* releases;

(B) Releases permitted under Federal programs or under Federal programs delegated to the States (Federally permitted releases are defined in § 300.5), except to the extent that such releases are found to pose a threat to human health and the environment; or

(C) Releases to the air that do not exceed standards promulgated pursuant to RCRA section 3004(n), or absent such standards, or where such standards do not apply, releases to the air that do not present a threat to human health or the environment.

(ii) Releases from units at a facility designated for off-site transfer of CERCLA waste must be addressed as follows:

(A) *Receiving units at RCRA subtitle C facilities.* CERCLA wastes may be transferred to an off-site unit regulated under subtitle C of RCRA, including a facility regulated under the permit-by-rule provisions of 40 CFR 270.60 (a), (b) or (c), only if that unit is not releasing any hazardous waste, hazardous constituent, or hazardous substance into the ground water, surface water, soil or air.

(B) *Other units at RCRA subtitle C land disposal facilities.* CERCLA wastes may not be transferred to any unit at a RCRA subtitle C land disposal facility where a non-receiving unit is releasing any hazardous waste, hazardous constituent, or hazardous substance into the ground water, surface water, soil, or air, unless that release is controlled by an enforceable agreement for corrective action under subtitle C of RCRA or other applicable Federal or State authority. For purposes of this section, a RCRA "land disposal facility" is any RCRA facility at which a land disposal unit is located, regardless of whether a land disposal unit is the receiving unit.

(C) *Other units at RCRA subtitle C treatment, storage, and permit-by-rule facilities.* CERCLA wastes may not be transferred to any unit at a RCRA subtitle C treatment, storage or permit-by-rule facility, where a release of any hazardous waste, hazardous constituent, or hazardous substance from non-receiving units poses a significant threat to public health or the environment, unless that release is controlled by an enforceable agreement for corrective action under subtitle C of RCRA or other applicable Federal or State authority.

(D) *All other facilities.* CERCLA wastes should not be transferred to any unit at an other-than-RCRA subtitle C facility if the EPA Regional Office has information indicating that an environmentally significant release of hazardous substances has occurred at that facility, unless the release is controlled by an enforceable agreement for corrective action under an applicable Federal or State authority.

(iii) Releases are considered to be "controlled" for the purpose of this section as provided in § 300.440 (f)(3)(iv) and (f)(3)(v). A release is not considered "controlled" for the purpose of this section during the pendency of administrative or judicial challenges to corrective action requirements, unless the facility has made the requisite showing under § 300.440(e).

(c) *Basis for determining acceptability.* (1) If a State finds that a facility within its jurisdiction is operating in non-compliance with state law requirements including the requirements of any Federal program for which the State has been authorized, EPA will determine, after consulting with the State as appropriate, if the violation is relevant under the rule and if so, issue an initial determination of unacceptability.

(2) If a State finds that releases are occurring at a facility regulated under State law or a Federal program for which the State is authorized, EPA will determine, after consulting with the State as appropriate, if the release is relevant under the rule and if so, issue an initial determination of unacceptability.

(3) EPA may also issue initial determinations of unacceptability based on its own findings. EPA can undertake any inspections, data collection and/or assessments necessary. EPA will then notify with the State about the results and issue a determination notice if a relevant violation or release is found.

(d) *Determination of unacceptability.* (1) Upon initial determination by the EPA Regional Office that a facility being considered for the off-site transfer of any CERCLA waste does not meet the criteria for acceptability stated in § 300.440(b), the EPA Region shall notify the owner/operator of such facility, and the responsible agency in the State in which the facility is located, of the unacceptability finding. The notice will be sent by certified and first-class mail, return receipt requested. The certified notice, if not acknowledged by the return receipt card, should be considered to have been received by the addressee if properly sent by regular mail to the last address known to the EPA Regional Office.

(2) The notice shall generally: state that based on available information from a RCRA Facility Assessment (RFA), inspection, or other data sources, the facility has been found not to meet the requirements of § 300.440; cite the specific acts, omissions, or conditions which form the basis of these findings; and inform the owner/operator of the procedural recourse available under this regulation.

(3) A facility which was previously evaluated and found acceptable under this rule (or the preceding policy) may continue to receive CERCLA waste for 60 calendar days after the date of issuance of the notice, unless otherwise determined in accordance with paragraphs (d)(8) or (d)(9) of this section.

(4) If the owner or operator of the facility in question submits a written request for an informal conference with the EPA Regional Office within 10 calendar days from the issuance of the notice, the EPA Regional Office shall provide the opportunity for such conference no later than 30 calendar days after the date of the notice, if possible, to discuss the basis for the underlying violation or release determination, and its relevance to the facility's acceptability to receive CERCLA cleanup wastes. State representatives may attend the informal conference, submit written comments prior to the informal conference, and/or request additional meetings with the EPA Region, relating to the unacceptability issue during the determination process. If no State representative is present, EPA shall notify the State of the outcome of the conference. An owner/operator may submit written comments by the 30th day after issuance of the notice, in addition to or instead of requesting an informal conference.

(5) If the owner or operator neither requests an informal conference nor submits written comments, the facility becomes unacceptable to receive CERCLA waste on the 60th day after the notice is issued (or on such other date designated under paragraph (d)(9) of this section). The facility will remain unacceptable until such time as the EPA Regional Office notifies the owner or operator otherwise.

(6) If an informal conference is held or written comments are received, the EPA Region shall decide whether or not the information provided is sufficient to show that the facility is operating in physical compliance with respect to the relevant violations cited in the initial notice of unacceptability, and that all relevant releases have been eliminated or controlled, as required in paragraph (b)(2) of this section, such that a determination of acceptability would be appropriate. EPA will notify the owner/operator in writing whether or not the information provided is sufficient to support a determination of acceptability. Unless EPA determines that information provided by the owner/operator and the State is sufficient to support a determination of acceptability, the facility becomes unacceptable on the 60th calendar day after issuance of the original notice of unacceptability (or other date established pursuant to paragraphs (d)(8) or (d)(9) of this section).

(7) Within 10 days of hearing from the EPA Regional Office after the informal conference or the submittal of written comments, the owner/operator or the State may request a reconsideration of the unacceptability determination by the EPA Regional Administrator (RA). Reconsideration may be by review of the record, by conference, or by other means deemed appropriate by the Regional Administrator; reconsideration does not automatically stay the determination beyond the 60-day period. The owner/operator will receive notice in writing of the decision of the RA.

(8) The EPA Regional Administrator may decide to extend the 60-day period if more time is required to review a submission. The facility owner/operator shall be notified in writing if the Regional Administrator extends the 60 days.

(9) The EPA Regional Office may decide that a facility's unacceptability is immediately effective (or effective in less than 60 days) in extraordinary situations such as, but not limited to, emergencies at the facility or egregious violations. The EPA Region shall notify the facility owner/operator of the date of unacceptability, and may modify timeframes for comments and other procedures accordingly.

(e) *Unacceptability during administrative and judicial challenges of corrective action decisions.* For a facility with releases that are subject to a corrective action permit, order, or decree, an administrative or judicial challenge to the corrective action (or a challenge to a permit modification calling for additional corrective action) shall not be considered to be part of a corrective action "program" controlling those releases and shall not act to stay a determination of unacceptability under this rule. However, such facility may remain acceptable to receive CERCLA waste during the pendency of the appeal or litigation if:

(1) It satisfies the EPA Regional Office that adequate interim corrective action measures will continue at the facility; or

(2) It demonstrates to the EPA Regional Office the absence of a need to take corrective action during the short-term, interim period.

Either demonstration may be made during the 60-day review period in the context of the informal conference and RA reconsideration.

(f) *Re-evaluating unacceptability.* If, after notification of unacceptability and

the opportunity to confer as described in § 300.440(d), the facility remains unacceptable, the facility can regain acceptability. A facility found to be unacceptable to receive CERCLA wastes based on relevant violations or releases may regain acceptability if the following conditions are met:

(1) *Judgment on the merits.* The facility has prevailed on the merits in an administrative or judicial challenge to the finding of noncompliance or uncontrolled releases upon which the unacceptability determination was based.

(2) *Relevant violations.* The facility has demonstrated to the EPA Region its return to physical compliance for the relevant violations cited in the notice.

(3) *Releases.* The facility has demonstrated to the EPA Region that:

(i) All releases from receiving units at RCRA subtitle C facilities have been eliminated and prior contamination from such releases is controlled by a corrective action program approved under subtitle C of RCRA;

(ii) All releases from other units at RCRA subtitle C land disposal facilities are controlled by a corrective action program approved under subtitle C of RCRA;

(iii) All releases from other units at RCRA subtitle C treatment and storage facilities do not pose a significant threat to human health or the environment, or are controlled by a corrective action program approved under subtitle C of RCRA.

(iv) A RCRA subtitle C corrective action program may be incorporated into a permit, order, or decree, including the following: a corrective action order under RCRA section 3008(h), section 7003 or section 3013, a RCRA permit under 40 CFR 264.100 or 264.101, or a permit under an equivalent authority in a State authorized for corrective action under RCRA section 3004(u). Releases will be deemed controlled upon issuance of the order, permit, or decree which initiates and requires completion of one or more of the following: a RCRA Facility Investigation, a RCRA Corrective Measures Study, and/or Corrective Measures Implementation. The release remains controlled as long as the facility is in compliance with the order, permit, or decree, and enters into subsequent agreements for implementation of additional corrective action measures when necessary, except during periods of administrative or judicial challenges, when the facility must make a demonstration under § 300.440(e) in order to remain acceptable.

(v) Facilities with releases regulated under other applicable Federal laws, or State laws under a Federally-delegated program may regain acceptability under this section if the releases are deemed by the EPA Regional Office not to pose a threat to human health or the environment, or if the facility enters into an enforceable agreement under those laws to conduct corrective action activities to control releases. Releases will be deemed controlled upon the issuance of an order, permit, or decree which initiates and requires one or more of the following: a facility investigation, a corrective action study, and/or corrective measures implementation. The release remains controlled as long as the facility is in compliance with the order, permit, or decree, and enters into subsequent agreements for implementation of additional corrective measures when necessary, except during periods of administrative or judicial challenges, when the facility must make a demonstration under § 300.440(e) in order to remain acceptable.

(4) Prior to the issuance of a determination that a facility has returned to acceptability, the EPA Region shall notify the State in which the facility is located, and provide an opportunity for the State to discuss the facility's acceptability status with EPA.

(5) An unacceptable facility may be reconsidered for acceptability whenever the EPA Regional Office finds that the facility fulfills the criteria stated in § 300.440(b). Upon such a finding, the EPA Regional Office shall notify the facility and the State in writing.

[FR Doc. 93–23069 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 205 and 233

RIN 0970–AB14

Aid to Families With Dependent Children Program; Certain Provisions of the Omnibus Budget Reconciliation Act of 1990

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Interim final rule.

SUMMARY: These interim final rules implement three sections of the Omnibus Budget Reconciliation Act (OBRA) of 1990 that apply to the Aid to Families with Dependent Children (AFDC) program. They are: Section 5053, which deletes all references to income deeming by legal guardians in minor parent cases; section 5054, which expands State agency responsibility for reporting, to an appropriate agency or official, known or suspected instances of child abuse and neglect of a child receiving AFDC; and section 5055, which adds an explicit reference to title IV–E on the list of programs for which information about AFDC applicants and recipients may be made available.

In addition, we deleted the reference to title IV–C since the WIN program is no longer operative. Other OBRA 90 changes pertaining to the AFDC–UP program and the Earned Income Tax Credit disregard were published July 9, 1992, in the final rules implementing the related AFDC amendments of the Family Support Act of 1988 (57 FR 30408–30409).

DATES: Effective Date: September 22, 1993.

Comments: Comments must be received on or before October 22, 1993.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Children and Families, Attention: Mr. Mack A. Storrs, Director, Division of AFDC Program, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments may be inspected between 8 a.m. and 4:30 p.m. during regular business days by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mack A. Storrs, Director, Division of AFDC Program, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9289.

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule Provisions

Eliminating the Use of the Term "Legal Guardian" (Section 233.20 of the Interim Rule)

The Omnibus Budget Reconciliation Act (OBRA) of 1981 added section 402(a)(39) of the Social Security Act to require that, in determining AFDC benefits for a dependent child whose parent or legal guardian is under the age of 18, the State agency must include the income of the minor parent's own parents or legal guardians who are living in the same home.

Section 5053 of Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended section 402(a)(39) of the Social Security Act by eliminating the use of the term "legal guardian." Section 402(a)(39) provides that in determining AFDC benefits for a dependent child whose parent is under the age of 18, the

State agency must include the income of the minor parent's own parents who are living in the same home. We have amended Federal regulations at § 233.20(a)(3)(xviii) to reflect this statutory change.

As stated in the OBRA 90 conference report (H.R. Conf. Rep. No. 964, 101st Cong. 2d Sess. (Oct. 1990) pp. 911–12), Congress recognized that legal guardianship is not relevant to eligibility determination. Even if a legal guardian were appointed, the child would not be eligible for AFDC unless living with a relative as defined in section 406 of the Social Security Act.

Congress also recognized that the use of the term "legal guardian" with respect to the deeming of income is inappropriate in the context of the AFDC statute. Unlike the parent-child relationship, legal guardianship has not been a basis for attributing income to AFDC beneficiaries. An example given in the Conference report illustrates that there is the potential for unequal treatment under the AFDC program when legal guardianship is used as a source of attributed income in three-generation families. If a minor child is living with an aunt who is her legal guardian, the aunt's income is not automatically attributed to the AFDC beneficiary; however, if the minor has a child, the guardian's income is included in the AFDC determination for the minor and her child. (H.R. Conf. Rep. No. 964, 101st Cong. 2d Sess. (Oct. 1990) p. 912). The OBRA 90 amendment resolved these problems.

Reporting of Child Abuse and Neglect (Sections 205.50 and 233.90 of the Interim Rule)

Prior to OBRA 90, section 402(a)(16) of the Social Security Act provided that, if the State Agency has reason to believe that a child and a relative receiving aid are residing in an unsuitable home due to the neglect, abuse, or exploitation of the child, the State must take action. The State is required to report the situation with all the relevant information to the appropriate court or law enforcement agencies in the State. This statutory provision is currently reflected in the Federal regulations at § 233.90(a)(2).

Section 5054 of OBRA 90 amended section 402(a)(16) of the Social Security Act to require that each State agency report, to an appropriate agency or official, known or suspected instances of child abuse and neglect of a child receiving AFDC. A conforming change was made to section 402(a)(9) to allow the release of information to appropriate individuals. The amendment includes as "instances" of abuse and neglect situations where a child experiences physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment under circumstances which indicate that the child's health or welfare is threatened. To implement these statutory changes we have amended § 233.90(a)(2) and revised § 205.50(a)(1) by adding a new paragraph (G).

Disclosure of Information About AFDC Applicants and Recipients for Purposes Directly Connected With Foster Care and Adoption Assistance Programs (Section 205.50 of the Interim Rule)

Prior to the enactment of OBRA 90, the use or disclosure of information concerning AFDC applicants and recipients was restricted by section 402(a)(9) of the Social Security Act. Information on AFDC recipients and applicants could only be used for purposes directly connected with: (1) The administration of the AFDC program or several other specified Social Security Act programs; (2) any investigation, prosecution, or criminal or civil proceeding conducted in connection with such programs; (3) the administration of any other Federal or Federally-assisted program providing assistance or services to individuals on the basis of need; and (4) any audit of such programs (H.R. Conf. Rep. No. 964, 101st Cong. 2d Sess. (Oct. 1990) p. 913).

This section of the Social Security Act did not contain a specific reference to title IV–E, which covers the foster care and adoption assistance programs.

Section 5055 of OBRA 90 amended section 402(a)(9)(A) of the Social Security Act by adding an explicit reference to title IV–E to the list of programs for which information about AFDC applicants and recipients may be made available. We have amended § 205.50(a)(1)(i)(A) to reflect this statutory change. In addition, the reference to title IV–C was deleted from 45 CFR 205.50(a)(1)(A), since the WIN program is no longer operative.

Regulatory Procedures

Justification for Dispensing With Notice of Proposed Rulemaking

The amendments to these regulations are being published in interim final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department has good cause for finding that the Notice of Proposed Rulemaking is unnecessary, impractical or contrary to the public interest, it may dispense with such notice if it incorporates a brief statement in the interim final regulation of the reasons for doing so.

The Department finds that there is good cause to dispense with Notice of Proposed Rulemaking with respect to these changes. We find that publication of these regulations in proposed form would be unnecessary as the regulations are procedural in nature and involve a straightforward implementation of the changes to the statutory provisions which require no exercise of discretion. However, we are interested in comments on these interim rules. We will review any comments that are received within 30 days of the date of publication of this interim final rule and, if appropriate, we will publish final rules with any necessary changes.

Executive Order 12991

These interim final rules have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not: (1) Have an annual effect on the economy of $100 million or more; (2) impose a major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies or geographic regions; or (3) result in significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This rule does not require any information collection activities and therefore no approval is necessary under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant economic impact on a substantial number of small entities because they effect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs,

Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance)

Dated: April 21, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: June 9, 1993

Donna E. Shalala,

Secretary.

PART 205—GENERAL ADMINISTRATION PUBLIC ASSISTANCE PROGRAMS

Accordingly, part 205 of chapter II, title 45, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 205 continues to read as follows:

Authority: 5 U.S.C. 552a note; 42 U.S.C. 602, 603, 606, 607, 611, 1302, 1306(a), and 1320b-7.

2. Section 205.50 is amended by revising paragraph (a)(1)(i)(A) and adding paragraph (a)(1)(i)(G) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *

(1) * * *

(i) * * *

(A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-D, IV-E, or IV-F or under title I, X, XIV, XVI(AABD), XIX, XX, or the Supplemental Security Income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients.

* * * * *

(G) The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

* * * * *

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Accordingly, part 233 of chapter II, title 45, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 233 continues to read as follows:

Authority: 42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note.

2. Section 233.20 is amended by revising paragraph (a)(3)(xviii) to read as follows:

§ 233.20 Need and amount of assistance

(a) * * *

(3) * * *

(xviii) For AFDC, in the case of a dependent child whose parent is a minor under the age of 18 (without regard to school attendance), the State shall count as income to the assistance unit the income, after appropriate disregards, of such minor's own parent(s) living in the same household as the minor and dependent child. The disregards to be applied are the same as are applied to the income of a stepparent pursuant to paragraph (a)(3)(xiv) of this section. However, in applying the disregards, each employed parent will receive the benefit of the work expense disregard in paragraph (a)(3)(xiv)(A) of this section.

* * * * *

3. Section 233.90 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 233.90 Factors specific to AFDC.

(a) * * *

(2) Where it has reason to believe that a child receiving aid is in an unsuitable environment because of known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of such child, under circumstances which indicate the child's health or welfare is threatened, the State or local agency will:

* * * * *

[FR Doc. 93-23117 Filed 9-21-93; 8:45 am]

BILLING CODE 4184-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 22, and 94

[ET Docket No. 92-9; FCC 93-350]

Redevelopment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Second Report and Order (Order) the Commission adopts Rules that reallocate five bands above 3 GHz to the private operational and common carrier fixed microwave services on a co-primary basis and prescribe channelization plans and technical standards to govern their use. These rules ensure that fixed microwave licensees relocating from 1850-1990, 2110-2150, and 2160-2200 MHz frequencies (2 GHz band) will have available alternative frequency bands that are suitable for providing equivalent service with comparable reliability. This action will make possible the relocation of the 2 GHz fixed operations and will ensure that these licensees will not be disadvantaged by the emerging technologies reallocation.

EFFECTIVE DATE: December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653-8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order adopted July 15, 1993, and released August 13, 1993. The Further Notice of Proposed Rule Making initiating this proceeding is summarized at 57 FR 42916 (September 17, 1992). This action will not add to or decrease the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Second Report and Order

1. The Order reallocates five bands (3.7-4.2 GHz (4 GHz), 5.925-6.425 GHz (lower 6 GHz), 6.525-6.875 GHz (upper 6 GHz), 10.565-10.615/10.630-10.680 GHz (10 GHz), and 10.7-11.7 GHz (11 GHz)) to the private operational and common carrier fixed microwave services on a co-primary basis and prescribes channelization plans and technical rules to govern their use. The Order maintains the existing 20 MHz channel plan at 4 GHz and adopts a 1.25 MHz/based plan at 6, 10, and 11 GHz. The Commission concludes that these channeling plans will be equitable to all manufacturers, will efficiently satisfy the spectrum requirements of low capacity 2 GHz licensees while permitting lower-cost equipment to be used, and will reduce the potential for interference to satellite operations at 4 GHz. The Commission also adopts Part 21 coordination procedures and Part 94 interference standards in all bands.

2. *4 GHz.* The 4 GHz band currently is allocated for common carrier fixed and fixed satellite use and is channelized into twelve 20 MHz channel pairs for fixed use. In the

Further Notice, we proposed to amend the allocation to include private fixed use on a co-primary basis; and to overlap the 20 MHz channel pairs with channels ranging from 400 kHz to 10 MHz.

3. We conclude that the existing 20 MHz channel plan should not be modified. While we would have preferred to accommodate both narrowband and wideband channels at 4 GHz, we conclude that under all of the proposed plans there would exist the possibility of interference to the currently-licensed satellite operations. However, we continue to believe it feasible to permit private as well as common carrier microwave use of the band under the existing channel plan. Coordination between satellite and terrestrial users can accommodate additional use by terrestrial users, possibly including paths that would be difficult to accommodate in higher bands. Accordingly, we will authorize use of the 4 GHz band by private fixed microwave licensees in addition to common carrier fixed microwave licensees, but decline to change the channelization of the band.

4. *6 GHz.* In the Further Notice, we proposed to amend the common carrier fixed and fixed satellite allocations in the lower 6 GHz band to include private fixed use on a co-primary basis; and to rechannelize from the current eight 29.65 MHz channel pairs to overlapping twenty-four 400 kHz pairs, twelve 800 kHz pairs, forty-two 1.6 MHz pairs, twenty 3.2 MHz pairs, twelve 5 MHz pairs, twenty-four 10 MHz pairs, and eight 30 MHz pairs. In the upper 6 GHz band, we proposed to amend the private fixed allocation to include common carrier fixed use on a co-primary basis; and to rechannelize from the current five 800 kHz pairs, three 1.6 MHz pairs, fifteen 5 MHz pairs, and sixteen 10 MHz pairs to an overlapping twelve 400 kHz pairs, six 800 kHz pairs, forty-five 1.6 MHz pairs, fifteen 5 MHz pairs, and sixteen 10 MHz pairs.

5. We conclude that 6 GHz will be the primary relocation band for 2 GHz licensees, and therefore efficiently accommodating these licensees in this band is of utmost importance. In order to accomplish this task, there is a need to provide for low, medium, and high capacity requirements; and also to provide spectrum for future growth of systems using each of these capacities. We therefore adopt a 1.25 MHz-based plan, rather that the proposed 1.6 MHz-based plan. This plan permits the accommodation of low capacity 2 GHz licensees in 400 and 800 kHz channels and offers substantial flexibility for systems to grow both through aggregation of like-bandwidth channels and upgraded modem technology. Further, the plan allows lower cost modems to be used for 1.25, 2.5, and 3.75 MHz channels, and permits the accommodation of the nearly 7000 2 GHz facilities licensed for 3.5 MHz in 3.75 MHz channels. Finally, by minimizing the amount of existing equipment rendered obsolete, the plan promotes competition and does not favor any manufacturer.

6. We recognize that existing wideband common carrier licensees of the lower 6 GHz band are apprehensive about new narrowband use of the band. However, the channel plan that we are adopting permits efficient use by both wideband and narrowband users. Further, we are retaining 29.65 MHz channel spacing in this band rather than the proposed 30 MHz spacing. This eliminates the potential for interference to analog systems. Accordingly, we are adopting our proposed 6 GHz reallocation and the 1.25 MHz-based channel plan as discussed above.

7. *10 GHz.* In the Further Notice, we proposed to reallocate this band from private and common carrier point-to-multipoint use (Digital Termination Service (DTS) and Digital Electronic Message Service (DEMS), respectively) to private and common carrier point-to-point fixed use on a co-primary basis; and to channelize the band in accordance with a 1.6 MHz-based plan.

8. With regard to channelizing the 10 GHz band, commenting parties note that current point-to-point use in adjacent spectrum is based upon a 1.25 MHz plan, and introducing a 1.6 MHz-based plan could create confusion and inefficiency, as well as rendering several existing 1.25 MHz-based radios in the 10.550–10.565/10.615–10.630 GHz bands unusable in the 10.565–10.615 and 10.630–10.680 GHz bands. Additionally, while the U.S. is not obligated to follow international band plans, a 1.6 MHz plan is inconsistent with the 10 GHz plan recommended by the Consultative Committee International for Radio. Accordingly, we are adopting our proposed 10 GHz reallocation but will use a 1.25 MHz-based channel plan.

9. *11GHz.* In the Further Notice, we proposed to amend the common carrier fixed allocation in the 11 GHz band to include private fixed use on a co-primary basis; and to rechannelize from twelve 40 MHz pairs to overlapping fifty 10 MHz pairs and sixteen 30 MHz pairs.

10. Commenting parties generally favor permitting a wide range of narrowband and wideband channels at 11 GHz. We concur that such flexibility is desirable. Therefore, we are modifying our proposal to permit a range of channels between 1.25 MHz and 40 MHz in bandwidth. Our goal is to treat narrowband and wideband users equitably. While this means that a flexible channel plan may not be ideal for a specific user, overall the plan is desirable. Accordingly, we are adopting our proposed 11 GHz reallocation proposal and will use a 1.25 MHz-based channel plan.

11. *Technical Issues.* In the Further Notice, we proposed changes to the minimum loading standards and data rates in the 4, 6, 10, and 11 GHz bands for systems using digital modulation. Based on the comments, we believe that many existing 2 GHz licensees may not easily meet the existing and proposed loading standards, and that a transition period is appropriate to permit manufacturers to meet the proposed digital data rates. However, we also want to ensure that channels are used as efficiently as possible in a timely manner. Therefore, we are maintaining our existing voice channel loading requirements and are adopting our proposed digital loading standards for channels of 10 MHz and greater bandwidth, but will liberally waive loading requirements in accommodating displaced 2 GHz licensees in the bands above 3 GHz.

12. We also are adopting our proposed digital data rates except for 30 MHz channels at 6 GHz, in which we will require a more efficient utilization rate. For new equipment to meet the adopted data rates, we are specifying a 3.5 year transition period ending June 1, 1997, and are imposing a deadline of July 15, 1994, to cease the manufacture or import of equipment that does not meet the new data rates. We also are imposing a 2.5 year period for licensees of wideband digital channels (10 MHz and greater) to load their systems to 50% of channel capacity.

13. With regard to expansion of existing microwave systems, we are adopting our proposal to permit expansion of existing systems under current channel plans. While coordination between existing and future microwave systems that use different channel plans will be necessary to ensure that inter-system interference does not result, we do not believe it necessary to disadvantage existing licensees by preventing expansion of their systems. Further, since the rechannelization plans that we are adopting essentially overlay narrowband channels on existing wideband channels, such expansion is generally compatible with use under the revised plans.

14. With regard to coordination procedures and interference standards, we note that the basic differences between common carrier (part 21) and private (part 94) services are that common carriers must notify potentially-affected licensees of their planned use, whereas there is no such requirement in private bands; and that common carrier interference standards are somewhat less stringent than private standards. There is a clear consensus to use common carrier coordination procedures in shared bands, and common carrier and private interference standards are converging. Further, we believe it essential that a recognized organization administer interference standards, and that currently is the case under part 94. Accordingly, we are adopting uniform part 21 coordination procedures and part 94 interference standards for the 4, 6, 10, and 11 GHz bands.

15. The Further Notice proposed antenna standards for the 10 GHz band that reflect the proposed reallocation from point-to-multipoint to point-to-point use, and listed the current standards for the 4, 6, and 11 GHz bands. Commenting parties have raised potentially valid concerns about our existing antenna standards. However, we do not have sufficient information at this time to propose changes to these standards. Accordingly, we are adopting the proposed standards, with some minor modifications, as specified below in the rules, and encourage industry organizations and other interested parties to explore the need for modifying the standards in all of the reallocated bands.

16. The Further Notice stated that automatic transmit power control (ATPC) is permitted under both parts 21 and 94 of our rules provided that the change in effective radiated power (ERP) is no greater than 3 decibels (dB), and proposed to clarify this point. We believe our proposal to clarify that ATPC is permitted up to a 3 dB increase in power is appropriate. However, commenting parties have raised issues that we believe can best be addressed by industry groups such as TIA and NSMA. Accordingly, we are adopting our proposed ATPC rules changes, as specified below in the rules, and encourage industry groups to explore in greater detail under what circumstances ATPC should be authorized and whether a greater increase in power than 3 dB would be appropriate.

17. *Regulatory Flexibility Analysis.* Pursuant to 5 U.S.C. 603, an initial Regulatory Flexibility Analysis was incorporated in the Further Notice of Proposed Rule, *supra*. Written comments on the proposals in the Further Notice, including the Regulatory Flexibility Analysis, were requested.

18. *Need for and Objective of Rules.* Our objective is to reaccommodate current 2 GHz common carrier and private fixed microwave licensees on frequencies above 3 GHz with appropriate channelization plans and technical rules. Reaccommodation of these licensees is necessary to ensure that they can continue to provide equivalent service with comparable reliability.

19. *Issues Raised by the Public in Response to the Initial Analysis.* Many parties suggested modifications to the proposed reallocations, rechannelization plans, and technical rules, although not specifically to the initial regulatory flexibility analysis. We have modified our proposals as appropriate. For example, in the Further Notice we had proposed to use a 1.6 MHz-based channel plan in the 4, 6, and 10 GHz bands, and a 10 MHz-based plan in the 11 GHz band; however, commenting parties have convinced us that the existing 20 MHz channel plan is more appropriate in the 4 GHz band, and that a 1.25 MHz-based plan is more appropriate in the 6, 10, and 11 GHz bands.

20. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent With Stated Objectives.* We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary in order to ensure that the public receives the benefits of continued fixed microwave service in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

21. Accordingly, *It Is Ordered* That parts 2, 21, 22 and 94 of the Commission's rules and Regulations *Are Amended* as specified below, effective 90 days after publication in the **Federal Register**. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r).

List of Subjects

47 CFR Part 2

Frequency allocations and radio treaty matters; general rules and regulations, Radio.

47 CFR Part 21

Radio.

47 CFR Part 22

Radio.

47 CFR Part 94

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

I. Part 2 of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r) and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations is amended to read as follows:

a. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 3700-4200 MHz band.

b. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 5925-6425 MHz band.

c. Add a primary allocation for the Domestic Public Fixed Services in column (6) of the 6525-6875 MHz band.

d. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 10.55-10.60 GHz band.

e. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 10.60-10.68 GHz band.

f. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 10.7-11.7 GHz band.

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
			Government	Non-government		
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Allocation MHz	Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*		*	*	*	*
	3700–4200		3700–4200	3700–4200		
	Fixed.			Fixed.	Domestic Public Fixed (21).	
	Fixed-Satellite (space-to-Earth).			Fixed-Satellite (space-to-Earth).	Satellite Communications (25).	
	Mobile except aeronautical mobile				Private Operational Fixed Microwave (94).	
	787			NG41		
*	*		*	*	*	*
5925–7075			5925–7125	5925–6425		
	Fixed.			Fixed.	Domestic Public Fixed (21)..	
	Fixed Satellite (Earth-to-space).			Fixed-Satellite (Earth-to-space).	Satellite Communications (25)	
	Mobile.				Private Operational-Fixed Microwave (94).	
	791 792A 809		791 809	NG41		
				6425–6525		
				Fixed-Satellite (Earth-to-space)..	Auxiliary Broadcast (74).	
				Mobile	Cable Television (78).	
					Domestic Public Fixed (21).	
					Private Operational Fixed Microwave (94).	
				791 809		
				6525–6875		
				Fixed.	Domestic Public Fixed (21)..	
				Fixed-Satellite (Earth-to-space).	Satellite Communications (25).	
					Private Operational-Fixed. Microwave (94).	
				792A 809		
*	*		*	*	*	*
10.55–10.60			10.55–10.60	10.55–10.60		
	Fixed.			Fixed.	Domestic Public Fixed (21).	
	Mobile except aeronautical mobile.				Private Operational-Fixed Microwave (94).	
	Radiolocation.					
10.60–10.68			10.60–10.68	10.60–10.68		
	Earth Exploration Satellite (passive).		Earth Exploration-Satellite (passive).	Earth Exploration Satellite (passive).	Domestic Public Fixed (21)..	
	Fixed.		Space Research (passive).	Fixed.	Private Operational Fixed Microwave (94).	
	Mobile except aeronautical mobile.			Space Research (passive).		
	Radio Astronomy.					
	Space Research (passive).					
	Radiolocation 831 832					
			US265 US277	US265 US277		
*	*		*	*	*	
10.7–11.7	10.7–11.7		10.7–11.7	10.7–11.7		

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government	Non-government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Fixed Fixed-Satellite (space-to-Earth) (Earth-to-space). Mobile except aeronautical mobile	Fixed Fixed-Satellite (space-to-Earth). Mobile except aeronautical mobile		10.7–11.7	10.7–11.7 Fixed. Fixed Satellite (space-to-Earth).	Domestic Public Fixed (21). Private Operational-Fixed Microwave (94).	
792A 835	792A		US211	792A US211 NG41 NG104.		

* * * * *

II. Part 21 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation in part 21 continues to read:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Section 21.100 is amended by revising paragraph (c) and by adding paragraphs (d)(2)(xi) and (d)(2)(xii) to read as follows:

§ 21.100 Frequencies.

* * * * *

(c) Frequency diversity transmission will not be authorized in these services in the absence of a factual showing that the required communications cannot practically be achieved by other means. Where frequency diversity is deemed to be justified on a protection channel basis, it shall be limited to one protection channel for the bands 3700–4200, 5925–6425, and 6525–6875 MHz, and a ratio of one protection channel for three working channels for the bands 10,550–10,680 and 10,700–11,700 MHz. In the bands 3700–4200, 5925–6425, and 6525–6875 MHz, no frequency diversity protection channel will be authorized unless there is a minimum of three working channels, except that where a substantial showing is made that a total of three working channels will be required within three years, a protection channel may be authorized simultaneously with the first working channel. A protection channel authorized under such exception will be subject to termination if applications for the third working channel are not filed within three years of the grant date of the applications for the first working channel. Where equipment employing digital modulation techniques with cross-polarized operation on the same frequency is used, the protection channel authorized under the above conditions may be considered to consist of both polarizations of the protection frequency where such is shown to be necessary.

(d) * * *

(2) * * *

(xi) Interference protection criteria for fixed stations in the bands 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz are specified in § 94.63.

(xii) Any frequency reserved by a licensee for future use in the bands 3700–4200, 5925–6425, 6525–6875, 10,550–10,680 and 10,700–11,700 MHz must be released for use by another licensee upon a showing by the latter that it requires an additional frequency and cannot coordinate one that is not reserved for future use.

* * * * *

3. Section 21.107 is amended by revising paragraph (b) to read as follows:

§ 21.107 Transmitter power.

* * * * *

(b) The rated power of a transmitter employed in these radio services shall not exceed the values shown in the following tabulation:

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
512.0 to 2,110	20.0	20.0	(3)	
932.5 to 935.0	20.0		+40	
941.5 to 944.0	20.0		+40	
2,110 to 2,130	20.0			
2,150 to 2,160	[1] 20.0		+45	
2,160 to 2,180	[1] 20.0			
2,500 to 2,686	[1] 10.0			
2,686 to 2,690	0.25			
3,700 to 4,200	20.0		+50	
5,925 to 6,425	20.0		+55	
6,425 to 6,525		20.0		+35
6,525 to 6,875	10.0		+50	
10,550 to 10,680	[4] 10.0		+50	
10,700 to 11,700	10.0		+50	
12,200 to 13,250	10.0	10.0		
17,700 to 18,600	10.0		+55	
18,600 to 18,800	[2] 10.0		+35	
18,800 to 19,700	10.0		+55	
21,200 to 23,600	10.0		+50	

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
27,500 to 29,500	10.0		+55	
31,000 to 31,300	0.05	0.05		
38,600 to 40,000	10.0	1.5	+50	

[1] In the 2150–2162 MHz, 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz frequency bands, when used for the Multipoint Distribution Service, EIRP up to 2000 watts may be authorized pursuant to § 21.904 of this part.
[2] The power delivered to the antenna is limited to −3 dBW.
[3] The EIRP of stations in the 932–935, 941.5–944, and 10,600–10,800 MHz bands must not exceed +40 dBW.
[4] The output power of a Digital Termination System nodal transmitter shall not exceed 0.5 watts per 250 KHz. The output power of a Digital Termination System user transmitter shall not exceed 0.04 watts per 250 KHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input power. The operating power shall not exceed the authorized power by more than 10 percent of the authorized power in watts at any time.

* * * * *

4. In § 21.108 paragraph (c) is amended by revising the table "Antenna Standards" and the associated footnotes to read as follows:

§ 21.108 Directional antennas.

* * * * *

(c) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
932.5 to 935	A	14.0	N/A		6	11	14	17	20	24
941.5 to 944	B	20.0	N/A			6	10	13	15	20
2,500 to 4,200	A	N/A	36	23	29	33	36	42	55	55
	B	N/A	36	20	24	28	32	32	32	32
5,925 to 6,425[5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	21	25	29	32	35	39	45
5,925 to 6,425[6]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
6,525 to 6,875[5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	21	25	29	32	35	35	39
6,525 to 6,875[6]	A	1.5	N/A	26	29	32	34	38	41	49
	B	2.0	N/A	21	25	29	32	35	39	45
10,550 to 10,680[4 5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	35	39
10,550 to 10,680[6]	A	3.4	34	20	24	28	32	35	55	55
	B	3.4	34	20	24	28	32	35	35	39
10,565 to 10,615[7]	N/A	360	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,630 to 10,680[7]	N/A	N/A	34	20	24	28	32	35	36	36
10,700 to 11,700[5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
17,700 to 18,820	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
18,920 to 19,700[1]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
21,200 to 23,600	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
31,000 to 31,300[2 3]	N/A	4.0	38	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Above 31,300	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36

[1] Digital Termination User Station antennas in this band shall meet performance Standard B and have a minimum antenna gain of 34 dBi. The maximum beamwidth requirement does not apply to DTS User Stations. Digital Termination Nodal Stations need not comply with these standards.
[2] The minimum front-to-back ratio shall be 38 dB.
[3] Mobile, except aeronautical mobile, stations need not comply with these standards.
[4] Except for such antennas between 140° and 180° authorized or pending on January 1, 1989, in the band 10,550 to 10,565 MHz for which minimum radiation to suppression to angle (in degrees) from centerline of main beam is 36 decibels.
[5] These antenna standards apply to all point-to-point stations authorized after June 1, 1997. Existing licensees and pending applicants on that date are grandfathered and need not comply with these standards.
[6] These antenna standards apply to all point-to-point stations authorized on or before June 1, 1997.
[7] These antenna standards apply only to Digital Termination User Stations licensed, in operation, or applied for prior to July 15, 1993.

Note: Stations must employ antenna that meets the performance standards for Category A, except that in areas not subject to frequency congestion, antennas meeting standards for Category B may be employed. Note, however, that the Commission may

require the use of high performance antennas where interference problems can be resolved by the use of such antennas.

* * * * *

5. In section 21.108 paragraph (e) is amended by revising the introductory text and by revising the heading of paragraph (e)(1) to read as follows:

§ 21.108 Directional antennas.

* * * * *

(e) These limitations are necessary to minimize the probability of harmful interference to reception in the bands 5925–6875 on board geostationary space stations in the fixed-satellite service (Part 25).

(1) 5925 to 6875 MHz. * * *

* * * * *

6. Section 21.120 is amended by adding paragraph (e) to read as follows:

§ 21.120 Authorization of transmitters.

* * * * *

(e) After July 15, 1994, the manufacture (except for export) or importation of equipment employing digital modulation techniques in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz bands must meet the minimum payload capacity requirements of § 21.122(a)(3).

7. Section 21.122 is amended by revising paragraph (a) to read as follows:

§ 21.122 Microwave digital modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 15 GHz shall, with appropriate multiplex equipment, comply with the following additional requirements:

(1) The bit rate, in bits per second, shall be equal to or greater than the bandwidth specified by the emission designator in Hertz (e.g., to be acceptable, equipment transmitting at a 20 Mb/s rate must not require a bandwidth of greater than 20 MHz), except the bandwidth used to calculate the minimum rate shall not include any authorized guard band.

(2) Equipment to be used for voice transmission placed in service, authorized, or applied for on or before June 1, 1997 in the 2110 to 2130 and 2160 to 2180 MHz bands shall be capable of satisfactory operation within the authorized bandwidth to encode at least 96 voice channels. Equipment placed in service, authorized, or applied for on or before June 1, 1997 in the 3700–4200, 5925–6425 (30 MHz bandwidth), and 10,700–11,700 MHz (30 and 40 MHz bandwidths) bands shall be capable of satisfactory operation within the authorized bandwidth to encode at least 1152 voice channels. These required loading levels may be reduced by a factor of 1/N provided that N transmitters may be operated satisfactorily, over the same radio path, within an authorized bandwidth less than, or equal to, the maximum authorizable bandwidth (e.g., the 1152 channel requirement may be reduced to 576 if two transmitters can be satisfactorily operated over the same path within the maximum bandwidth). Where type accepted equipment is designed to operate on the same frequency in a cross polarized configuration to meet the above capacity requirements, the Commission will require, at the time additional transmitters are authorized, that both polarizations of a frequency be used before a new frequency assignment is made, unless a single transmitter installation was found to be justified by the Commission at the time it authorized the first transmitter.

(3) The following capacity and loading requirements shall be met for equipment applied for, authorized, and placed in service after June 1, 1997 in the 3700–4200 MHz (4 GHz), 5925–6425 and 6525–6875 MHz (6 GHz), 10,550–10,680 MHz (10 GHz), and 10,700–11,700 MHz (11 GHz) bands:

Nominal channel bandwidth (MHz)	Minimum payload capacity (Mbits/s)	Minimum traffic loading payload (as percent of payload capacity)	Typical utilization [1]
0.400	1.54	N/A	1 DS–1
0.300	3.08	N/A	2 DS–1
1.25	3.08	N/A	2 DS–1
1.60	6.17	N/A	4 DS–1
2.50	6.17	N/A	4 DS–1
3.75	12.3	N/A	8 DS–1
5.0	18.5	N/A	12 DS–1
10.0	44.7	[2] 50	1 DS–3/STS–1
20.0	89.4	[2] 50	2 DS–3/STS–1
30.0 (11 GHz)	89.4	[2] 50	2 DS–3/STS–1
30.0 (6 GHz)	134.1	[2] 50	3 DS–3/STS–1
40.0	134.1	[2] 50	3 DS–3/STS–1

[1] DS and STS refer to the number of voice circuits a channel can accommodate. 1 DS–1=24 voice circuits; 2 DS–1=48; 4 DS–1=96; 8 DS–1=192; 12 DS–1=288; 1 DS–3/STS–1=672; 2 DS–3/STS–1=1344; 3 DS–3/STS–1=2016.

[2] This loading requirement must be met within 30 months of licensing. If two transmitters simultaneously operate on the same frequency over the same path, the requirement is reduced to 25 percent.

(4) If a transmitter is authorized to operate in a bandwidth that is not listed in paragraph (a)(3) of this section, it shall meet the minimum payload capacity and traffic loading requirements of the next largest channel bandwidth listed in the table; *e.g.*, if the authorized bandwidth is 3.5 MHz, the minimum payload capacity shall be 12.3 Mbits/s.

(5) Transmitters carrying digital motion video motion material are exempt from the requirements specified in paragraphs (a)(2) and (a)(3) of this section, provided that the minimum bit rate specified in paragraph (a)(1) of this section is met. In the 6, 10, and 11 GHz bands, concatenation of multiple contiguous channels is permitted for channels of equal bandwidth on center frequencies, provided no other channels are available and the minimum payload capacity requirements are met.

* * * * *

8. Section 21.502 is revised to read as follows:

§ 21.502 Frequencies.

(a) Frequencies in the 17,700–19,700 MHz band are available for assignment for all DEMS applicants. Assignment will consist of a pair of channels as set out in paragraph (c) of this section plus

internodal channels as set out in paragraph (d) of this section.

(b) Licensees may apply for an additional channel pair in an SMSA only when it is operating its previously authorized DTS at or near the expected capacity and the service to be provided will fully utilize all spectrum requested.

(c) Digital Termination Systems assignments shall be made according to the following plan, except that systems licensed, in operation, or applied for in the 10,565–10,615 and 10,630–10,680 MHz bands prior to July 15, 1993 are permitted to use frequencies in those bands if they prior coordinate with 10 GHz point-to-point licensees:

Channel No.	Nodal station frequency band (MHz)	User station frequency band (MHz)
30	18,870–18,880	19,210–19,220
31	18,880–18,890	19,220–19,230
32	18,890–18,900	19,230–19,240
33	18,900–18,910	19,240–19,250
34	18,910–18,920	19,250–19,260

These channel pairs will be assigned in each SMSA and may be subdivided as desired by the licensee.

(d) Internodal link assignments are to be made in accordance with the provisions of subpart I of part 21, applying to point-to-point operations.

9. Section 21.503 is revised to read as follows:

§21.503 Frequency stability.

The frequency stability of each Digital Termination Nodal Station transmitter authorized for this service in the 17,700–19,700 MHz band shall be ±0.001%. The frequency stability of each Digital Termination User Station transmitter authorized for this service in this band shall be ±0.003%.

10. Section 21.506 is revised to read as follows:

§21.506 Transmitter power.

The transmitter power shall be governed by § 21.107 of this part. Further, each application shall contain an analysis demonstrating compliance with § 21.107(a).

§21.507 [Removed]

11. Section 21.507 is removed.

12. Section 21.701 is amended by redesignating paragraphs (e) through (g) as Paragraph (i) through (k), by revising paragraphs (a) and (d) and by adding paragraphs (e) through (h) and paragraph (l) to read as follows:

§21.701 Frequencies.

(a) Frequencies in the following bands are available for assignment to fixed radio stations in the Point-to-Point Microwave Radio Service.

932.5–935 MHz [17]
941.5–944 MHz [17 18]
2,110–2,130 MHz [1 3 7 20]
2,160–2,180 MHz [1 2 20 21]
3,700–4,200 MHz [8 14]
5,925–6,425 MHz [6 14]
6,525–6,875 MHz [14]
10,550–10,680 MHz [19]
10,700–11,700 MHz [8 9 19]
13,200–13,250 MHz [4]
17,700–18,820 MHz [5 10 15]
18,920–19,160 MHz [5 10 15]
19,260–19,700 MHz [5 10 15]
21,200–22,000 MHz [4 11 12 13]
22,000–23,600 MHz [4 11 12]
27,500–29,500 MHz [5]
31,000–31,300 MHz [16]
38,600–40,000 MHz [4]

[1] Frequencies in this band are shared with control and repeater stations in the Domestic Public Land Mobile Radio Service and with stations in the International Fixed Public Radiocommunication Services located south of 25 deg.30′ north latitude in the State of Florida and U.S. posessions in the Caribbean area. Additionally, the band 2160–2162 MHz is shared with stations in the Multipoint Distribution Service.

[2] Except upon a showing that no alternative frequencies are available, no new assignments will be made in the band 2160–2162 MHz for stations located within 80.5 kilometers (50 miles) of the coordinates of the cities listed in Sec. 21.901(c).

[3] Television transmission in this band is not authorized and radio frequency channel widths shall not exceed 3.5 MHz.

[4] Frequencies in this band are shared with fixed and mobile stations licensed in other services.

[5] Frequencies in this band are shared with stations in the fixed-satellite service.

[6] These frequencies are not available for assignment to mobile earth stations.

[7] Frequencies in the band 2110–2120 MHz may be authorized on a case-by-case basis to Government or non-Government space research earth stations for telecommand purposes in connection with deep space research.

[8] This frequency band is shared with station(s) in the Local Television Transmission Service and, in the U.S. Possessions in the Caribbean area, with stations in the International Fixed Public Radiocommunications Services.

[9] The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.

[10] This band is co-equally shared with stations in the fixed services under Parts 21, 74, 78 and 94 of the Commission's Rules.

[11] Frequencies in this band are shared with Government stations.

[12] Assignments to common carriers in this band are normally made in the segments 21.2–21.8 GHz and 22.4–23.0 GHz and to operational fixed users in the segments 21.8–22.4 GHz and 23.0–23.6 GHz. Assignments may be made otherwise only upon a showing that no interference free frequencies are available in the appropriate band segments.

[13] Frequencies in this band are shared with stations in the earth exploration satellite service (space to earth).

[14] Frequencies in this band are shared with stations in the fixed-satellite and private-operational fixed microwave services.

[15] Stations licensed as of September 9, 1983 to use frequencies in the 17.7–19.7 GHz band may, upon proper application, continue to be authorized for such operation.

[16] Frequencies in this band are co-equally shared with stations in the Auxiliary Broadcasting (Part 74), Cable Television Relay (Part 78), Private Operational-Fixed Microwave (Part 94) and General Mobile Radio (Part 95) Services.

[17] Frequencies in these bands are shared with Government fixed stations and stations in the Private Operational-Fixed Microwave Service (Part 94).

[18] Frequencies in the 942 to 944 MHz band are also shared with broadcast auxiliary stations (Part 74).

[19] Frequencies in this band are shared with stations in the private-operational fixed microwave service.

[20] New facilities in these bands will be licensed only on a secondary basis. Facilities licensed or applied before January 16, 1992, are permitted to make modifications and minor extensions and retain their primary status.

[21] Any authorization of additional stations to use the 2160–2162 MHz band for Multipoint Distribution Service applied for after January 16, 1992 shall be secondary to use of the band for emerging technology services.

* * * * *

(d) *3,700 to 4,200 MHz.* 20 MHz maximum authorized bandwidth. 20 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3710	3990
3730	4010
3750	3950
3770	3970
3790	4070
3810	4090
3830	4030
3850	4050
3870	4150
3890	4170
3910	4110
3930	4130
N/A	[1] 4190

[1] This frequency may be assigned for unpaired use.

(e) *5,925 to 6,425 MHz.* 30 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.225	6177.100
5925.625	6177.500
5926.050	6177.925
5926.450	6178.325
5926.875	6178.750
5927.275	6179.150
5927.725	6179.600
5928.125	6180.000
5928.550	6180.425
5928.950	6180.825
5929.375	6181.250
5929.775	6181.650

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6168.350	6420.225
6168.750	6420.625
6169.175	6421.050
6169.575	6421.450
6170.000	6421.875
6170.400	6422.275
6170.850	6422.725
6171.250	6423.125
6171.675	6423.550
6172.075	6423.950
6172.500	6424.375
6172.900	6424.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.425	6177.300
5926.250	6178.125
5927.075	6178.950
5927.925	6179.800
5928.750	6180.625
5929.575	6181.450
6168.550	6420.425
6169.375	6421.250
6170.200	6422.075
6171.050	6422.925
6171.875	6423.750
6172.700	6424.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.625	6177.500
5926.875	6178.750
5928.125	6180.000
5929.375	6181.250
6108.893	6360.933
6110.128	6362.168
6111.364	6363.404
6112.599	6364.639
6113.834	6365.874
6115.070	6367.110
6116.305	6368.345
6117.541	6369.581
6118.776	6370.816
6120.011	6372.051
6121.247	6373.287
6122.482	6374.522
6123.718	6375.758
6124.953	6376.993
6126.189	6378.229
6127.424	6379.464
6128.659	6380.699
6129.895	6381.935
6131.130	6383.170
6132.366	6384.406
6133.601	6385.641
6134.836	6386.876
6136.072	6388.112
6137.307	6389.347
6138.543	6390.583
6139.778	6391.818
6141.014	6393.054
6142.249	6394.289
6143.484	6395.524
6144.720	6396.760
6145.955	6397.995
6147.191	6399.231
6148.426	6400.466
6149.661	6401.701
6150.897	6402.937
6152.132	6404.172
6153.368	6405.408
6154.603	6406.643
6155.839	6407.879
6157.074	6409.114
6158.309	6410.349
6159.545	6411.585
6160.780	6412.820
6162.016	6414.056
6163.251	6415.291
6164.486	6416.526
6165.722	6417.762
6166.957	6418.997
6168.750	6420.625
6170.000	6421.875
6171.250	6423.125
6172.500	6424.375
6173.750[1]	n/a
6175.000[1]	n/a
6176.250[1]	n/a

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5926.250	6178.125
5928.750	6180.625
6109.510	6361.550
6111.981	6364.021
6114.452	6366.492
6116.923	6368.963
6119.394	6371.434
6121.865	6373.905
6124.335	6376.375
6126.806	6378.846
6129.277	6381.317
6131.748	6383.788
6134.219	6386.259
6136.690	6388.730
6139.160	6391.200
6141.631	6393.671
6144.102	6396.142
6146.573	6398.613
6149.044	6401.084
6151.515	6403.555
6153.985	6406.025
6156.456	6408.496
6158.927	6410.967
6161.398	6413.438
6163.869	6415.909
6166.340	6418.380
6169.375	6421.250
6171.875	6423.750
6175.625[1]	n/a

[1] This frequency may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6111.364	6363.404
6116.305	6368.345
6121.247	6373.287
6126.189	6378.229
6131.130	6383.170
6136.072	6388.112
6141.014	6393.054
6145.955	6397.995
6150.897	6402.937
6155.839	6407.879
6160.780	6412.820
6165.722	6417.762
6175.000[1]	n/a

[1] This frequency may be assigned for unpaired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6110.75	6362.79
6115.69	6367.73
6120.63	6372.67
6125.57	6377.61
6130.51	6382.55
6135.45	6387.49
6140.40	6392.44
6145.34	6397.38
6150.28	6402.32
6155.22	6407.26
6160.16	6412.20
6165.10	6417.14

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5935.32	6187.36
5945.20	6197.24
5955.08	6207.12
5964.97	6217.01
5974.85	6226.89
5984.73	6236.77
5994.62	6246.66
6004.50	6256.54
6014.38	6266.42
6024.27	6276.31
6034.15	6286.19
6044.03	6296.07
6053.92	6305.96
6063.80	6315.84
6073.68	6325.72
6083.57	6335.61
6093.45	6345.49
6103.33	6355.37
6113.22[1]	[1] 6365.26
6123.10[1]	[1] 6375.14
6132.98[1]	[1] 6385.02
6142.87[1]	[1] 6394.91
6152.75[1]	[1] 6404.79
6162.63[1]	[1] 6414.67

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(8) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5945.20	6197.24
5974.85	6226.89
6004.50	6256.54
6034.15	6286.19
6063.80	6315.84
6093.45	6345.49
6123.10 [1]	[1] 6375.14
6152.75 [1]	[1] 6404.79

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(f) *6,525 to 6,875 MHz.* 10 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.225	6870.225
6525.625	6870.625
6526.050	6871.050
6526.450	6871.450
6526.875	6871.875
6527.275	6872.275
6527.725	6872.725
6528.125	6873.125
6528.550	6873.550
6528.950	6873.950
6529.375	6874.375
6529.775	6874.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.425	6870.425
6526.250	6871.250
6527.075	6872.075
6527.925	6872.925
6528.750	6873.750
6529.575	6874.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.625	6870.625
6526.875	6871.875
6528.125	6873.125
6529.375	6874.375
6540.625 [1]	[1] 6718.125
6541.875 [1]	[1] 6719.375
6543.125 [1]	[1] 6713.125
6544.375 [1]	[1] 6714.375
6545.625 [1]	[1] 6715.625
6546.875 [1]	[1] 6716.875
6548.125	6728.125
6549.375	6729.375
6550.625	6730.625
6551.875	6731.875
6553.125 [1]	[1] 6723.125
6554.375 [1]	[1] 6724.375
6555.625 [1]	[1] 6725.625
6556.875 [1]	[1] 6726.875
6558.125	6738.125
6559.375	6739.375
6560.625	6740.625
6561.875	6741.875
6563.125	6733.125
6564.375	6734.375
6565.625	6735.625
6566.875	6736.875
6568.125 [1]	[1] 6720.625
6569.375 [1]	[1] 6721.875
6580.625 [1]	[1] 6868.125
6581.875 [1]	[1] 6869.375
6583.125	6743.125
6584.375	6744.375
6585.625	6745.625
6586.875	6746.875
6588.125	6748.125
6589.375	6749.375
6590.625	6750.625
6591.875	6751.875
6593.125	6753.125
6594.375	6754.375
6595.625	6755.625
6596.875	6756.875
6598.125	6758.125
6599.375	6759.375
6600.625	6760.625
6601.875	6761.875
6603.125	6763.125
6604.375	6764.375
6605.625	6765.625
6606.875	6766.875
6608.125	6768.125
6609.375	6769.375
6610.625	6770.625
6611.875	6771.875
6613.125	6773.125
6614.375	6774.375
6615.625	6775.625
6616.875	6776.875
6618.125	6778.125
6619.375	6779.375
6620.625	6780.625
6621.875	6781.875
6623.125	6783.125
6624.375	6784.375
6625.625	6785.625
6626.875	6786.875
6628.125	6788.125
6629.375	6789.375
6630.625	6790.625
6631.875	6791.875
6633.125	6793.125
6634.375	6794.375
6635.625	6795.625
6636.875	6796.875
6638.125	6798.125
6639.375	6799.375
6640.625	6800.625
6641.875	6801.875
6643.125	6803.125
6644.375	6804.375
6645.625	6805.625
6646.875	6806.875
6648.125	6808.125
6649.375	6809.375
6650.625	6810.625
6651.875	6811.875
6653.125	6813.125
6654.375	6814.375
6655.625	6815.625
6656.875	6816.875
6658.125	6818.125
6659.375	6819.375
6660.625	6820.625
6661.875	6821.875
6663.125	6823.125
6664.375	6824.375
6665.625	6825.625
6666.875	6826.875
6668.125	6828.125
6669.375	6829.375
6670.625	6830.625
6671.875	6831.875
6673.125	6833.125
6674.375	6834.375
6675.625	6835.625
6676.875	6836.875
6678.125	6838.125
6679.375	6839.375
6680.625	6840.625
6681.875	6841.875
6683.125	6843.125
6684.375	6844.375
6685.625	6845.625
6686.875	6846.875
6688.125	6848.125
6689.375	6849.375
6690.625	6850.625
6691.875	6851.875
6693.125	6853.125
6694.375	6854.375
6695.625	6855.625
6696.875	6856.875
6698.125	6858.125
6699.375	6859.375
6700.625	6860.625
6701.875	6861.875
6703.125	6863.125
6704.375	6864.375
6705.625	6865.625
6706.875	6866.875
6708.125 [1]	[1] 6710.625
6709.375 [1]	[1] 6711.875

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6526.25	6871.25
6528.75	6873.75
6541.25 [1]	[1] 6718.75
6543.75 [1]	[1] 6713.75
6546.25 [1]	[1] 6716.25
6548.75	6728.75
6551.25	6731.25
6553.75 [1]	[1] 6723.75
6556.25 [1]	[1] 6726.25
6558.75	6738.75
6561.25	6741.25
6563.75	6733.75
6566.25	6736.25
6568.75 [1]	[1] 6721.25
6581.25 [1]	[1] 6868.75
6583.75	6743.75
6586.25	6746.25
6588.75	6748.75
6591.25	6751.25
6593.75	6753.75
6596.25	6756.25

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6598.75	6758.75
6601.25	6761.25
6603.75	6763.75
6606.25	6766.25
6608.75	6768.75
6611.25	6771.25
6613.75	6773.75
6616.25	6776.25
6618.75	6778.75
6621.25	6781.25
6623.75	6783.75
6626.25	6786.25
6628.75	6788.75
6631.25	6791.25
6633.75	6793.75
6636.25	6796.25
6638.75	6798.75
6641.25	6801.25
6643.75	6803.75
6646.25	6806.25
6648.75	6808.75
6651.25	6811.25
6653.75	6813.75
6656.25	6816.25
6658.75	6818.75
6661.25	6821.25
6663.75	6823.75
6666.25	6826.25
6668.75	6828.75
6671.25	6831.25
6673.75	6833.75
6676.25	6836.25
6678.75	6838.75
6681.25	6841.25
6683.75	6843.75
6686.25	6846.25
6688.75	6848.75
6691.25	6851.25
6693.75	6853.75
6696.25	6856.25
6698.75	6858.75
6701.25	6861.25
6703.75	6863.75
6706.25	6866.25
6708.75 [1]	[1] 6711.25

[1] These frequencies may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545.625 [1]	[1] 6715.625
6550.625	6730.625
6555.625 [1]	[1] 6725.625
6560.625	6740.625
6565.625	6735.625
6585.625	6745.625
6590.625	6750.625
6595.625	6755.625
6600.625	6760.625
6605.625	6765.625
6610.625	6770.625
6615.625	6775.625
6620.625	6780.625
6625.625	6785.625
6630.625	6790.625
6635.625	6795.625
6640.625	6800.625
6645.625	6805.625
6650.625	6810.625
6655.625	6815.625
6660.625	6820.625
6665.625	6825.625
6670.625	6830.625
6675.625	6835.625
6680.625	6840.625
6685.625	6845.625
6690.625	6850.625
6695.625	6855.625
6700.625	6860.625
6705.625	6865.625
6710.625 [1]	[1] 6720.625

[1] These frequencies may be assigned for unpaired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6550	6730
6555 [1]	[1] 6725
6560	6740
6565	6735
6585	6745
6590	6750
6595	6755
6600	6760
6605	6765
6610	6770
6615	6775
6620	6780
6625	6785
6630	6790
6635	6795
6640	6800
6645	6805
6650	6810
6655	6815
6660	6820
6665	6835
6670	6830
6675	6835
6680	6840
6685	6845
6690	6850
6695	6855
6700	6860
6705	6865
6710 [1]	[1] 6720

[1] These frequencies may be assigned for unpaired use.

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6555 [1]	[1] 6725
6565	6735
6585	6745
6595	6755
6605	6765
6615	6775
6625	6785
6635	6795
6645	6805
6655	6815
6665	6825
6675	6835
6685	6845
6695	6855
6705	6865
6535 [2]	[2] 6575

[1] These frequencies may be assigned for unpaired use.

[2] Available only for emergency restoration, maintenance bypass, or other temporary-fixed purposes. Such uses are authorized on a non-interference basis to other frequencies in this band. Interference analysis required by section 94.63 of this chapter does not apply to this frequency pair.

(g) *10,550 to 10,680 MHz.* 5 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.225	10670.225
10605.625	10670.625
10606.050	10671.050
10606.450	10671.450
10606.875	10671.875
10607.275	10672.275
10607.725	10672.725
10608.125	10673.125
10608.550	10673.550
10608.950	10673.950
10609.375	10674.375
10609.775	10674.775
10610.225	10675.225
10610.625	10675.625
10611.050	10676.050
10611.450	10676.450
10611.875	10676.875
10612.275	10677.275
10612.725	10677.725
10613.125	10678.125
10613.550	10678.550
10613.950	10678.950
10614.375	10679.375
10614.775	10679.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.425	10670.425
10606.250	10671.250
10607.075	10672.075
10607.925	10672.925
10608.750	10673.750
10609.575	10674.575
10610.425	10675.425
10611.250	10676.250
10612.075	10677.075
10612.925	10677.925
10613.750	10678.750
10614.575	10679.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10550.625	10615.625
10551.875	10616.875
10553.125	10618.125
10554.375	10619.375
10555.625	10620.625
10556.875	10621.875
10558.125	10623.125
10559.375	10624.375
10560.625 [1]	[1] 10625.625
10561.875 [1]	[1] 10626.875
10563.125 [1]	[1] 10628.125
10564.375 [1]	[1] 10629.375
10565.625	10630.625
10566.875	10631.875
10568.125	10633.125
10569.375	10634.375
10570.625	10635.625
10571.875	10636.875
10573.125	10638.125
10574.375	10639.375
10575.625	10640.625
10576.875	10641.875
10578.125	10643.125
10579.375	10644.375
10580.625	10645.625
10581.875	10646.875
10583.125	10648.125
10584.375	10649.375
10585.625	10650.625
10586.875	10651.875
10588.125	10653.125
10589.375	10654.375
10590.625	10655.625
10591.875	10656.875
10593.125	10658.125
10594.375	10659.375
10595.625	10660.625
10596.875	10661.875
10598.125	10663.125
10599.375	10664.375
10600.625	10665.625
10601.875	10666.875
10603.125	10668.125
10604.375	10669.375
10605.625	10670.625
10606.875	10671.875
10608.125	10673.125
10609.375	10674.375
10610.625	10675.625
10611.875	10676.875
10613.125	10678.125
10614.375	10679.375

[1] These frequencies are also available for DTS stations licensed, in operation, or applied for prior to July 15, 1993.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10616.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75
10561.25	10626.25
10563.75	10628.75
10566 25	10631.25
10568 75	10633.75
10571.25	10636.25
10573.75	10638.75
10576.25	10641.25
10578.75	10643.75
10581.25	10646.25
10583.75	10648.75
10586.25 [1]	[1] 10651.25
10588.75 [1]	[1] 10653.75
10591.25 [1]	[1] 10656.25
10593.75 [1]	[1] 10658.75
10596.25 [1]	[1] 10661.25
10598.75 [1]	[1] 10663.75
10601.25 [1]	[1] 10666.25
10603.75 [1]	[1] 10668.75
10606.25 [1]	[1] 10671.25
10608.75 [1]	[1] 10673.75
10611.25 [1]	[1] 10676.25
10613.75 [1]	[1] 10678.75

[1] These frequencies are also available for DTS stations licensed, in operation, or applied for prior to July 15, 1993.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10553.125	10618.125
10558.125	10623.125
10563.125	10628.125
10568.125	10633.125
10573.125	10638.125
10578.125	10643.125
10583.125	10648.125
10588.125	10653.125
10593.125	10658.125
10598.125	10663.125
10603.125	10668.125

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10552.5	10617.5
10557.5	10622.5
10562.5	10627.5
10567.5 [1]	[1] 10632.5
10572.5 [1]	[1] 10637.5
10577.5 [1]	[1] 10642.5
10582.5 [1]	[1] 10647.5
10587.5	10652.5
10592.5	10657.5
10597.5	10662.5
10602.5	10667.5

[1] These frequencies are also available for DTS stations licensed, in operation, or applied for prior to July 15, 1993.

(h) *10,700 to 11,700 MHz*. 40 MHz authorized bandwidth.

(1) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11130.625	11620.625
11131.875	11621.875
11133.125	11623.125
11134.375	11624.375
11135.625	11625.625
11136.875	11626.875
11138.125	11628.125
11139.375	11629.375
11140.625	11630.625
11141.875	11631.875
11143.125	11633.125
11144.375	11634.375
11145.625	11635.625
11146.875	11636.875
11148.125	11638.125
11149.375	11639.375
11150.625	11640.625
11151.875	11641.875
11153.125	11643.125
11154.375	11644.375
11155.625	11645.625
11156.875	11646.875
11158.125	11648.125
11159.375	11649.375
11160.625	11650.625
11161.875	11651.875
11163.125	11653.125
11164.375	11654.375
11165.625	11655.625
11166.875	11656.875
11168.125	11658.125
11169.375	11659.375
11170.625	11660.625
11171.875	11661.875
11173.125	11663.125
11174.375	11664.375
11175.625	11665.625
11176.875	11666.875
11178.125	11668.125
11179.375	11669.375
11180.625	11680.625
11181.875	11681.875
11183.125	11683.125
11184.375	11684.375
11185.625	11685.625
11186.875	11686.875
11188.125	11688.125
11189.375	11689.375
11190.625	11690.625
11191.875	11691.875
11193.125	11693.125
11194.375	11694.375
11195.625	11695.625
11196.875	11696.875
11198.125	11698.125
11199.375	11699.375

(2) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11131.25	11621.25
11133.75	11623.75
11136.25	11626.25
11138.75	11628.75
11141.25	11631.25
11143.75	11633.75
11146.25	11636.25
11148.75	11638.75
11151.25	11641.25
11153.75	11643.75
11156.25	11646.25
11158.75	11648.75
11161.25	11651.25

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11163.75	11653.75
11166.25	11656.25
11168.75	11658.75
11171.25	11661.25
11173.75	11663.75
11176.25	11666.25
11178.75	11668.75
11181.25	11681.25
11183.75	11683.75
11186.25	11686.25
11188.75	11688.75
11191.25	11691.25
11193.75	11693.75
11196.25	11696.25
11198.75	11698.75

(3) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11133.125	11623.125
11138.125	11628.125
11143.125	11633.125
11148.125	11638.125
11153.125	11643.125
11158.125	11648.125
11163.125	11653.125
11168.125	11658.125
11173.125	11663.125
11178.125	11668.125
11183.125	11683.125
11188.125	11688.125
11193.125	11693.125
11198.125	11698.125

(4) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11132.5	11622.5
11137.5	11627.5
11142.5	11632.5
11147.5	11637.5
11152.5	11642.5
11157.5	11647.5
11162.5	11652.5
11167.5	11657.5
11172.5	11662.5
11177.5	11667.5
11182.5	11682.5
11187.5	11687.5
11192.5	11692.5
11197.5	11697.5

(5) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10705	11205
10715	11215
10725[2]	[1]11675
10735	11225
10745	11235
10755	11245
10765	11255
10775	11265
10785	11275
10795	11285
10805	11295
10815	11305
10825	11315
10835	11325
10845	11335
10855	11345
10865	11355
10875	11365
10885	11375
10895	11385
10905	11395
10915	11405
10925	11415
10935	11425
10945	11435
10955	11445
10965	11455
10975	11465
10985	11475
10995	11485
11005	11495
11015	11505
11025	11515
11035	11525
11045	11535
11055	11545
11065	11555
11075	11565
11085	11575
11095	11585
11105	11595
11115	11605
11125	11615
11135[1]	[2]11625
11145[1]	[1]11635
11155[1]	[1]11645
11165[1]	[1]11655
11175[1]	[1]11665
11185[1]	[1]11685
11195[1]	[1]11695

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

[2] These frequencies may be assigned for unpaired use.

(6) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10715	11215
10755	11245
10795	11285
10835	11325
10875	11365
10915	11405
10955	11445
10995	11485
11035	11525
11075	11565
11115	11605
11155[1]	[1]11645
11185[1]	5[1]11685

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(7) 40 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10735	11225
10775	11265
10815	11305
10855	11345
10895	11385
10935	11425
10975	11465
11015	11505
11055	11545
11095	11585
11135[1]	[1]11625
11175[1]	[1]11665

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(1) Fixed systems licensed, in operation, or applied for in the 5925–6425, 10,550–10,680, and 10,700–11,700 MHz bands prior to July 15, 1993 are permitted to use channel plans in effect prior to that date, including adding channels under those plans.

13. Section 21.710 is revised to read as follows:

§ 21.710 Limitations on path lengths and channel loading.

(a) The distance between end points of a fixed link must equal or exceed the value set forth in the following table or the EIRP must be reduced in accordance with the equation set the in paragraph (b) of this section.

Frequency band (MHz)	Minimum path length (km)
Below 1,850	N/A
1,850 to 7,125	17
10,550 to 13,250	5
Above 17,700	N/A

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation.

EIRP=30 − 20 log[A/B], dBW

Where:

EIRP=Equivalent isotropic radiated power in dBW.

A=Minimum path length from the Table for the frequency band in kilometers.

B=The actual path length in kilometers.

Note: Automatic transmit power control may be used to meet this requirement up to a 3 dB increase in EIRP.

(c) Upon an appropriate technical showing, applicants and licensees unable to meet the minimum path length requirement may be granted an exception to these requirements.

(d) Except for video transmission, an application for an initial working channel for a given route will not be accepted for filing where the anticipated loading (within 30 months for data and five years for voice, or other period subject to reasonable projection) is less than the minimum specified for the following frequency bands. Absent extraordinary circumstances, applications proposing additional frequencies over existing routes will not be granted unless it is shown that the traffic load will shortly exhaust the capacity of the existing equipment. For the 3700–4200 MHz band, all persons intending to utilize baseband frequencies above 7.3 MHz, or to operate with more than 1500 equivalent 4 kHz voice channels per radio channel, must submit evidence of coordination pursuant to § 21.100(d). Where no construction of radio facilities is requested, licensees must submit this evidence with their filing of any necessary authority required pursuant to section 214 of the Communications Act and part 63 of this chapter.

Frequency band (MHz)	Minimum number of voice channels (4 kHz or equivalent)	Minimum original data loading (Mb/s)
3700 to 4200 (20 MHz bandwidth)	[1] 900	44.7
5925 to 6425 (10 MHz bandwidth)	.....	22.3
5925 to 6425 (20 MHz bandwidth)	.....	44.7
5925 to 6425 (30 MHz bandwidth)	[1] 900	67.0
10,700 to 11,700 (10 MHz bandwidth)	240	22.3
10,700 to 11,700 (20 MHz bandwidth)	240	44.7
10,700 to 11,700 (30 MHz bandwidth)	[1] 900	44.7
10,700 to 11,700 (40 MHz bandwidth)	[1] 900	67.0

[1] Where transmitters employing digital modulation techniques are designed to be used so that two may simultaneously operate on the same frequency over the same path, the minimum number of voice channels is reduced to 500 per transmitter.

III. Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation in part 22 continues to read as follows.

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.501 is amended by revising paragraph (e) to read as follows:

§ 22.501 Frequencies.

* * * * *

(e) On a shared basis with fixed stations in the Point-to-Point Microwave Radio Service, frequencies in the bands 2110–2130 MHz and 2160–2180 MHz may be authorized for use by control and repeater stations functioning in conjunction with the Public Land Mobile Service. The emission bandwidth shall be limited to the minimum necessary to serve the purpose required, including the applicant's future growth plans. No new assignments will be made in the 2160–2162 MHz band for stations located within 50 miles of the coordinates of the sites listed in § 21.901(c) of this chapter, except upon a showing that no alternative frequencies are available. Channel bandwith in excess of 800 kHz will not be authorized. In each of these bands, the highest frequency that would not cause harmful interference to any other stations shall be assigned. Licensees in the 2110–2130 MHz and 2160–2180 MHz bands that may be required to relocate to other bands by emerging technology service providers are eligible for licensing under part 21 of this chapter in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz bands.

* * * * *

IV. Part 94 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation in part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.45 is amended by revising paragraph (a)(10) to read as follows:

§ 94.45 Changes in authorized station requiring modification.

(a) * * *

(10) Any increase in authorized effective isotropic radiated power in excess of 3 dB (a 2-to-1 ratio);

* * * * *

3. Section 94.61 is amended by revising paragraph (b) to read as follows:

§ 94.61 Applicability.

* * * * *

(b) Frequencies in the following bands are available for assignment to stations in the Private Operational-Fixed Microwave Service:

Frequency band (MHz)	
928 to 929	(19) and (20.)
932 to 932.5	(32)
932.5 to 935	(33).
941 to 941.5	(32).
941.5 to 944	(33) and (34).
952 to 960	(1) and (20).
1850 to 1990	(2) and (35).
2130 to 2150	(2) (21) and (35).
2150 to 2160	(3).
2180 to 2200	(2) (21) and (35).
2450 to 2500	(4) and (21)
2650 to 2690	(5).
3700 to 4200	(8) (10) and (21).
5925 to 6425	(6) (10) and (21)
6425 to 6525	(6) (30) and (31).
6525 to 6575	(6) (10) (21) and (28).
6575 to 6625	(2) (6) (10) (21) and (28).
6625 to 6875	(2) (6) (10) (21) and (28).
10,550 to 10,680	(10) and (21).
10,700 to 11,700	(8) (10) and (21).
12,200 to 12,500	(2) (21) and (25).
12,500 to 12,700	(2) (6) (21) and (25).
12,700 to 13,200	(6) and (26).
13,200 to 13,250	(6) (9) (14) and (21).
17,700 to 18,142	(6) (8) (10) (21) and (27).
18,142 to 18,580	(6) (8) (10) (23) and (27).
18,580 to 18,820	(10) (17) and (21).
18,820 to 18,920	(21) and (24).
18,920 to 19,160	(10) (17) and (21).
19,160 to 19,260	(21) and (24).
19,260 to 19,700	(10) (21) and (27).
21,200 to 22,000	(10) (11) (12) (13) and (23).
22,000 to 23,600	(10) (12) (13) and (23).
31,000 to 31,300	(23) and (29).
38,600 to 40,000	(9) (18) and (23).
Bands above 40,000	(16) and (23).

1 Frequencies in this band are shared with stations in the International Fixed (in Puerto Rico and the Virgin Islands) and International Control Services. (Part 23)

2 Frequencies in this band are shared with stations in the International Control Service. (Part 23)

3 Frequencies in this band are shared with stations in the Multipoint Distribution Service (Part 21). These frequencies may be used for the transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

4 Frequencies in this band are shared with mobile and radiolocation stations in other services, and must accept harmful interference that may be experienced from operations of industrial, scientific, or medical (ISM) equipment operating on 2450 MHz. In the 2483.5–2500 MHz band, no applications for new stations or modifications to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the radiodetermination Satellite Service However, all grandfathered temporary fixed licensees are required to notify directly each Radiodetermination Satellite Service licensee concerning present and proposed locations of operation.

5 Frequencies in this band are shared with earth stations in the Fixed Satellite Service (part 25 of this chapter), space stations in the Broadcasting Satellite Service (part 25 of this chapter), and with stations in the Instructional Television Fixed Service (ITFS) (part 74 of this chapter). No new licenses will be issued in the bands 2650–2656, 2662–2668 or 2674–2680 MHz. Existing stations in the 2650–2656 MHz, 2662–2668 MHz and 2674–2680 MHz frequency bands will be grandfathered and licensed under part 21 of this chapter.

6 Frequencies in this band are shared with Earth (Earth-to-space) stations in the Fixed Satellite Service. (Part 25)

7 [Reserved]

8 Frequencies in this band are shared with space (space-to-Earth) stations in the Fixed Satellite Service. (Part 25)

9 This band is shared with fixed and mobile station operations authorized under other services.

10 Frequencies in this band are shared with fixed stations in the Domestic Public Radio Services. (Part 21)

11 Frequencies in this band are shared with space (space-to-Earth) stations in the Earth Exploration Satellite Service. (Part 25)

12 Authorizations are normally granted only to common carriers (Part 21) in the band segments 21.2–21.8 GHz and 22.4–23.00 GHz, and to operational-fixed users (Part 94) in the segments 21.8–22.4 GHz and 23.0–23.6 GHz. Cross-service assignments for these users may be made only upon a showing that no interference-free frequencies are available in the appropriate band segments. Frequencies in the 21.8–22.0 GHz and 23.0–23.2 GHz band segments may be authorized to operational fixed users under the provisions of Sec. 94.91.

13 This frequency band is shared with U.S. Government Stations.

14 Frequencies in this band are shared with stations in the Television Auxiliary Broadcast Service (Part 74), the Local Television Transmission Service (Part 21) and the Point-to-Point Microwave Service (Part 21).

16 Available on developmental basis only under Subpart E of this part.

17 Frequencies in this band are shared with (1) DTS intermodal links, Point-to-Point Microwave Service stations and point-to-point return radio links for MDS stations under Part 21 rules and (2) aural broadcasts STL and intercity relay stations under part 74 rules.

18 These frequencies are assigned for use within a rectangular service area to be described in the application by the maximum and minimum latitudes and longitudes. Such service area shall be as small as practicable consistent with the local service requirements of the user. The use of these frequencies is subject to the terms and conditions set forth in Sec. 21.711. These frequencies shall be assigned only where it is shown that the applicant will have a reasonable projected requirement for a multiplicity of service points or transmission paths within the area.

19 Frequencies in this band are paired with the band of 952–953 MHz and are limited for use by multiple address remote stations.

20 The frequencies in this band which are allocated for Part 94 multiple address systems are available for point-to-multipoint transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers. Other frequencies in this band are available for the point-to-point transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

21 This band is available for radio systems to be used for the point-to-point transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

23 This band is available for radio systems to be used for the point-to-point transmission of the licensee's program material or services to the licensee's customers.

24 Frequencies in this band are shared with the Common Carrier services for Digital Termination Systems. The available frequencies are indicated Sec. 94.65.

25 Frequencies in this band have been allocated to the Direct Broadcast Service and are authorized for Operational Fixed use only pursuant to Sec. 94.93.

26 Frequencies in this band are only available for applications filed pursuant to Sec. 94.93.

27 Frequencies in this band are shared with Broadcast Auxiliary, and Cable Television Relay services.

28 This band is also available for applications filed pursuant to Sec. 94.93.

29 Frequencies in this band are co-equally shared with stations in the Domestic Public Fixed (Part 21), Auxiliary Broadcasting (Part 74), Cable Television Relay (Part 78) and General Mobile Radio (Part 95) Services.

30 This band is co-equally shared with mobile stations licensed pursuant to parts 21, 74 and 78 of the Commission's Rules.

31 Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

32 Frequencies in the 932 to 932.5 MHz and 941 to 941.5 MHz bands are shared with Government fixed point-to-multipoint stations and point-to-multipoint stations in the Public Land Mobile Service (Part 22). Frequencies in these bands are paired with one another and are available for point-to-multipoint transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

33 Frequencies in the 932.5 to 935 MHz and 941.5 to 944 MHz bands are shared with Government fixed point-to-point stations and stations in the Point-to-Point Microwave Radio Service (Part 21). Frequencies in these bands are paired with one another.

34 Frequencies in the 942 to 944 MHz band are also shared with broadcast auxiliary stations (Part 74).

35 New facilities in these bands will be licensed only on a secondary basis. Facilities licensed or applied for before January 16, 1992, are permitted to make modifications and minor extensions and retain their primary status.

4. Section 94.63 is amended by revising paragraph (a) to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

(a) Before filing an application for new or modified facilities under this part, the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in this service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section, unless otherwise agreed to in accordance with § 94.15(b). As an exception to the above requirement, when the proposed facilities are to be operated in the bands 932–935, 941–944, 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, 10,700–11,700, 17,700–19,700, 21,200–21,800, 22,400–23,000, or 38,600–40,000 MHz applicants shall follow the prior coordination procedure specified in § 21.100(d) of this chapter. In addition, when the proposed facilities are to be operated in the bands 12,500–12,700 MHz, applications shall also follow the procedures in § 21.706(c) and (d) of this chapter and the technical standards and requirements of part 25 of this chapter as regards licensees in the Satellite Communications Service. See also § 94.77.

* * * * *

5. Section 94.65 is amended by redesignating paragraphs (j) through (m) as paragraphs (m) through (p); by redesignating paragraph (h) as paragraph (l); revising paragraphs (g) and (i); and by adding paragraphs (h), (j) and (k) to read as follows;

§ 94.65 Frequencies.

* * * * *

(g) *3,700 to 4,200 MHz.* 20 MHz maximum authorized bandwidth. 20 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3710	3990
3730	4010
3750	3950
3770	3970
3790	4070
3810	4090
3830	4030
3850	4050
3870	4150
3890	4170
3910	4110

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3930	4130
n/a	[1] 4190

[1] This frequency may be assigned for unpaired use.

(h) *5,925 to 6,425 MHz.* 30 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.225	6177.100
5925.625	6177.500
5926.050	6177.925
5926.450	6178.325
5926.875	6178.750
5927.275	6179.150
5927.725	6179.600
5928.125	6180.000
5928.550	6180.425
5928.950	6180.825
5929.375	6181.250
5929.775	6181.650
6168.350	6420.225
6168.750	6420.625
6169.175	6421.050
6169.575	6421.450
6170.000	6421.875
6170.400	6422.275
6170.850	6422.725
6171.250	6423.125
6171.675	6423.550
6172.075	6423.950
6172.500	6424.375
6172.900	6424.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.425	6177.300
5926.250	6178.125
5927.075	6178.950
5927.925	6179.800
5928.750	6180.625
5929.575	6181.450
6168.550	6420.425
6169.375	6421.250
6170.200	6422.075
6171.050	6422.925
6171.875	6423.750
6172.700	6424.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.625	6177.500
5926.875	6178.750
5928.125	6180.000
5929.375	6181.250
6108.893	6360.933
6110.128	6362.168
6111.364	6363.404
6112.599	6364.639
6113.834	6365.874
6115.070	6367.110
6116.305	6368.345
6117.541	6369.581
6118.776	6370.816
6120.011	6372.051
6121.247	6373.287
6122.482	6374.522
6123.718	6375.758
6124.953	6376.993
6126.189	6378.229
6127.424	6379.464
6128.659	6380.699
6129.895	6381.935
6131.130	6383.170
6132.366	6384.406
6133.601	6385.641
6134.836	6386.876
6136.072	6388.112
6137.307	6389.347
6138.543	6390.583
6139.778	6391.818
6141.041	6393.054
6142.249	6394.289
6143.484	6395.524
6144.720	6396.760
6145.955	6397.995
6147.191	6399.231
6148.426	6400.466
6149.661	6401.701
6150.897	6402.937
6152.132	6404.172
6153.368	6405.408
6154.603	6406.643
6155.839	6407.879
6157.074	6409.114
6158.309	6410.349
6159.545	6411.585
6160.780	6412.820
6162.016	6414.056
6163.251	6415.291
6164.486	6416.526
6165.722	6417.762
6166.957	6418.997
6168.750	6420.625
6170.000	6421.875
6171.250	6423.125
6172.500	6424.375
6173.750 [1]	n/a
6175.000 [1]	n/a
6176.250 [1]	n/a

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5926.250	6178.125
5928.750	6180.625
6109.510	6361.550
6111.981	6364.021
6114.452	6366.492
6116.923	6368.963
6119.394	6371.434
6121.865	6373.905
6124.335	6376.375
6126.806	6378.846
6129.277	6381.317
6131.748	6383.788
6134.219	6386.259
6136.690	6388.730
6139.160	6391.200
6141.631	6393.671
6144.102	6396.142
6146.573	6398.613
6149.044	6401.084
6151.515	6403.555
6153.985	6406.025
6156.456	6408.496
6158.927	6410.967
6161.398	6413.438
6163.869	6415.909
6166.340	6418.380
6169.375	6421.250
6171.875	6423.750
6175.625 [1]	n/a

[1] This frequency may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6111.364	6363.404
6116.305	6368.345
6121.247	6373.287
6126.189	6378.229
6131.130	6383.170
6136.072	6388.112
6141.014	6393.054
6145.955	6397.995
6150.897	6402.937
6155.839	6407.879
6160.780	6412.820
6165.722	6417.762
6175.000 [1]	n/a

[1] This frequency may be assigned for unpaired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6110.75	6362.79
6115.69	6367.73
6120.63	6372.67
6125.57	6377.61
6130.51	6382.55
6135.45	6387.49
6140.40	6392.44
6145.34	6397.38
6150.28	6402.32
6155.22	6407.26
6160.16	6412.20
6165.10	6417.14

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5935.32	6187.36
5945.20	6197.24
5955.08	6207.12
5964.97	6217.01
5974.85	6226.89

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5984.73	6236.77
5994.62	6246.66
6004.50	6256.54
6014.38	6266.42
6024.27	6276.31
6034.15	6286.19
6044.03	6296.07
6053.92	6305.96
6063.80	6315.84
6073.68	6325.72
6083.57	6335.61
6093.45	6345.49
6103.33	6355.37
6113.22[1]	[1]6365.26
6123.10[1]	[1]6375.14
6132.98[1]	[1]6385.02
6142.87[1]	[1]6394.91
6152.75[1]	[1]6404.79
6162.63[1]	[1]6414.67

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(8) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5945.20	6197.24
5974.85	6226.89
6004.50	6256.54
6034.15	6286.19
6063.80	6315.84
6093.45	6345.49
6123.10[1]	[1]6375.14
6152.75[1]	[1]6404.79

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(i) *6,525 to 6,875 MHz.* 10 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.225	6870.225
6525.625	6870.625
6526.050	6871.050
6526.450	6871.450
6526.875	6871.875
6527.275	6872.275
6527.725	6872.725
6528.125	6873.125
6528.550	6873.550
6528.950	6873.950
6529.375	6874.375
6529.775	6874.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.425	6870.425
6526.250	6871.250
6527.075	6872.075
6527.925	6872.925
6528.750	6873.750
6529.575	6874.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.625	6870.625
6526.875	6871.875
6528.125	6873.125
6529.375	6874.375
6540.625[1]	[1]6718.125
6541.875[1]	[1]6719.375
6543.126[1]	[1]6713.125
6544.375[1]	[1]6714.375
6545.625[1]	[1]6715.625
6546.875[1]	[1]6716.875
6548.125	6728.125
6549.375	6729.375
6550.625	6730.625
6551.875	6731.875
6553.125[1]	[1]6723.125
6554.375[1]	[1]6724.375
6555.625[1]	[1]6725.625
6556.875[1]	[1]6726.875
6558.125	6738.125
6559.375	6739.375
6560.625	6740.625
6561.875	6741.875
6563.125	6733.125
6564.375	6734.375
6565.625	6735.625
6566.875	6736.875
6568.125[1]	[1]6720.625
6569.375[1]	[1]6721.875
6580.625[1]	[1]6868.125
6581.875[1]	[1]6869.375
6583.125	6743.125
6584.375	6744.375
6585.625	6745.625
6586.875	6746.875
6588.125	6748.125
6589.375	6749.375
6590.625	6750.625
6591.875	6751.875
6593.125	6753.125
6594.375	6754.375
6595.625	6755.625
6596.875	6756.875
6598.125	6758.125
6599.375	6759.375
6600.625	6760.625
6601.875	6761.875
6603.125	6763.125
6604.375	6764.375
6605.625	6765.625
6606.875	6766.875
6608.125	6768.125
6609.375	6769.375
6610.625	6770.625
6611.875	6771.875
6713.125	6773.125
6614.375	6774.375
6615.625	6775.625
6616.875	6776.875
6618.125	6778.125
6619.375	6779.375
6620.625	6780.625
6621.875	6781.875
6623.125	6783.125
6624.375	6784.375
6625.625	6785.625
6626.875	6786.875
6628.125	6788.125
6629.375	6789.375
6630.625	6790.625
6631.875	6791.875
6633.125	6793.125
6634.375	6794.375
6635.625	6795.625
6636.875	6796.875
6638.125	6798.125
6639.375	6799.375
6640.625	6800.625
6641.875	6801.875
6643.125	6803.125
6644.375	6804.375
6645.625	6805.625
6646.875	6806.875
6648.125	6808.125
6649.375	6809.375
6650.625	6810.625
6651.875	6811.875
6653.125	6813.125
6654.375	6814.375
6655.625	6815.625
6656.875	6816.875
6658.125	6818.125
6659.375	6819.375
6660.625	6820.625
6661.875	6821.875
6663.125	6823.125
6664.375	6824.375
6665.625	6825.625
6666.875	6826.875
6668.125	6828.125
6669.375	6829.375
6670.625	6830.625
6671.875	6831.875
6673.125	6833.125
6674.375	6834.375
6675.625	6835.625
6676.875	6836.875
6678.125	6838.125
6679.375	6839.375
6680.625	6840.625
6681.875	6841.875
6683.125	6843.125
6684.375	6844.375
6685.625	6845.625
6686.875	6846.875
6688.125	6848.125
6689.375	6849.375
6690.625	6850.625
6691.875	6851.875
6693.125	6853.125
6694.375	6854.375
6695.625	6855.625
6696.875	6856.875
6698.125	6858.125
6699.375	6859.375
6700.625	6860.625
6701.875	6861.875
6703.125	6863.125
6704.375	6864.375
6705.625	6865.625
6706.875	6866.875
6708.125[1]	[1]6710.625
6709.375[1]	[1]6711.875

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6526.25	6871.25
6528.75	6873.75
6541.25 [1]	[1] 6718.75
6543.75 [1]	[1] 6713.75
6546.25 [1]	[1] 6716.25
6548.75	6728.75
6551.25	6731.25
6553.75 [1]	[1] 6723.75
6556.25 [1]	[1] 6726.25
6558.75	6738.75
6561.25	6741.25
6563.75	6733.75
6566.25	6736.25
6568.75 [1]	[1] 6721.25
6581.25 [1]	[1] 6868.75
6583.75	6743.75
6586.25	6746.25
6588.75	6748.75
6591.25	6751.25
6593.75	6753.75
6596.25	6756.25
6598.75	6758.75
6601.25	6761.25
6603.75	6763.75
6606.25	6766.25
6608.75	6768.75
6611.25	6771.25
6613.75	6773.75
6616.25	6776.25
6618.75	6778.75
6621.25	6781.25
6623.75	6783.75
6626.25	6786.25
6628.75	6788.75
6631.25	6791.25
6633.75	6793.75
6636.25	6796.25
6638.75	6798.75
6641.25	6801.25
6643.75	6803.75
6646.25	6806.25
6648.75	6808.75
6651.25	6811.25
6653.75	6813.75
6656.25	6816.25
6658.75	6818.75
6661.25	6821.25
6663.75	6823.75
6666.25	6826.25
6668.75	6828.75
6671.25	6831.25
6673.75	6833.75
6676.25	6836.25
6678.75	6838.75
6681.25	6841.25
6683.75	6843.75
6686.25	6846.25
6688.75	6848.75
6691.25	6851.25
6693.75	6853.75
6696.25	6856.25
6698.75	6858.75
6701.25	6861.25
6703.75	6863.75
6706.25	6866.25
6708.75 [1]	[1] 6711.25

[1] These frequencies may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545.625 [1]	[1] 6715.625
6550.625	6730.625
6555.625 [1]	[1] 6725.625
6560.625	6740.625
6565.625	6735.625
6585.625	6745.625
6590.625	6750.625
6595.625	6755.625
6600.625	6760.625
6605.625	6765.625
6610.625	6770.625
6615.625	6775.625
6620.625	6780.625
6625.625	6785.625
6630.625	6790.625
6635.625	6795.625
6640.625	6800.625
6645.625	6805.625
6650.625	6810.625
6655.625	6815.625
6660.625	6820.625
6665.625	6825.625
6670.625	6830.625
6675.625	6835.625
6680.625	6840.625
6685.625	6845.625
6690.625	6850.625
6695.625	6855.625
6700.625	6860.625
6705.625	6865.625
6710.625 [1]	[1] 6720.625

[1] These frequencies may be assigned for unpaired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6550	6730
6555 [1]	[1] 6725
6560	6740
6565	6735
6585	6745
6590	6750
6595	6755
6600	6760
6605	6765
6610	6770
6615	6775
6620	6780
6625	6785
6630	6790
6635	6795
6640	6800
6645	6805
6650	6810
6655	6815
6660	6820
6665	6825
6670	6830
6675	6835
6680	6840
6685	6845
6690	6850
6695	6855
6700	6860
6705	6865
6710 [1]	[1] 6720

[1] These frequencies may be assigned for unpaired use.

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6555 [1]	[1] 6725
6565	6735
6585	6745
6595	6755
6605	6765
6615	6775
6625	6785
6635	6795
6645	6805
6655	6815
6665	6825
6675	6835
6685	6845
6695	6855
6705	6865
6535 [2]	[2] 6575

[1] These frequencies may be assigned for unpaired use.

[2] Available only for emergency restoration, maintenance bypass, or other temporary-fixed purposes. Such uses are authorized on a non-interference basis to other frequencies in this band. Interference analysis required by § 94.63 does not apply to this frequency pair.

(j) *10,550 to 10,680 MHz.* 5 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.225	10670.225
10605.625	10670.625
10606.050	10671.050
10606.450	10671.450
10606.875	10671.875
10607.275	10672.275
10607.725	10672.725
10608.125	10673.125
10608.550	10673.550
10608.950	10673.950
10609.375	10674.375
10609.775	10674.775
10610.225	10675.225
10610.625	10675.625
10611.050	10676.050
10611.450	10676.450
10611.875	10676.875
10612.275	10677.275
10612.725	10677.725
10613.125	10678.125
10613.550	10678.550
10613.950	10678.950
10614.375	10679.375
10614.775	10679.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.425	10670.425
10606.250	10671.250
10607.075	10672.075
10607.925	10672.925
10608.750	10673.750
10609.575	10674.575
10610.425	10675.425
10611.250	10676.250
10612.075	10677.075
10612.925	10677.925
10613.750	10678.750
10614.575	10679.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10550.625	10615.625
10551.875	10616.875
10553.125	10618.125
10554.375	10619.375
10555.625	10620.625
10556.875	10621.875
10558.125	10623.125
10559.375	10624.375
10560.625	10625.625
10561.875	10626.875
10563.125	10628.125
10564.375	10629.375
10565.625	10630.625
10566.875	10631.875
10568.125	10633.125
10569.375	10634.375
10570.625	10635.625
10571.875	10636.875
10573.125	10638.125
10574.375	10639.375
10575.625	10640.625
10576.875	10641.875
10578.125	10643.125
10579.375	10644.375
10580.625	10645.625
10581.875	10646.875
10583.125	10648.125
10584.375	10649.375
10585.625	10650.625
10586.875	10651.875
10588.125	10653.125
10589.375	10654.375
10590.625	10655.625
10591.875	10656.875
10593.125	10658.125
10594.375	10659.375
10595.625	10660.625
10596.875	10661.875
10598.125	10663.125
10599.375	10664.375
10600.625	10665.625
10601.875	10666.875
10603.125	10668.125
10604.375	10669.375
10605.625	10670.625
10606.875	10671.875
10608.125	10673.125
10609.375	10674.375
10610.625	10675.625
10611.875	10676.875
10613.125	10678.125
10614.375	10679.375

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10661.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75
10561.25	10626.25
10563.75	10628.75
10566.25	10631.25
10568.75	10633.75
10571.25	10636.25
10573.75	10638.75
10576.25	10641.25
10578.75	10643.75
10581.25 [1]	[1] 10646.25
10583.75 [1]	[1] 10648.75
10586.25 [1]	[1] 10651.25
10588.75 [1]	[1] 10653.75
10591.25 [1]	[1] 10656.25
10593.75 [1]	[1] 10658.75
10596.25 [1]	[1] 10661.25
10598.75 [1]	[1] 10663.75
10601.25	10666.25
10603.75	10668.75
10606.25 [1]	[1] 10671.25
10608.75	10673.75
10611.25 [1]	[1] 10676.25
10613.75	10678.75

[1] These frequencies are also available for DTS stations licensed, in operation, or applied for prior to July 15, 1993.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10553.125	10618.125
10558.125	10623.125
10563.125	10628.125
10568.125	10633.125
10573.125	10638.125
10578.125	10643.125
10583.125	10648.125
10588.125	10653.125
10593.125	10658.125
10598.125	10663.125
10603.125	10668.125

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10552.5	10617.5
10557.5	10622.5
10562.5	10627.5
10567.5	10632.5
10572.5	10637.5
10577.5	10642.5
10582.5	10647.5
10587.5	10652.5
10592.5	10657.5
10597.5	10662.5
10602.5	10667.5

(k) *10,700 to 11,700 MHz.* 40 MHz authorized bandwidth.

(1) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11130.625	11620.625
11131.875	11621.875
11133.125	11623.125
11134.375	11624.375
11135.625	11625.625
11136.875	11626.875
11138.125	11628.125
11139.375	11629.375
11140.625	11630.625
11141.875	11631.875
11143.125	11633.125
11144.375	11634.375
11145.625	11635.625
11146.875	11636.875
11148.125	11638.125
11149.375	11639.375
11150.625	11640.625
11151.875	11641.875
11153.125	11643.125
11154.375	11644.375
11155.625	11645.625
11156.875	11646.875
11158.125	11648.125
11159.375	11649.375
11160.625	11650.625
11161.875	11651.875
11163.125	11653.125
11164.375	11654.375
11165.625	11655.625
11166.875	11656.875
11168.125	11658.125
11169.375	11659.375
11170.625	11660.625
11171.875	11661.875
11173.125	11663.125
11174.375	11664.375
11175.625	11665.625
11176.875	11666.875
11178.125	11668.125
11179.375	11669.375
11180.625	11680.625
11181.875	11681.875
11183.125	11683.125
11184.375	11684.375
11185.625	11685.625
11186.875	11686.875
11188.125	11688.125
11189.375	11689.375
11190.625	11690.625
11191.875	11691.875
11193.125	11693.125
11194.375	11694.375
11195.625	11695.625
11196.875	11696.875
11198.125	11698.125
11199.375	11699.375

(2) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11131.25	11621.25
11133.75	11623.75
11136.25	11626.25
11138.75	11628.75
11141.25	11631.25
11143.75	11633.75
11146.25	11636.25
11148.75	11638.75
11151.25	11641.25

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11153.75	11643.75
11156.25	11646.25
11158.75	11648.75
11161.25	11651.25
11163.75	11653.75
11166.25	11656.25
11168.75	11658.75
11171.25	11661.25
11173.75	11663.75
11176.25	11666.25
11178.75	11668.75
11181.25	11681.25
11183.75	11683.75
11186.25	11686.25
11188.75	11688.75
11191.25	11691.25
11193.75	11693.75
11196.25	11696.25
11198.75	11698.75

(3) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11133.125	11623.125
11138.125	11628.125
11143.125	11633.125
11148.125	11638.125
11153.125	11643.125
11158.125	11648.125
11163.125	11653.125
11168.125	11658.125
11173.125	11663.125
11178.125	11668.125
11183.125	11683.125
11188.125	11688.125
11193.125	11693.125
11198.125	11698.125

(4) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11132.5	11622.5
11137.5	11627.5
11142.5	11632.5
11147.5	11637.5
11152.5	11642.5
11157.5	11647.5
11162.5	11652.5
11167.5	11657.5
11172.5	11662.5
11177.5	11667.5
11182.5	11682.5
11187.5	11687.5
11192.5	11692.5
11197.5	11697.5

(5) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10705	11205
10715	11215
10725[2]	[1]11675
10735	11225
10745	11235
10755	11245
10765	11255
10775	11265
10785	11275
10795	11285
10805	11295
10815	11305
10825	11315
10835	11325
10845	11335
10855	11345
10865	11355
10875	11365
10885	11375
10895	11385
10905	11395
10915	11405
10925	11415
10935	11425
10945	11435
10955	11445
10965	11455
10975	11465
10985	11475
10995	11485
11005	11495
11015	11505
11025	11515
11035	11525
11045	11535
11055	11545
11065	11555
11075	11565
11085	11575
11095	11585
11105	11595
11115	11605
11125	11615
11135[1]	[2]11625
11145[1]	[1]11635
11155[1]	[1]11645
11165[1]	[1]11655
11175[1]	[1]11665
11185[1]	[1]11685
11195[1]	[1]11695

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

[2] These frequencies may be assigned for unpaired use.

(6) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10715	11215
10755	11245
10795	11285
10835	11325
10875	11365
10915	11405
10955	11445
10995	11485
11035	11525
11075	11565
11115	11605
11155[1]	[1]11645
11185[1]	[1]11685

[1] Alternate channels These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(7) 40 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10735	11225
10775	11265
10815	11305
10855	11345
10895	11385
10935	11425
10975	11465
11015	11505
11055	11545
11095	11585
11135[1]	[1]11625
11175[1]	[1]11665

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

* * * * *

6. Section 94.65 is amended by revising the introductory text of newly designated paragraph (m)(8) to read as follows:

§ 94.65 Frequencies.

* * * * * * *

(m) * * *

(8) The following frequencies are available for point-to-multipoint systems, except that systems licensed, in operation, or applied for in the 10,565–10,615 and 10,630–10,680 MHz bands prior to July 15, 1993 are permitted to use frequencies in those bands if they prior coordinate with 10 GHz point-to-point licensees:

* * * * * * *

7. Section 94.65 is amended by adding paragraphs (q) and (r) to read as follows:

§ 94.65 Frequencies.

* * * * * * *

(q) Fixed systems licensed, in operation, or applied for in the 6525–6875 and 10,550–10,680 MHz bands prior to July 15, 1993 are permitted to use channel plans in effect prior to that date, including adding channels under those plans.

(r) Frequency diversity transmission will not be authorized in this service in the absence of a factual showing that the required communications cannot practically be achieved by other means. Where frequency diversity is deemed to be justified on a protection channel basis, it shall be limited to one protection channel for the bands 3700–4200, 5925–6425, and 6525–6875 MHz, and a ratio of one protection channel for three working channels for the bands

10,550–10,680 and 10,700–11,700 MHz. In the bands 3700–4200, 5925–6425, and 6525–6875 MHz, no frequency diversity protection channel will be authorized unless there is a minimum of three working channels, except that where a substantial showing is made that a total of three working channels will be required within three years, a protection channel may be authorized simultaneously with the first working channel. A protection channel authorized under such exception will be subject to termination if applications for the third working channel are not filed within three years of the grant date of the applications for the first working channel. Where equipment employing digital modulation techniques with cross-polarized operation on the same frequency is used, the protection channel authorized under the above conditions may be considered to consist of both polarizations of the protection frequency where such is shown to be necessary.

8. Section 94.71 is amended by revising paragraph (b) to read as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * * * *

(b) The maximum bandwidth that will be authorized per frequency is set out in the table that follows. Regardless of the maximum authorized bandwidth specified for each frequency band, the Commission reserves the right to issue a license for less than the maximum bandwidth if it appears that a lesser bandwidth would be sufficient to support an applicant's intended communications.

Frequency band (MHz)	Maximum authorized bandwidth
928–929	12.5, 25 kHz [1,6]
932–932.5, 941–941.5	12.5 kHz [1]
932.5–935, 941.5–944	12.5, 25, 50, 100, 200 kHz [1]
952–960	12.5, 25, 50, 100, 200 kHz [1,5]
1850–1990	5 or 10 MHz [1]
2130–2150	800 or 1600 kHz [1]
2150–2160	10 MHz
2180–2200	800 or 1600 kHz [1]
2450–2483.5	625 kHz [2]
2483.5–2500	800 kHz
3700–4200	20 MHz
5925–6425	30 MHz
6425–6525	25 MHz
6525–6875	10 MHz
10,550–10,680	5 MHz
10,700–11,700	40 MHz
12,200–12,700	10 or 20 MHz [1]
13,200–13,250	25 MHz
17,700–18,140	80 MHz
18,140–18,142	2 MHz
18,142–18,580	6 MHz
18,580–18,820	20 MHz
18,820–18,920	10 MHz
18,920–19,160	20 MHz
19,160–19,260	10 MHz
19,260–19,700	80 MHz
21,200–23,600	up to 100 MHz [4]
31,000–31,300	25 or 50 MHz
38,600–40,000	up to 50 MHz
Bands above 40,000 3.	
* * * * *	

[1] The maximum bandwidth that will be authorized for each particular frequency in this band is detailed in the appropriate frequency table in § 94.65.

[2] 1250 kHz, 1875 kHz, or 2500 kHz on a case-by-case basis.

[3] To be specified in authorization.

[4] For exceptions see § 94.91.

[5] A 12.5 bandwidth applies only to frequencies listed § 94.65(a)(1).

[6] For frequencies listed in § 94.65(a)(1), consideration will be given on a case-by-case basis to authorizing bandwidths up to 50 kHz.

9. Section 94.73 is revised to read as follows:

§ 94.73 Power limitations.

On any authorized frequency, the average power delivered to an antenna in this service shall be the minimum amount of power necessary to carry out the communications desired. Application of this principle shall include, but not be limited to, requiring a licensee who replaces one or more of his antennas with larger antennas to reduce his antenna input power by an amount appropriate to compensate for the increased primary lobe gain of the replacement antenna(s). In no event shall the average equivalent isotropically radiated power (EIRP), as referenced to an isotropic radiator, exceed the values specified below. Further, the output power of a transmitter on any authorized frequency in this service shall not exceed the following:

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP [1]	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
928 to 929	5.0		+17	
932 to 932.5			+17	
932.5 to 935	20.0		+40	
941 to 941.5			+30	
941.5 to 944	20.0		+40	
952 to 960	[6] 20.0		[2] +40	
1850 to 1990	20.0		+45	
2130 to 2150	20.0		+45	
2150 to 2160	20.0		[2] +45	
2180 to 2200	20.0		+45	
2450 to 2500	20.0		+45	
3700 to 4200	20.0		+50	
5925 to 6425	20.0		+55	
6425 to 6525		20.0		+35
6525 to 6875	20.0		+50	
10,550 to 10,680	[4] 10.0		+50	
10,700 to 11,700	10.0		+50	
12,200 to 12,700 [7]	10.0		+50	
12,700 to 13,250	10.0		[3] +50	
17,700 to 18,600	10.0		+55	
18,600 to 18,800	[5] 10.0		+35	
18,800 to 19,700	10.0		+55	
21,200 to 23,600 [7]	10.0		+40	

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP [1]	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
31,000 to 31,300	0.05	0.05	.....	.....
38,600 to 40,000	10.0	.....	+40	.....

[1] Peak envelope power shall not exceed five times the average power.
[2] For multiple address operations, see §94.65(a)(1)(v). When an omnidirectional antenna is authorized in the 2150–2160 MHz band, the maximum power shall be 60 dBm.
[3] Also, see §94.77.
[4] The output power of a Digital Termination System nodal transmitter shall not exceed 0.5 watts per 250 kHz. The output power of a Digital Termination system user transmitter shall not exceed 0.04 watts per 250 kHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input port. The operating power shall not exceed the authorized power by more than 10 percent of the authorized power in watts at any time.
[5] Maximum power delivered to antenna shall not exceed −3 dBW.
[6] Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.
[7] Also, see §§94.90 and 94.91.

10. Section 94.75 is amended by revising paragraph (b) to read as follows:

§94.75 Antenna limitations.

* * * * *

(b) Directional antennas shall meet the performance standards (for parallel polarization) indicated in the following table:

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beam width to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibles						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
932.5 to 935	A	14.0	N/A	.....	6	11	14	17	20	24
941.5 to 944	B	20.0	N/A	.....	.....	6	10	13	15	20
952 to 960 [1 4]	A	14.0	N/A	.....	6	11	14	17	20	24
	B	20.0	N/A	.....	.....	6	10	13	15	20
1,850 to 2,500 [2]	A	5.0	N/A	12	18	22	25	29	33	39
	B	8.0	N/A	5	18	20	20	25	28	36
3,700 to 4,200	A	N/A	36	23	29	33	36	42	55	55
	B	N/A	36	20	24	28	32	32	32	32
5,925 to 6,875 [10]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
6,525 to 6,875 [11]	A	1.5	N/A	26	29	32	34	38	41	49
	B	2.0	N/A	21	25	29	32	35	39	45
10,550 to 10,680 [3 9]	A	3.4	34	20	24	28	32	35	55	55
	B	3.4	34	20	24	28	32	35	35	39
10,565 to 10,615 [3 12],	N/A	360	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,630 to 10,680	N/A	N/A	34	20	24	28	32	35	36	36
10,700 to 11,700 [10]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
12,200 to 13,250 [6]	A	1.0	N/A	23	28	35	39	41	42	50
	B	2.0	N/A	20	25	28	30	32	37	47
17,700 to 19,700 [3]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
21,200 to 23,600 [5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
31,000 to 31,300 [7 8]	N/A	4.0	38	N/A	N/A	N/A	N/A	N/A	N/A	N/A
38,600 to 40,000	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36

[1] Except for frequencies listed in Sec. 94.65(a)(1), where omnidirectional antennas may be used.
[2] Except for 2,150–2,160 MHz, where the maximum beamwidth is 360 degrees.
[3] Except as provided for in paragraph (h) of this section.
[4] Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards: (1) The minimum on-beam forward gain must be at least 10 dBi, and (2) the minimum front-to-back ratio must be at least 20 dB.
[5] Except as provided in §94.91.
[6] Except for temporary-fixed operations in the band 13200 MHz – 13250 MHz with output powers less than 250 mW and as provided in §94.90.
[7] The minimum front-to-back ratio shall be 38 dBi.
[8] Mobile, except aeronautical mobile, stations need not comply with these standards.
[9] Except for such antennas between 140 deg. and 180 deg. authorized or pending on January 1, 1989 for which minimum radiation suppression to angle (in degrees) from centerline of main beam is 36 decibels.

[10] These antenna standards apply to all point-to-point stations authorized after June 1, 1997. Existing licensees and pending applicants on that date are grandfathered and need not comply with these standards.
[11] These antenna standards apply to all point-to-point stations authorized on or before June 1, 1997.
[12] These antenna standards apply only to Digital Termination User Stations licensed, in operation, or applied for prior to July 15, 1993.

* * * * *

11. Section 94.77 is amended by revising the introductory text and the heading of paragraph (a) to read as follows:

§ 94.77 Interference to geostationary-satellites.

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 2655–2690 MHz, 5925–6875 MHz, and 12.7–12.75 GHz on board geostationary-space stations in the fixed-satellite service (part 25). Stations authorized in the band 2655–2690 MHz prior to July 1, 1976 that exceed the power levels in paragraphs (a) and (b) of this section are permitted to operate indefinitely, provided that the operation of such stations does not result in harmful interference to reception in this band on board geostationary space stations.

(a) *2655 to 2690 MHz and 5925 to 6875 MHz.* * * *

* * * * *

12. Section 94.79 is revised to read as follows:

§ 94.79 Minimum path lengths for fixed links.

(a) The distance between end points of a fixed link must equal or exceed the value set forth in the following table or in the EIRP must be reduced in accordance with the equation set forth in paragraph (b) of this section.

Frequency band (MHz)	Minimum path length (km)
Below 1,850	N/A
1,850 to 7,125	17
10,550 to 13,250	5
Above 17,700	N/A

(b) For paths shorter then those specified in the Table, the EIRP shall not exceed the value derived from the following equation.

EIRP=30–20 log[A/B], dBW

Where:

EIRP=Equivalent isotropic radiated power in dBW.

A=Minimum path length from the Table for the frequency band in kilometers.

B=The actual path length in kilometers.

Note: Automatic transmit power control may be used to meet this requirement pursuant to § 94.45.

(c) Upon an appropriate technical showing, applicants and licensees unable to meet the minimum path length requirement may be granted an exception to these requirements.

Note: Links authorized prior to April 1, 1987 need not comply with this requirement.

13. Section 94.81 is amended by adding paragraph (c) to read as follows:

§ 94.81 Authorization of microwave equipment.

* * * * *

(c) After July 15, 1994, the manufacture (except for export) or importation of equipment employing digital modulation techniques in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz bands must meet the minimum payload capacity requirements of § 21.122(a)(3) of this chapter.

14. Section 94.94 is revised to read as follows:

§ 94.94 Microwave digital modulation.

Microwave transmitters employing digital modulation techniques in the 17,700–19,700 MHz band shall transmit at a bit rate, in bits per second (bps), equal to or greater than the authorized bandwidth in Hertz (e.g., to be acceptable, equipment transmitting at a 20 Mbps rate must not require an authorized bandwidth greater than 20 MHz). This bps/Hz standard is independent of the antenna (polarization) used, frequency reuse, or how the system is configured. For equipment applied for, authorized, and placed in service after June 1, 1997 in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz bands, standards of § 21.122(a)(3) of this chapter shall be met.

Note: Systems authorized in the 17,700–19,700 MHz band prior to December 1, 1988 may install equipment with no minimum bit rate.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Removal of Echinocereus Triglochidiatus var. Inermis (Spineless Hedgehog Cactus) From the List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby removes *Echinocereus triglochidiatus* var. *inermis* (spineless hedgehog cactus) from the List of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate that this plant is not a discrete and valid taxonomic entity and does not meet the definition of a species (which includes subspecies) as defined by the Endangered Species Act of 1973, as amended; it was listed in error. *E. t.* var. *inermis* is a spineless form of *E. t.* var. *melanacanthus* (red-flowered hedgehog cactus) that occurs sporadically in southeastern Utah and in southwestern Colorado. *E. t.* var. *melanacanthus* is a common variety with a widespread distribution from northern Utah and Colorado south to the States of Durango and San Luis Potosi in central Mexico. This final rule eliminates Federal protection of the Endangered Species Act, as amended.

EFFECTIVE DATE: September 22, 1993.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services, 730 Simms Street, room 290, Golden, Colorado 80401, or at the U.S. Fish and Wildlife Service, Ecological Services, Western Colorado Suboffice, 529–25½ Road, suite B–113, Grand Junction, Colorado 81505–6199.

FOR FURTHER INFORMATION CONTACT: Dr. Lucy Jordan, Botanist, at the above Grand Junction address (Phone: 303/243–2778).

SUPPLEMENTARY INFORMATION:

Background

The spineless hedgehog cactus has been known for nearly 100 years. It was

first collected in the La Sal Mountains of Utah by the German botanist Carl Albert Purpus and described by Karl Schuman in 1896 as *Echinocereus phoeniceus* Engelm. var. *inermis* K. Schuman (Taylor 1985). The Purpus type collection is no longer available for study because it was destroyed during World War II.

Historically, the spineless hedgehog cactus has not been recognized as a taxonomically distinct taxon. For instance, in the first complete treatment of the flora of Colorado, Harrington (1954) considered it only as a form. However, in the early 1970's, Arp (1973) made the combination *Echinocereus triglochidiatus* Engelm. var. *inermis* (K. Schum.) G.K. Arp. Although he recognized that the spineless hedgehog cactus had not been considered taxonomically distinct, Arp (1973) considered it: " * * * a distinct and identifiable population." His taxonomic recognition of the spineless hedgehog cactus coincided with passage of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its new provisions for the protection of endangered and threatened plants. The Fish and Wildlife Service (Service) listed it as endangered on November 7, 1979 (44 FR 64744).

Subsequent to listing the spineless hedgehog cactus, a recovery plan (U.S. Fish and Wildlife Service 1986) was prepared. This plan pointed out that some botanists questioned the taxonomic status of the plant and suggested further studies were needed to evaluate its taxonomy. Although the Service had listed the spineless hedgehog cactus, subsequent evaluations did not recognize it as a distinct taxon. These evaluations include Benson (1982), Taylor (1985), Weber (1987), and Welsh et al. (1987). The consensus of knowledgeable botanists is that the spineless hedgehog cactus is only a form and not a taxonomic entity.

The recovery plan also stated that the difference between spineless plants on mesa or ridge tops and spined plants on adjacent sideslopes may only be due to microhabitat differences. These different microsites are separated by short distances of as little as 15 m (50 ft). Subsequent inventories in the 12 years since listing have found spined and spineless plants on either flats or slopes, and spineless plants have been found in much more widely scattered areas (James Ferguson, Bureau of Land Management, pers. comm., 1985).

The spineless hedgehog cactus is now found at over 20 sites. Its known range has been expanded 160 km (100 mi) to the west (Heil and Porter 1989) and 40 km (25 mi) to the east and south (James Ferguson, pers. comm., 1986) of the original area. This is an area about 320 km (200 mi) by 160 km (100 mi), where it occurs widely interspersed within the range of var. *melanacanthus* (red-flowered hedgehog cactus) in southeast Utah and southeast Colorado.

The spineless hedgehog cactus does not breed true. Attempts by cactus nurserymen to breed spineless plants from mature, 15-year-old stock have yielded a mixture of spined and spineless progeny (Steven Brack, cactus horticulturist, Belen, New Mexico, pers. comm., 1991).

The spineless hedgehog cactus was formerly recognized as a distinct entity by cactus collectors. However, the cactus trade is well-known for splitting narrowly defined morphological variants of plants that are of horticultural interest to collectors. Collectors are usually not as concerned with concepts of populational integrity in nature, and horticultural recognition is not necessarily the same as scientific classification.

The Service published a proposal to delist the spineless hedgehog cactus on January 14, 1993 (58 FR 4401). All interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The Service particularly requested any evidence of populations of *E. triglochidiatus* whose individuals are plants referable only, or largely to, the variety *inermis*. No comments were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Echinocereus triglochidiatus* var. *inermis* should be removed from the List of Endangered and Threatened Plants found at 50 CFR 17.12. Procedures found at Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. Regulations (50 CFR 424.11) require that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Echinocereus triglochidiatus* Engelm. var. *inermis* (K. Schum.) G.K. Arp. (spineless hedgehog cactus) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Echinocereus triglochidiatus var. *inermis* has been determined to be a spineless form of *E. t.* var *melanacanthus*. *E. t.* var. *melanacanthus* is a common variety that is distributed from Utah and Colorado south into the States of Durango and San Luis Potosi in central Mexico (Benson 1982). The common *E. t.* var. *melanacanthus*, which includes *E. t.* var. *inermis*, is not threatened. The final rule that designated *E. t.* var. *inermis* as an endangered species identified habitat modification from pinyon-juniper chaining and mining activities. Because *E. t.* var. *inermis* is not a valid taxon and does not meet the definition of "species" as defined in the Act and because the taxon of which it is a part is common and wide ranging, this threat is not applicable.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The final rule cited overcollecting by commercial and private cactus collectors as the primary threat. Here again, as stated above in Section A, this threat is not applicable to the common and wide-ranging *E. t.* var. *melanacanthus* which includes *E. t.* var *inermis*.

C. Disease or Predation

Neither disease nor predation is a threat to *E. t.* var. *melanacanthus* which includes *E. t.* var. *inermis*.

D. The Inadequacy of Existing Regulatory Mechanisms

Echinocereus triglochidiatus var. *melanacanthus*, a common and wide ranging taxon, is not threatened by the inadequacy of regulatory mechanisms. All cacti are listed in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention). The Convention regulates and in some cases prohibits the export and international trade in species listed in the appendices. *E. t.* var. *inermis* will no longer be considered a distinct taxon in the appendices, but *E. t.* var. *melanacanthus* will remain on Appendix II.

E. Other Natural and Manmade Factors Affecting Its Continued Existence

None are known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *E. t.* var. *inermis* in determining to make this final rule. Based on this evaluation, the preferred action is to remove *Echinocereus triglochidiatus* var. *inermis* from the List of Endangered and Threatened Plants in 50 CFR 17.12, thereby removing it from the protection

of the Act, as amended. The regulations of 50 CFR 424.11(d) state that a species may be delisted if: (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes current scientific information exists that demonstrates that *E. t.* var. *inermis* does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" as defined in Section 3(16) of the Act. Therefore, *E. t.* var. *inermis* was listed in error.

In accordance with 5 U.S.C. 553(d), the Service has determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions which may affect a species no longer in need of protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the spineless hedgehog cactus.

Effects of Rule

This action removes the spineless hedgehog cactus from the List of Endangered and Threatened Plants. Federal Agencies are no longer required to consult with the Secretary of the Interior to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *E. t.* var. *inermis*. There is no designated critical habitat for this species. Federal restrictions on taking of this species no longer apply. There are no specific preservation or management programs for the species that are terminated.

National Environmental Policy Act

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

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Author

The original author of the proposed rule was John L. Anderson, Botanist, U.S. Fish and Wildlife Service. The primary author of this final rule is Dr. Lucy A. Jordan, Botanist (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

§ 17.12(h) [Amended]

2. § 17.12(h) is amended by removing the entry "*Echinocereus triglochidiatus* var. *inermis* (spineless hedgehog cactus)" under "Cactaceae" from the List of Endangered and Threatened Plants.

Dated: September 1, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–23104 Filed 9–21–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Final Rule To Delist the Plant Hedeoma apiculatum (McKittrick Pennyroyal) and Remove Its Critical Habitat Designation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service removes the plant *Hedeoma apiculatum* (McKittrick pennyroyal) from the List of Endangered and Threatened Plants and removes its critical habitat. The species is endemic to the Guadalupe Mountains in northwestern Texas and southeastern New Mexico. Because of the range, the number of newly discovered populations, and the remote and inaccessible nature of the habitat, the Service determines that McKittrick pennyroyal is not in danger of extinction throughout all or a significant portion of its range now or in the foreseeable future.

EFFECTIVE DATE: September 22, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 3530 Pan American Highway, NE., suite D, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, at the above address (505/883–7877).

SUPPLEMENTARY INFORMATION:

Background

Hedeoma apiculatum (McKittrick pennyroyal) was first collected in 1882, but remained undescribed until 1939 (Epling and Stewart 1939). The plant is a perennial herb, 10–15 cm (4–6 in.) tall, with dense tufts of leaves growing from woody rootstocks. The showy pink flowers are about 2 cm (0.8 in.) long, solitary or in clusters, and emerge from among the leaves towards the tips of the stems (Irving 1980).

McKittrick pennyroyal is endemic to the Guadalupe Mountains in Eddy County, New Mexico, and Culberson County, Texas. It is found in fissures and weathered pockets in open limestone rock outcrops at elevations above 1,660 m (5,400 ft). The species prefers north facing cliffs and slopes, but can occur on any aspect of sheltered relatively moist outcrops (Irving 1980, Knight and Cully 1988, Sivinski and Lightfoot 1992).

McKittrick pennyroyal was listed July 13, 1982 (47 *FR* 30440) as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Threats to the species at the time of listing were described as limited distribution, low numbers, and low reproductive potential, which all made the species vulnerable to extinction from the effects of habitat disturbance. Since the listing, additional surveys in the Guadalupe Mountains in New Mexico and Texas have shown the plant to be more widespread and abundant than previously known.

Irving (1980), reported 7 known locations for McKittrick pennyroyal scattered from near Hunter Peak in Guadalupe Mountains National Park (GMNP), Texas, to Big Canyon, Guadalupe Mountains, New Mexico. Since 1980, the species' range has been extended north to Double Canyon, Guadalupe Mountains, New Mexico, with many new locations being discovered. New populations were reported by the National Park Service (NPS) in 1986 (Richard B. Smith, GMNP, *in litt.* 1986), New Mexico Energy, Minerals and Natural Resources Department (Knight and Cully 1988), U.S. Forest Service (Hayes 1988), the Bureau of Land Management (BLM) (Dunmire 1990), and other sources. This information is summarized in Sivinski and Lightfoot (1992). A total of 13 Texas and 23 New Mexico locations are known at this time in a 166 sq km (65 sq mi) area in the Guadalupe Mountains of New Mexico and Texas. At the time of listing in 1982, plant numbers were estimated at 1,100. Although accurate counts and estimates are difficult to make, about 5,000 counted plants now comprise the 36 known locations.

Approximately 5–10% of an estimated 5,700 ha (14,000 ac) of potential habitat has been surveyed for McKittrick pennyroyal, mostly along trails and canyon bottoms. Potential habitat is abundant, but very difficult to survey because of the steep broken terrain and the remoteness of the area. It is likely that numerous groups of plants remain undiscovered throughout the suitable habitat, and that additional surveys will continue to identify new locations for the species (Sivinski and Lightfoot 1992).

At the time of listing the Service perceived the species to be vulnerable because of its low numbers and limited distribution and because of the potential threats to the species in its known locations from trail development and the impact of hikers. Management for the species in GMNP has included the designation of special management areas with limited public use, banning the use of horses on particular trails, and reducing levels of camping in certain sensitive areas (William P. Dunmire, Carlsbad Caverns and Guadalupe Mountains National Parks, *in litt.* 1984; Robin Wobbenhorst, GMNP, pers. comm. 1992). These management activities have reduced the human threats to McKittrick pennyroyal. The additional locations found since listing are in areas remote from human impacts, which provide a measure of security for the species.

Federal government actions on this species began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51), which included McKittrick pennyroyal in the threatened category, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 *FR* 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. McKittrick pennyroyal was included as threatened in this notice. McKittrick pennyroyal was proposed for listing as a threatened species with critical habitat on August 13, 1980 (45 *FR* 54682). The final rule listing McKittrick pennyroyal as a threatened species and designating its critical habitat was published July 13, 1982 (47 *FR* 30440). The McKittrick Pennyroyal Recovery Plan was completed in 1985 (U.S. Fish and Wildlife Service, 1985).

Federal involvement with McKittrick pennyroyal subsequent to listing has included surveys for new locations, monitoring of known populations, protection from human impacts through limiting use in sensitive areas, and inclusion in the development of the U.S. Environmental Protection Agency's (EPA) pesticide labeling program for protection of endangered species. The species has been included in all section 7 consultations over Federal projects occurring in suitable habitat in Eddy County, New Mexico, and Culberson County, Texas. Except for consultation with EPA on pesticide labeling, there have been no formal section 7 consultations involving this species. On September 22, 1992 (57 *FR* 43673), the Service proposed to delist the McKittrick pennyroyal and remove its critical habitat designation.

Summary of Comments and Recommendations

In the September 22, 1992, proposed rule (57 *FR* 43673) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Carlsbad Current Argus* on October 9, 1992, and the *El Paso Times* on October 8, 1992, which invited general public comment. Six comments were received within the comment period.

Timely comments on the proposal were received from the State of New Mexico (Energy, Minerals and Natural Resources Department), the U.S. Forest Service (Southwestern Region), the Bureau of Land Management (New Mexico State Office), the Botanical Research Institute of Texas, Inc., the Texas Wildlife Association, and one professional botanist. All commentors supported the proposal. A specific concern raised in one comment is discussed below.

Concern: Is the overall population trend increasing, decreasing, or remaining stable?

Response: Surveys of Hunter's Peak, Upper Bear Canyon, and Devil's Den by the National Park Service (1987) and of Lonesome Ridge by The Nature Conservancy (1990) documented increases within several populations of McKittrick pennyroyal. Populations located on vertical limestone cliffs are inaccessible to monitoring and there is no demographic data available for these sites. However, surveys of several accessible populations clearly demonstrate overall population increases. The NPS, Forest Service, and BLM will continue to monitor McKittrick pennyroyal populations on lands under their jurisdiction.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that McKittrick pennyroyal should be removed from the List of Threatened and Endangered Plants, and that its critical habitat designation should be removed. Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of threatened

and endangered species. The same procedures apply to reclassifying species or removing them from these lists. A species may be determined to be an endangered or threatened species based on the best scientific and commercial information available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Hedeoma apiculatum* W.S. Stewart (McKittrick pennyroyal) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

McKittrick pennyroyal populations are scattered throughout a 166 sq km (65 sq mi) range. Surveys since listing have increased the known distribution and abundance of the species. At the time of listing, most of the few known populations were located adjacent to hiking trails. Management actions to protect the species and the discovery of a significant number of populations that are remote from human activity have significantly reduced the threat from recreational activities.

Potential threats to this species from modification or destruction of habitat included exploratory drilling for natural gas or other resources, and wildfire. Exploratory drilling is excluded from most McKittrick pennyroyal habitat because of the steepness of the outcrops upon which the species occurs. Little was known about the response of McKittrick pennyroyal to fire until 1990, when 13,000 ha (33,000 ac) of habitat burned on the Lincoln National Forest. In 1991, these areas were surveyed and numerous healthy plants were observed on canyon walls. Lack of fuel in these locations had apparently protected the McKittrick pennyroyal and associated plant species. Thus, it appears that wildfire is not a serious threat to the long-term survival of this species (Sivinski and Lightfoot 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The final rule listing McKittrick pennyroyal identified collection for garden cultivation as a potential threat. No evidence for this kind of activity has come to light since the species was listed. Because of the increase in distribution and known plant numbers, the potential threat from this activity has been reduced.

C. Disease or Predation

In the final listing rule, grazing was noted to have occurred at one location. However, livestock are excluded from most of the habitat because of the steepness of the slopes. Other predators or disease organisms are not known at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

McKittrick pennyroyal is on the New Mexico State List of Endangered Plant Species (9–10–10 NMSA 1978; NMFRCD Rule No. 91–1) and the Texas List of Endangered, Threatened or Protected Native Plants (Chapter 88, Texas Parks and Wildlife Code). It is considered a sensitive species by the Forest Service, and has received special management consideration by the NPS. All States and agencies will have the option of retaining this species on their various lists when it is removed from the Federal List of Endangered and Threatened Plants. The Forest Service will monitor the populations on the Lincoln National Forest for at least 5 years following delisting. Management actions taken by the NPS to protect the species will be left in place in the Guadalupe Mountains National Park, and the status of the populations there will be monitored. The BLM will place McKittrick pennyroyal on its sensitive species list and monitor populations on lands under its jurisdiction for a 5-year period.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Long-term climate changes from the more mesic Pleistocene to the present-day xeric conditions may have caused McKittrick pennyroyal to retreat from a more widespread distribution to the moist protected habitats of canyon walls and cliff faces. Further drying trends may pose a serious threat to the relictual habitats of this species. However, the rate of climatic change is sufficiently slow (and uncertain) that this threat is not expected to occur in the foreseeable future (Sivinski and Lightfoot 1992).

The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service concludes the data supporting the original classification were incomplete, and new data show removing *Hedeoma apiculatum* from the List of Endangered and Threatened Plants is warranted. The Service after conducting a review of the species' status determines the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become an endangered or threatened species within the foreseeable future throughout all or significant portion of its range. Given the expanded range, number of newly discovered locations and individuals, remote habitat, and protection provided by that remoteness and difficulty of access, the Service concludes, on the basis of the best scientific and commercial information, that *Hedeoma apiculatum* does not warrant the protection of the Act.

In accordance with 5 U.S.C. 553(d), the Service has determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions which may affect a species no longer in need of the protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the McKittrick pennyroyal.

Effect of Delisting

This final rule removes the McKittrick pennyroyal from the List of Endangered and Threatened Plants, and removes the areas designated for it as critical habitat. Federal agencies no longer need to consult with the Service to insure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of McKittrick pennyroyal or result in destruction or adverse modification of its critical habitat.

The 1988 amendments to the Act require that all species which have been delisted due to recovery be monitored for at least 5 years following delisting. The McKittrick pennyroyal is being delisted primarily because the original listing information was in error, not because of recovery. Nevertheless, the Forest Service, NPS, and BLM have all indicated they will monitor the status of McKittrick pennyroyal for at least 5 years following delisting. The Service will work with these agencies to coordinate the monitoring effort.

National Environmental Policy Act

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

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Dunmire, W.W. 1990. Biological inventory of Lonesome Ridge ACEC, Carlsbad Resource Area, Bureau of Land Management: An investigation of biological resources focusing on plant and animal communities with recommendations for future management actions. U.S.D.I. Bureau of Land Management, Carlsbad Resource Area, Carlsbad, New Mexico. 52 pp.

Epling, C. and W.S. Stewart. 1939. A revision of *Hedeoma* with a review of allied genera. Report. Spec. Nov. Regni. Veg. Beihefte 115:1–49.

Hayes, F.A. 1988. Report on a *Hedeoma* survey. U.S.D.A. Forest Service, Albuquerque, New Mexico. 9 pp.

Irving, R.S. 1980. Status report on *Hedeoma* apiculatum. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico. 16 pp.

Knight, P.J. and A.C. Cully. 1988. Endangered plant study: Monitoring endangered plants, Project Number E–9–1. *Hedeoma apiculatum*. U.S. Fish and Wildlife Service, Division of Endangered Species, Albuquerque, New Mexico. 9 pp.

Sivinski, R. and K. Lightfoot. 1992. Status summary for the McKittrick pennyroyal (*Hedeoma apiculatum*). U.S. Fish and Wildlife Service, Ecological Services Field Office, Albuquerque, New Mexico. 31 pp.

U.S. Fish and Wildlife Service. 1985. McKittrick pennyroyal (*Hedeoma apiculatum* W.S. Stewart) Recovery Plan. U.S.D.I. Fish and Wildlife Service, Albuquerque, New Mexico. 46 pp.

Author

The primary author of this final rule is Philip Clayton (See **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Regulations Promulgation

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

PART 17—[AMENDED]

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

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

§ 17.12 [Amended]

2. Amend § 17.12(h) by removing the entry "*Hedeoma apiculatum*" under "Lamiaceae—Mint family:" from the List of Endangered and Threatened Plants.

§ 17.96 [Amended]

3. Amend § 17.96(a) by removing the critical habitat entry for "Hedeoma apiculatum" under "Family Lamiaceae".

Dated: September 1, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–23159 Filed 9–21–93; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

U.S. Standards for Beans

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Notice is hereby given that the Federal Grain Inspection Service (FGIS) is considering proposing several changes to the United States Standards for Beans. Specifically, FGIS is considering eliminating the factor "clean-cut weevil-bored beans" from the grade requirement for the class Blackeye beans and changing the grade limits for the factors "total defects," "blistered, wrinkled and/or broken beans," and "splits" for the class Baby Lima beans. FGIS invites comments, including data, views, and suggestions regarding the recommended changes.

DATES: Comments must be received by November 22, 1993.

ADDRESSES: Written comments must be submitted to George Wollam, FGIS, USDA, room 0624 South Building, P.O. Box 96454, Washington, DC 20090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection in room 0632 USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION: On March 16, 1993, FGIS published in the **Federal Register** (58 FR 14174) a notice that the United States Standards for Beans were under review. FGIS believed that these standards were meeting the needs of producers, warehouse managers, shippers, and all others who handle or market beans. Consequently no changes were planned or proposed.

Interested parties were invited to participate in the rulemaking process by submitting written comments and/or recommendations regarding the official standards. During the 60-day comment period, a total of two comments were received. One commenter, a major importer from Germany, recommended that the U.S. Standards for Beans be changed to agree more closely with a particular State's standards for beans. The other commenter, representing both a State bean shippers association and a State bean growers group, recommended eliminating the factor "clean-cut weevil-bored beans" from the grade requirements for the class Blackeye beans and changing the grade limits for the factors "total defects," "blistered, wrinkled, and/or broken beans," and "splits" for the class Baby Lima beans.

Adopting State Bean Standards

Uniformity between federal, state, and regional bean standards is desirable, but not necessary. Generally, state and regional standards are written for particular classes/varieties of beans grown within a state or regional growing area. These standards also tend to be oriented toward a specific market or end-user. The U.S. standards, on the other hand, are written for all beans grown in the United States and all potential users; i.e., producers, canners, packers, exporters, importers, and consumers.

FGIS appreciates the varying concerns and needs of those who use the U.S. Standards for Beans. For this reason, the U.S. Standards—as well as most state and regional standards—provide a wide-range of grade options. Purchase contracts may also stipulate quality requirements over and above these grade requirements.

FGIS believes that Federal, State, and regional standards each play an important role in the marketing of U.S. beans. FGIS is not aware of any major problems associated with the apparent differences in these standards. Accordingly, FGIS does not plan to propose further alignment of the U.S. Standards for Beans with any particular State or regional standards at this time.

Changing the Requirements for Blackeye and Baby Lima Beans

One commenter recommended that the grading factor "clean-cut weevil-bored beans" be eliminated from the grade requirements for the class Blackeye beans and that "clean-cut weevil-bored beans" be considered as "worm-cut" or "insect damaged" beans. The commenter also requested that the limits for "total defects," "blistered, wrinkled, and/or broken beans," and "splits" in the class Baby Lima beans be changed to not more than 2.0, 4.0, and 6.0 percent for grades U.S. Nos. 1, 2, and 3, respectively.

The present U.S. standards define "clean-cut weevil-bored beans" as beans from which weevils have emerged, leaving a clean-cut open cavity free from larvae, webbing, refuse, mold, or stain. "Clean-cut weevil-bored beans" are considered as a separate grading factor in only two classes of beans: Blackeye and Mung beans. According to the U.S. Standards for Beans, Blackeye beans in grades U.S. Nos. 1, 2, and 3 may not contain more than 0.0, 0.2, and 0.5 percent, respectively, of "clean-cut weevil-bored beans." In all other classes, "clean-cut weevil-bored beans" are included with the grading factor "total damage" and/or "total defects."

Currently, Baby Lima beans in grades U.S. Nos. 1, 2, and 3 may contain not more than 2.0, 3.0, and 5.0 percent, respectively, of "total defects" and not more than 3.0, 5.0, and 8.0 percent, respectively, of "blistered, wrinkled, and/or broken beans" or "splits." The grade limits for the factors "total defects" (which includes "splits") and "total damaged" for most other classes of beans (e.g., Great Northern, Small White, Kidney, Small Red, Pink, Black Turtle Soup, Blackeye, Cranberry, and Mung beans) is 2.0, 4.0, and 6.0 percent, for grades U.S. Nos. 1, 2, and 3, respectively.

Comments including data, views, and suggestions regarding the recommended changes to the U.S. Standards for Blackeye and Baby Lima beans are solicited from interested parties.

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Dated: August 27, 1993.

David R. Galliart,

Acting Administrator.

[FR Doc. 93–23128 Filed 9–21–93; 8:45 am]

BILLING CODE 3410–EN–M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AC96

Supplemental Security Income for the Aged, Blind, and Disabled; Waiver of Parent-to-Child Deeming for Certain Disabled Children

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 8010 of the Omnibus Budget Reconciliation Act of 1989 which provides that a disabled child under age 18 who lives with his or her parent(s) will not have parental income or resources deemed to him or her if the child previously received a reduced supplemental security income (SSI) benefit (personal needs allowance) while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of the individual's care; the child is eligible for medical assistance under a Medicaid State home care plan; and the child would otherwise be ineligible for a Federal SSI benefit because of the deeming of the parents' income or resources. The proposed rule also provides that, although deeming is waived in these circumstances, the in-kind support and maintenance provided by the parents will not be counted. Lastly, when such a child would not be ineligible because of the deeming of his parents' income but would receive a benefit of less than the amount payable under section 8010, the child's benefit will be $30 a month plus any optional State supplementation. Any of the child's own countable income will then be deducted from that amount.

DATES: To be sure that your comments are considered, we must receive them no later than November 22, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: Section 1614(f)(2) of the Social Security Act (the Act) requires that, for purposes of determining eligibility for and the amount of SSI benefits, the income and resources of a child under age 18 be deemed to include the income and resources of a parent (or spouse of a parent) who is living in the same household as the child, except to the extent determined by the Secretary to be inequitable under the circumstances. Regulations at § 416.1160 through § 416.1169 explain how we deem income and when it is inequitable to deem part or all of that income. Regulations at § 416.1202 through § 416.1204a explain how we deem resources.

Section 8010(a) of Public Law 101–239 amended section 1614(f)(2) of the Act to provide that parental income and resources shall not be deemed to any child under age 18 who is disabled, received SSI benefits under section 1611(e)(1)(I)(B) while in an institution described in that section, is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1915(c) of the Act or authorized under section 1902(e)(3), and, except for this waiver of deeming, would not be eligible for a Federal SSI benefit. Section 8010(b) amended section 1611(e)(1)(B) of the Act to include eligible children as described in section 1614(f)(2)(B) of the Act, among those eligible for the SSI personal needs allowance. These provisions became effective June 1, 1990.

The proposed regulation provides that we do not deem parental income and resources to disabled children who:

- Previously received SSI personal needs allowance benefits while residents of a medical facility for which Medicaid paid more than fifty percent of the cost of the individual's care;
- Are eligible for medical assistance under Medicaid State home care plans approved by the Secretary under the provisions of section 1915(c) of the Act or authorized under section 1902(e)(3); and
- Would otherwise be ineligible for a Federal SSI benefit because of the deeming of their parents' income and/or resources.

The proposed regulation also provides that children for whom the deeming rules are waived may be eligible to receive an SSI benefit up to the personal needs allowance (currently $30 monthly), plus an optional State supplement in certain States. The optional State supplement payable to a child for whom the deeming rules are waived will be determined by the State and, if the supplement is administered by the Federal government, set out in Federal/State agreements.

Further, the proposed regulation states that in-kind support and maintenance provided by a child's parent(s), which we do not count when deeming of parental income applies, also will not count when deeming of parental income is waived under section 1614(f)(2) of the Act. Otherwise, the counting of such in-kind support and maintenance could negate the beneficial effect of section 8010 of Public Law 101–239.

Finally, the proposed regulation addresses the situation of children who do not meet the criteria for waiver of deeming only because parental income is not high enough to make them ineligible for SSI benefits but is high enough to result in an SSI payment that is less than the amount that would be payable under section 8010 of Public Law 101–239. Under the proposed regulation, such children would receive an SSI benefit up to the personal needs allowance plus any optional State supplement. Any of the child's own countable income would then be deducted from that amount. This change is being made under the Secretary's discretionary deeming authority in section 1614(f)(2)(A) of the Act which allows the Secretary to determine the extent to which deeming of parental income and resources is inequitable under the circumstances. This change is necessary to prevent anomalies from being introduced into parent-to-child deeming.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

This proposed regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

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

Dated: April 23, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 1, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

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

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. New § 416.415 is added to read as follows:

§ 416.415 Amount of benefits; eligible individual is disabled child under age 18.

(a) If you are a disabled child under age 18 and meet the conditions in § 416.1165(i) for waiver of deeming, your parents' income will not be deemed to you and your benefit rate will be $30 a month.

(b) If you are a disabled child under age 18 and do not meet the conditions in § 416.1165(i) only because your parents' income is not high enough to make you ineligible for SSI but deeming of your parents' income would result in an SSI benefit less than the amount payable if you received benefits as a child under § 416.1165(i), your benefit will be the amount payable if you received benefits as a child under § 416.1165(i).

3. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

4. Section 416.1148 is revised to read as follows:

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

(a) *The one-third reduction and deeming of income.* If you live in the household of your spouse, parent, essential person, or sponsor whose income can be deemed to you, or the household of a parent whose income is not deemed to you because of the provisions of § 416.1165(i), the one-third reduction does not apply to you. The rules on deeming income are in §§ 416.1160 through 416.1169. However, if you live in another person's household as described in § 416.1131, and someone whose income can be deemed to you lives in the same household, we must apply both the one-third reduction and the deeming rules to you.

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose income can be deemed to you (§§ 416.1160 through 416.1169), or with a parent whose income is not deemed to you because of the provisions of § 416.1165(i), any food, clothing, or shelter that person provides is not income to you. However, if you receive any food, clothing, or shelter from another source, it is income and we value it under the presumed value rule (§ 416.1140). We also apply the deeming rules.

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any food, clothing, or shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

5. In § 416.1165, the introductory text is revised and a new paragraph (i) is added to read as follows:

§ 416.1165 How we deem income to you from your ineligible parents.

If you are a child living with your parents, we apply the deeming rules to you through the month in which you reach age 18. We follow the rules in paragraphs (a) through (e) of this section to determine your eligibility. To determine your benefit amount, we follow the rules in paragraph (f) of this section. The rules in paragraph (g) of this section apply to changes in your family situation. Paragraph (i) of this section discusses the conditions under which we will not deem your ineligible parents' income to you if you are a disabled child living with your parents.

* * * * *

(i) *Disabled child under age 18.* If you are a disabled child under the age of 18 living with your parents, we will not deem your parents' income to you if—

(1) You previously received a reduced SSI benefit while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of your care;

(2) You are eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(3) You would otherwise be ineligible for a Federal SSI benefit because of the deeming of your parents' income or resources.

6. The authority citation of subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; Sec. 211 of Pub. L. 93–66, 87 Stat. 154.

7. In § 416.1202, paragraph (b) is revised to read as follows:

§ 416.1202 Deeming of resources.

* * * * *

(b) *Child.* (1) *General.* In the case of a child (as defined in § 416.1856) who is under age 18, such child's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of an ineligible parent of such child (or the ineligible spouse of a parent) who is living in the same household (as defined in § 416.1851) as such child, whether or not available to such child, to the extent that the resources of such parent (or such spouse of a parent) exceed the resource limits described in § 416.1205 except as provided in paragraph (b)(2) of this section. (If the child is living with only one parent, the resource limit for an individual applies. If the child is living with both parents (or one parent and his or her spouse), the resource limit for an individual and spouse applies.) In addition to the exclusions listed in § 416.1210, pension funds which the ineligible parent or spouse of a parent may have are also excluded. "Pension funds" are defined in paragraph (a) of this section. As used in this section, the term "parent" means the natural or adoptive parent of a child and "spouse of a parent" means the spouse (as defined in § 416.1806) of such natural or adoptive parent.

(2) *Disabled child under age 18.* In the case of a disabled child under age 18 who is living in the same household

with his or her parents, the deeming provisions of paragraph (b)(1) of this section shall not apply if such child—

(i) Previously received a reduced SSI benefit while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of the individual's care;

(ii) Is eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(iii) Would otherwise be ineligible because of the deeming of his or her parents' resources or income.

* * * * *

[FR Doc. 93-23047 Filed 9-21-93; 8:45 am]

BILLING CODE 4190-29-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095-AA56

NARA Research Room Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NARA is proposing to change the hours that the Central Research Room, the Microfilm Research Room, and the Motion Picture, Sound and Video Research Room in the National Archives Building are open in the evening, beginning December 13, 1993. We are proposing that these research rooms will close at 8 p.m. instead of 10 p.m., Monday through Friday, and at 5 p.m. instead of 5:15 p.m. on Saturday. This proposed rule will affect researchers who use these research rooms in the late evening. NARA is taking this action so that resources will be available for staffing the research rooms at the new National Archives at College Park (Archives II) facility, beginning in January 1994.

DATES: Comments on the rule must be submitted by November 8, 1993.

ADDRESSES: Submit comments to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on 202-501-5110.

SUPPLEMENTARY INFORMATION: While the Central and Microfilm Research Rooms are currently open until 10 p.m., Monday through Friday, evening research room activity peaks between 5:30 and 6:30 p.m. and steadily declines thereafter. In a recent month (June 1993), the Microfilm Research Room showed a 30% decline in researchers after 8 p.m. and a 64% decline after 9 p.m. compared with the number of researchers present at 5 p.m.; in the Central Research Room there was a 59% decline after 8 p.m. and an 86% decline after 9 p.m. Evening use of the Motion Picture, Sound and Video Research Room, while lighter than the other two research rooms, shows a similar decrease in use after 8 p.m. Closing the research rooms 15 minutes earlier on Saturdays will give the research room staff time to secure the rooms before the 5:15 p.m. official closing of the building.

At the present time, only these three NARA research rooms in the Washington, DC, area offer evening hours. NARA intends to use the resources conserved by the earlier closing of these research rooms to offer evening and Saturday hours in the research rooms at the new National Archives at College Park facility (Archives II) in College Park, MD, beginning in January 1994. This will represent a considerable expansion in our services by the extension of evening and/or Saturday hours for records currently served in the Cartographic, Still Pictures, Electronic Records, and Nixon Research Rooms which do not have extended hours, and records currently served in the Suitland Research Room in the Washington National Records Center which has extended hours only on Saturdays.

A notice of proposed rulemaking addressing changes in research room procedures in NARA research rooms will be published in the **Federal Register** shortly. NARA also intends to publish a separate notice of proposed rulemaking for the Archives II facility, including research room hours, later this fall.

This proposed rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend chapter XII of title 36, Code of Federal Regulations, as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1253.1 is revised to read as follows:

§ 1253.1 National Archives Building.

The National Archives Building is located at seventh Street and Pennsylvania Avenue NW., Washington, DC 20408. Hours: For the Central Research Room, Microfilm Research Room, and Motion Picture, Sound and Video Research Room, 8:45 a.m. to 8 p.m., Monday through Friday; 8:45 a.m. to 5 p.m. on Saturday. For other research rooms, 8:45 a.m. to 5 p.m., Monday through Friday.

Dated: August 27, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93-23146 Filed 9-21-93; 8:45 am]

BILLING CODE 7515-01-W

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900—AG20

Loan Guaranty; Revised Definition of Net Value and Revised Criteria for Pre-Foreclosure Debt Waivers

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its Loan Guaranty regulations to revise the definition of property improvements for purposes of determining the net value of a foreclosed property and to clarify VA's position on pre-foreclosure debt waivers for liable veterans in cases involving transferee defaults. These changes will account for actual property appraisal procedures and will clarify agency policy on pre-foreclosure debt waiver.

DATES: Comments must be received on or before October 22, 1993. VA proposes to make these regulatory amendments effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. All written comments received will be available for public inspection in room 170, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3668.

SUPPLEMENTARY INFORMATION: VA is proposing to amend its Loan Guaranty regulations governing the formula for determining net value and to clarify VA's position with regard to the approval of pre-foreclosure debt waivers for liable veterans in cases involving transferee defaults, consistent with the Veterans Benefits Amendment Act of 1989, Public Law 101–237. An additional technical correction would be made to correct a reference in 38 CFR 36.4323.

When a VA guaranteed loan goes into default and servicing efforts by the holder and VA fail, the holder proceeds with termination of the loan. The rights and duties of the holder and VA in connection with termination of the loan and disposition of the property are governed by 38 CFR 36.4320. In most cases, VA establishes a maximum price which the holder may bid at the loan foreclosure sale. Establishment of such a price, known as the "specified amount," occurs when it is determined that the net value of the real property to VA exceeds the unguaranteed portion of the indebtedness, and VA can reduce its maximum claim liability by acquiring and reselling the property. If the property is sold to a holder at the foreclosure sale for a price no higher than the amount specified by VA, the holder may convey the property to VA in return for payment of the specified amount. VA also pays the holder's claim for the difference between the price paid for the property, which must be credited to the loan indebtedness by the holder, and any balance remaining on the loan, but not to exceed the maximum amount of loan guaranty. In this manner, VA may acquire the loan security (the home) and reduce its claim liability.

The formula for determining whether VA will offer the lender and election to convey the foreclosed property to VA is set forth at 38 CFR 36.4320. A key component of this formula is the "net value" of the property, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by the Government resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration and resale.

The definition of net value incorporates and defines the concept of "property improvement." This definition of "property improvement" was written at a time when the liquidation appraisal only took into account the cost of repairs needed to meet Minimum Property Requirements (MPRs) in determining "as is" value. Since then, appraisal procedures have been refined to recognize that repairs to the property may have a contributory effect on value which is not identical with their cost and that repairs other than those necessary to meet MPRs should be considered in determining value. VA proposes to amend the regulatory definition of property improvement contained within the definition of "net value," in 38 CFR 36.4301. The revised definition of property improvement includes any repair or improvement itemized on the liquidation appraisal, as reviewed by VA, which contributes to value and/or is required to meet minimum property requirements. This is consistent with current appraisal practices.

A second change to 38 CFR 36.4301 is also proposed which would simplify determination of the percentage to be used in the net value calculation. Currently 38 CFR 36.4301 requires use of three year's average property operation and sales expenses in the formula. This unnecessarily complicates determination of the percentage to be used in the net value calculation. It also can lead to determination of a percentage which is not truly reflective of current costs because more weight is given to old cost data than to VA's most recent experience. Amendment of the formula to require the use of only the most recent year's data will improve the accuracy of the determination.

VA is also proposing to amend 38 CFR 36.4323. Concern has been expressed by some field stations that current regulatory provisions regarding pre-foreclosure debt waivers do not clearly reflect VA's policy of approving pre-foreclosure waivers for liable veteran borrowers when the loan default is caused by a transferee owner. This policy is based in part on provisions of Public Law 101–237, the Veterans Benefits Amendments of 1989, which liberalized the rules on waiver of veterans' debts. Public Law 101–237 amended 38 U.S.C. 5302 to eliminate "material fault" as a bar to waiver of veterans' debts. 38 CFR 36.4323(e) would be amended to specifically provide that a veteran obligor may be granted a pre-foreclosure debt waiver in cases where the loan default is caused by a transferee owner, provided there are no indications of fraud, misrepresentation or bad faith on the part of the veteran whose debt would be waived. An additional technical correction would be made to a reference at § 36.4323(e)(4). The correct reference is to subsections (e)(1) and (e)(2), rather than to subsections (e)(2) and (e)(3).

These proposed regulatory amendments will have the effect of updating and clarifying the controlling regulations to reflect current procedures and are relatively minor in nature. These changes will not have a major effect on veterans or other program participants. For this reason, the Secretary hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, United States Code, sections 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regulations, and are not considered major regulatory changes as defined in the Executive Order. These regulations will not impact the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other 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 Program numbers are 64.114 and 64.118.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan program—housing and community development, Manufactured homes, Veterans.

Approved: July 6, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, it is proposed that 38 CFR part 36 be amended as set forth below:

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4300 through 36.4375, continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

2. In § 36.4301, the definition of "Net Value" is amended by revising the introductory text, paragraph (3), and the undesignated paragraph following paragraph (3)(ii) to read as follows:

§ 36.4301 Definitions.

* * * * *

Net value. The fair market value of real property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration, and resale. For purposes of determination of net value, *property improvement* is defined as any repair or improvement itemized on the liquidation appraisal, as reviewed by VA, which contributes to value and/or is required to meet minimum property requirements. Costs other than property improvement will be estimated as a percentage of the fair market value. Each year VA will review the average operating expenses incurred for properties acquired under § 36.4320 of this part which were sold during the preceding fiscal year and the average administrative cost to the government associated with the property management activity. The cost items reviewed will be:

(1) *Property operating expenses.* * * *

(2) *Selling expenses.* * * *

(3) *Administrative costs.* An estimate of the total cost for VA of personnel compensation and overhead (including all travel, transportation, standards level user charges (SLUC) communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this part. The average administrative costs will be determined by:

(i) Dividing the salary and benefits costs by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(ii) Dividing part (i) by the VBA ratio of personal services to total obligations.

The three cost averages will be added and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value. (The Secretary may, when determining property management costs, group properties in incremental value brackets). The calculation of net value will be based on the actual costs incurred over the last year. For Fiscal Year 1993, the percentage to be used when calculating net value will be 14.16. The fiscal year and percentage will be updated annually through a notice in the **Federal Register**.

* * * * *

3. Section 36.4323 is amended by revising paragraph (e)(1)(v); and by adding paragraph (e)(1)(vi); and the first sentence in paragraph (e)(4) is revised to read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) * * *

(1) * * *

(v) In consideration for a release of the Secretary's collection rights the obligor completes, or VA is enabled to authorize, and action which reduces the Government's claim liability sufficiently to offset the amount of the anticipated indebtedness which would otherwise be established pursuant to this paragraph and likely be collectable by VA after foreclosure in view of the obligor's financial situation; such actions would include termination of the loan by means of a deed in lieu of foreclosure, private sale of the property for less than the indebtedness with a reduced claim paid by VA for the balance due the loan holder or enabling VA to authorize the holder to elect a more expeditious foreclosure procedure when such an election would result in the legal release of the obligor's liability; or

(vi) The obligor being released is not the current title holder to the property and there are no indications of fraud, misrepresentation or bad faith on the obligor's part in obtaining the loan or disposing of the property or in connection with the loan default.

* * * * *

(4) Determinations made under paragraphs (e)(1) and (e)(2) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectable debts owing to the United States. * * *

(Authority: 38 U.S.C. 501, 3703(c)(1))

* * * * *

[FR Doc. 93-23156 Filed 9-21-93; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 36

RIN 2900-AG55

Loan Guaranty; Increase in Attorney Fees

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations to increase from $700 to $850 the maximum allowable amount VA will reimburse a loan holder for the cost of trustee's fees and legal services incurred by the holder in liquidating a loan guaranteed by VA. Increasing the maximum allowable amount will make it easier for holders to retain experienced legal counsel to perform required foreclosures in a timely manner.

DATES: Comments must be received on or before October 22, 1993.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection in room 172, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233-3668.

SUPPLEMENTARY INFORMATION: When a VA guaranteed loan is foreclosed and the loan holder incurs expenses for trustee's fees and legal services in connection with the foreclosure, VA will reimburse the holder for these costs, up to a maximum amount. 38 CFR 36.4276(b) and 36.4313(b) were last amended August 17, 1988 to increase from $350 to $700 the maximum amount VA would reimburse a loan holder for the cost of trustee's fees and legal services allowable on claims under guaranty. Since then the fees generally charged by trustees and attorneys for their services have increased. Most holders are reluctant to incur expenses that will not be reimbursed by VA.

The proposed fee increased to $850 would make it easier for holders to retain the experienced counsel needed to perform the required foreclosures in a timely manner. It would also bring VA's maximum amount into close

alignment with the Federal National Mortgage Association's (FNMA) fee schedule, which is considered a good indicator of customary attorney fees nationwide.

The Secretary hereby certifies that the proposed regulatory amendments 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. Increasing the amount VA will reimburse holders for trustee's fees and legal services will make it easier for holders to retain experienced legal counsel to perform required foreclosures.

The Secretary has also determined that the proposed amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumer or individual industries, nor will they have other 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 Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan program—housing and community development, Manufactured homes, Veterans.

This amendment is proposed under the authority granted the Secretary by sections 501(a) and 3720(a) of title 38, United States Code.

Approved: August 2, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36, is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4201 through 36.4287, continues to read as follow:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501(a), 3712.

2. In § 36.4276(b) the undesignated text at the end of paragraph (b) is removed and paragraph 36.4276(b)(5) is revised to read as follows:

§ 36.4276 Advances and other charges.

* * * * *

(b) * * *

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or $850 whichever is less. In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraphs (b) (4) and (5) of this section) exceed $850.

* * * * *

3. The authority citation for part 36, §§ 36.4300 through 36.4375, continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

4. In § 36.4313(b) the undesignated text at the end of paragraph (b) is removed and paragraph 36.4313(b)(5) is revised to read as follows:

§ 36.4313 Advances and other charges.

* * * * *

(b) * * *

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or $850 whichever is less. In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraphs (b) (4) and (5) of this section) exceed $850.

* * * * *

[FR Doc. 93–23157 Filed 9–21–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 12–23–5659; FRL–4733–3]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1990, EPA promulgated a Federal Implementation Plan (FIP) which contains stationary source volatile organic compound (VOC) control measures representing reasonable available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. EPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP). Included in EPA's rules was a requirement that all major sources be subject to control measures. On August 19, 1991, Reynolds requested that EPA reconsider the application of the control measures contained in the FIP to its facility in McCook, Illinois, and on October 17, 1991, Reynolds requested that EPA promulgate site-specific RACT limits for its hot and cold rolling mills. EPA has agreed to reconsider the RACT control requirements for Reynolds' aluminum rolling operations. In addition, as a result of EPA's reconsideration, EPA is proposing site-specific RACT control requirements for Reynolds' aluminum rolling operations.

DATES: Comments on this proposed revision to the Chicago FIP must be received by October 22, 1993 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for the hearing should be submitted to Jay Bortzer by October 22, 1993 at the address below.

ADDRESSES: Written comments on this action should be addressed to Jay Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Street, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of this action, the scope of which is discussed below.

For information on the hearing, interested persons may call Ms. Hattie Geisler at (312) 886–3199. Any hearing will 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 Clean Air Act (CAA), 42 U.S.C. 7607(d)(1), this section is subject to the procedural requirements of section 307(d). Therefore, EPA has established a public docket for this action, A–92–67, 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 Steven Rosenthal before visiting the Chicago location and Jacqueline Brown before visiting the Washington D.C. location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 18th Floor, Southwest, 77 West Jackson Blvd., Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Docket No. A–92–67, Air Docket (LE–131), room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch, EPA Region 5, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

Part D of the CAA, 42 U.S.C. 7401 et seq., requires that states adopt rules for major non-control Technique Guideline (CTG)[1] sources. This requirement is discussed in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20372). On July 21, 1988, Illinois submitted a rule which covered major (100 tons per year or more of VOC emissions) non-CTG VOC sources. This rule was disapproved by EPA on June 29, 1990 (55 FR 26814), primarily because its applicability provisions were inconsistent with EPA requirements. Among other defects, Illinois' non-CTG rule did not regulate the rolling operations at Reynolds' McCook facility.

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against EPA and sought a judgment that EPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. *Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis.

On May 25, 1988, EPA released a guidance document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (the "Blue Book"). The purpose of this VOC guidance document was to identify deficiencies which must be removed from existing SIPS and disapproved in any proposed SIPS. This document specifies EPA's non-CTG RACT requirements.

On January 18, 1989, the District Court in *Wisconsin* v. *Reilly* ordered that EPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, EPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement calls for the use of a more sophisticated air quality model, allows more time for EPA to promulgate a FIP using the model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of required VOM[2] RACT rules for Illinois to remedy deficiencies in its State regulations.

On December 27, 1989, EPA proposed major non-CTG rules consistent with its May 25, 1988, VOC guidance (54 FR 53080). The non-CTG rules proposed for promulgation by EPA covered Reynolds' aluminum rolling operations. On June 29, 1990, EPA took final action to promulgate major non-CTG rules. 55 FR 26814.

On August 29, 1990, Reynolds filed a petition for review of EPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group ("IERG") et al.* v. *Reilly*, No. 90–2778.

On August 19, 1991, Reynolds requested that EPA reconsider the FIP rule as it applies to its aluminum rolling operations and on October 17, 1991, Reynolds requested the adoption of site-specific RACT limits for its hot and cold rolling mills. On November 20, 1991, EPA announced its intention to reconsider its non-CTG rules as they apply to Reynolds, and issued a three-month stay of the applicable rule pending reconsideration, pursuant to section 307(d)(7)(B) of the Act, 42 U.S.C. 7607(d)(7)(B). 56 FR 58501. In addition, on November 20, 1991, EPA proposed to extend the three-month stay, but only as long as necessary to complete reconsideration. 56 FR 58528. On June 23, 1992, EPA extended the stay beyond the 3-month period, for as long as necessary to complete reconsideration of its non-CTG rules for Reynolds' aluminum rolling operations. 57 FR 27935. That stay indicated that when EPA concludes its reconsideration, it will publish its decision and any actions required to effectuate that decision in the **Federal Register**.

As a result of EPA's decision to reconsider the Federal rules as applied to Reynolds, EPA has reviewed information regarding Reynolds' rolling operations. This proposed rule presents a discussion of this analysis and proposes revised RACT rules for Reynolds.

II. Analysis of RACT

The Chicago FIP specifies a general non-CTG control requirement of 81 percent overall VOC reduction for non-coating sources. This control requirement, which would apply to Reynolds' aluminum rolling operations, is contained in 40 CFR 52.741(x). Reynolds has provided information to EPA which documents the infeasibility of the 81 percent control requirement for its hot and cold rolling mills.

Reynolds initially submitted information in support of site-specific RACT control requirements for its hot and cold rolling mills, on May 29, 1991. Additional supporting information was sent to EPA on October 17, 1991, March 30, 1992, and May 15, 1992.

A. RACT Demonstration for Cold Rolling Operations

The following process modification and treatment technologies were considered as part of the RACT demonstration for the cold rolling operations at Reynolds Metals Company's McCook Sheet and Plate Plant. A summary of its conclusions are presented below.

Lubrication Selection and Temperature Control: Severely hydrotreated mineral seal oils exhibit a lower vapor pressure than any other identified rolling oil at all temperatures expected to be approached in the rolling process. Thus, severely hydrotreated mineral seal oils inherently represent the lowest potential VOC emitting rolling oil available to the McCook cold rolling mills.

Mill Hooding: The #7 mill at McCook already is equipped with a hooding system. Retrofit of the #1 mill with hoods of modern design would be difficult. Any additional hooding systems or modifications to current systems at McCook are useful only when coupled with one of the treatment technologies discussed below.

Thermal Incineration: Low VOC inlet concentration and the potential of a mill fire deem incineration technology infeasible at the McCook cold rolling mills. Also, thermal incinerators are not in use on any known rolling mill.

The total capital investment for thermal incineration would be $20,368,000. Total annualized costs for this control option are $4,529,000. The cost effectiveness for this option is approximately $42,000 per ton of VOC removed.

Absorption: Although oil absorption units are demonstrated technology on new rolling mill installations, the potential applicability of a retrofit installation to an existing rolling mill is subject to many site-specific constraints due to the extreme size of the control units and the complex duct work required to sufficiently capture the

[1] Control techniques guideline documents have been prepared by EPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. Each individual CTG recommends a presumptive norm of control considered reasonably available to a specific source category.

[2] The State of Illinois uses the term "VOM" in its regulations. For the purposes of this RACT analysis, this term is considered equivalent to EPA's term "VOC."

fugitive emissions. Because of the age and the design of the buildings at the McCook plant, installation of an oil absorption system would be difficult. A structure for ductwork and auxiliary equipment would need to be constructed adjacent to each of the existing mills.

The total capital investment for absorption would be $27,105,000. Total annualized costs for this control option are $5,135,000. The cost effectiveness for this option is approximately $47,000 per ton of VOC removed.

Adsorption: This technology is not applicable to the McCook cold rolling mills as a result of rapid fouling from the heavy lubricant compounds used in the mill and an inability to regenerate the carbon on-site thereby requiring frequent carbon changes and the addition of fresh carbon. In addition, there are several inherent design concerns with applying carbon units to rolling mill emission streams including high levels of aerosol or liquid entrainment, desorption problems, and heel removal.

The total capital investment for carbon adsorption would be $17,781,000. Total annualized costs for this control option are $4,941,000. The cost effectiveness for this option is approximately $45,000 per ton of VOC removed.

Summary: Application of thermal incineration, oil absorption, and carbon adsorption technologies to the McCook cold rolling mills is technologically and/or economically infeasible. Thermal incineration and carbon adsorption appear technically infeasible for the McCook cold rolling mills. High capital and operating costs make thermal incineration, oil absorption, and carbon adsorption infeasible. The age and design of the mills makes retrofitting of the available control technologies extremely expensive.

The most appropriate control technology for the McCook cold rolling mills is the use of an inherently low emitting rolling fluid. Of the fluids commercially available, the use of a severely hydrotreated mineral seal oil will result in the greatest degree of emissions reduction. Additionally, it is important that temperatures be controlled to ensure that the vapor pressure exerted by the system does not cause excessive VOC emissions. In order to maximize VOC emission reductions and ensure maximum sensible heat capacity of the system, RACT should reasonably require that sump oil temperatures be maintained at 150 degrees F.

B. RACT Demonstration for Hot Rolling Operations

The following process modification and treatment technologies were considered as part of the RACT demonstration for the hot rolling operations at Reynolds Metals Company's McCook Sheet and Plate Plant. A summary of its findings are presented below.

Emulsion Selection: This option consists of the use of a water-based emulsion with a maximum temperature of the emulsion, as applied, of 200 degrees F. Maximizing the use of water, instead of oil, to achieve cooling of the metal, reduces the potential for oil vaporization. Reynolds claims that the oil content of the emulsion (1 to 15 percent) currently used at the McCook hot mills cannot be further reduced without creating operational problems and reducing product quality at the facility. For example, the aluminum sheet and rolls could weld together.

Thermal Incineration: Thermal incinerators are not in use on any known rolling mill. This technology could not be applied to hot rolling mills due to discontinuous emissions of VOC, the resulting low average VOC concentrations, and the high humidity of the inlet gas.

Oil Absorption: Although oil absorption units are demonstrated technology on new cold rolling mill installations, they have not been modified to handle water-based emulsions and have therefore never been used at a hot rolling mill to control VOC emissions. Oil absorption equipment is not commercially available anywhere in the world for a hot mill. This is because emulsions used in hot rolling operations are not suitable for current oil absorption technology.

Carbon Adsorption: Carbon adsorption has never been used at a hot rolling mill to control VOC emissions. This technology is not applicable to the McCook hot rolling mills due to the moisture content of the gas stream, which would result in continual desorption of VOCs.

Summary: Application of thermal incineration, oil absorption, or carbon adsorption technologies or installation of a hooding system to the McCook hot rolling mills appears to be infeasible. RACT for the McCook hot rolling mills is the application of a water-based emulsion with a maximum temperature of the emulsion, as applied, of 200 degrees F.

C. RACT at Other Aluminum Rolling Mills

On August 20, 1990 (55 FR 33904), EPA approved a major non-CTG RACT requirement for the aluminum rolling mills at the Reynolds Metal-Foil Plant in Richmond, Virginia, an ozone nonattainment area. RACT in that case consists of lubricant substitution (use of a less volatile lubricant) and the requirement that the lubricant temperature be controlled and maintained at or below 150°F.

III. Specific RACT Control Requirements and Test Methods

A. Cold Rolling Mills

RACT for the aluminum sheet cold rolling mills Nos. 1 and 7 at the McCook Sheet & Plate plant is the use of a severely hydrotreated mineral seal oil (rolling lubricant) and a maximum inlet sump rolling lubricant temperature of 150°F. Compliance shall be demonstrated by a monthly distillation range analysis of a grab rolling lubricant sample from each operating mill and daily rolling lubricant temperature readings in the inlet sump feeding each mill.

All incoming shipments of mineral seal oil for the Nos. 1 and 7 cold mills must be sampled and each sample must undergo a distillation range test using ASTM method D86–90, "Standard Test Method for Distillation of Petroleum Products." The initial and final boiling points of the mineral seal oil must be between 460°F and 635°F. Also, for the cold mills, samples of the as-applied lubricants must be taken on a monthly basis to verify, using ASTM method D86–90, that the boiling points are between 460°F and 635°F.

B. Hot Rolling Mills

RACT for the aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch and 145 inch mills, at the McCook Sheet & Plate plant is the use of an oil/water emulsion (rolling lubricant) not to exceed 15% by weight of petroleum-based oil and additives and a maximum inlet sump rolling lubricant temperature of 200°F. Compliance shall be demonstrated by a monthly analysis of a grab rolling lubricant sample from each operating mill and daily temperature readings in the inlet sump feeding each mill.

The lubricants at each hot mill must be sampled and tested, for the percentage of oil and water, on a monthly basis. ASTM Method D95–83 (Reapproved 1990), "Standard Test Method For Water in Petroleum Products and Bituminous Materials by Distillation", shall be used to determine the percent by weight of petroleum-based oil and additives.

C. Coolant Temperature Monitoring

Coolant temperatures shall be monitored at all of the rolling mills by use of thermocouple probes and chart recorders. The probes sense the coolant temperatures at the supply side to the mills.

D. Recordkeeping

All distillation test results for cold mill lubricants, all percent oil test results for hot mill lubricants, all coolant temperature recording charts, and all oil/water emulsion formulation records shall be kept on file, and be available for inspection by EPA, for three years.

IV. Compliance Date

A compliance date of four months from promulgation is proposed so that Reynolds has adequate time to comply with revised recordkeeping requirements.

V. Summary and Conclusions

Through today's notice, site-specific RACT requirements, revised recordkeeping requirements, and revised test methods are proposed for Reynold's aluminum rolling mills. The use of lower VOC emitting lubricants and lubricant temperature control has been previously approved by EPA as RACT for another aluminum rolling mill. Compliance with the revised emission limits and recordkeeping requirements must be achieved four months from EPA's final promulgation of these rules.

EPA is taking this action pursuant to its authority under section 110(k)(6) of the Act to correct through rulemaking any plan or plan revision.[3] EPA is interpreting this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to EPA's satisfaction that the information made available to the Agency at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and other information persuasively supports a change in the regulation. See 57 FR 6762 at 6763 (November 30, 1992). In this case, the information made available to EPA during the rulemaking for Reynolds was clearly inadequate for the development of a site-specific RACT determination.[4]

Public comment is solicited on this proposal for Reynolds. Public comments received by the date shown above will be considered in the development of EPA's final rule.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action involves only one source, Reynolds Metals Company. (Reynolds is not a small entity.) Therefore, EPA certifies that this RACT promulgation does not have a significant impact on a substantial number of small entities.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Ozone, Volatile organic compounds.

Dated: September 14, 1993.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, it is proposed that part 52, chapter I, title 40 of the Code of Federal Regulations be amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741 is amended by adding a new paragraph (x)(7) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

* * * * *

(x) * * *

(7) The control, recordkeeping, and monitoring requirements in this paragraph apply to the aluminum rolling mills at the Reynolds Metals Company's McCook Sheet & Plate Plant in McCook, Illinois (Cook County) instead of the control requirements and test methods in the other parts of paragraph (x) of this section, and the recordkeeping requirements in paragraph (y) of this section. All of the following requirements must be met by Reynolds on and after [insert date 4 months after date of publication of the final notice in the **Federal Register**].

(i) A severely hydrotreated mineral seal oil shall be the only lubricant used at Reynolds' aluminum sheet cold rolling mills numbers 1 and 7. The initial and final boiling points of the lubricant must be between 460°F and 635°F to be considered a severely hydrotreated mineral seal oil. All incoming shipments of mineral seal oil for the number 1 and 7 mills must be sampled and each sample must undergo a distillation range test to determine the initial and final boiling points using ASTM method D86–90. A grab rolling lubricant sample shall be taken from each operating mill on a monthly basis and each sample must undergo a distillation range test, to determine the initial and final boiling points, using ASTM method D86–90.

(ii) An oil/water emulsion, with no more than 15 percent by weight of petroleum-based oil and additives, shall be the only lubricant used at Reynolds' aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch, and 145 inch mills. A grab rolling lubricant sample shall be taken from each operating mill on a monthly basis and each sample shall be tested for the percent by weight of petroleum-based oil and additives by ASTM method D95–83.

(iii) The inlet sump rolling lubricant temperature for aluminum sheet cold rolling mills numbers 1 and 7 shall not exceed 150°F. The inlet sump rolling lubricant temperature for the aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch, and 145 inch mills shall not exceed 200°F. Coolant temperatures shall be monitored at all the rolling mills by use of thermocouple probes and chart recorders.

(iv) All distillation test results for cold mill lubricants, all percent oil test results for hot mill lubricants, all coolant temperature recording charts, and all oil/water emulsion formulation records, shall be kept on file, and be

[3] Since EPA is taking this action pursuant to section 110(k)(6), EPA believes that section 193 of the Act (the savings clause) is inapplicable. By its terms, section 110(k)(6) does not require any additional submission or evidence. Section 193 requires an assurance of equivalency for any revision. In order to provide for equivalency, the State would need to provide for compensating reductions. EPA believes that this conflict should be resolved concluding that section 110(k)(6) is not constrained by the savings clause requirement of equivalent reductions. EPA believes that the state and the sources within the state should not have to bear the burden of additional reductions where EPA lacked important site-specific information at the time of an initial promulgation. This is particularly true in the case of FIPs, where EPA takes the lead in developing the regulations and is not merely acting on state-submitted regulations.

[4] As discussed earlier, EPA was required to promulgate the June 29, 1990 FIP regulations under the tight timeframe ordered by the Court in *Wisconsin* v. Reilly.

available for inspection by EPA, for three years.

[FR Doc. 93-23070 Filed 9-21-93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[IL 18-3-5817; FRL-4698-7]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposal rule.

SUMMARY: On September 11, 1991, and March 15, 1993, the Illinois Environmental Protection Agency (IEPA) submitted to the United States Environmental Protection Agency (USEPA) volatile organic compound (VOC) rules, for the Chicago and East St. Louis ozone nonattainment areas, as proposed revisions to Illinois' State Implementation Plan (SIP) for ozone. These rules have been submitted to USEPA to correct the deficiencies in Illinois' VOC SIP that were identified in USEPA's May 1988 26, and June 17, 1988, letters notifying Illinois that Illinois' ozone SIP was substantially inadequate. These rules also expand the geographic applicability of Illinois' VOC rules to all the State's nonattainment areas. These proposed revisions are being parallel processed because the rules submitted on March 15, 1993, have been submitted to, but not as yet adopted by, the Illinois Pollution Control Board (IPCB). In this proposed rule, USEPA is proposing to approve these rules, provided that Illinois makes certain clarifications. If Illinois does not adopt and submit these rules to USEPA, USEPA will repropose action based upon the September 11, 1991, submittal.

DATES: Comments on this revision and on the proposed USEPA action must be received by October 22, 1993.

ADDRESSES: Written comments shall be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Steven Rosenthal at (312) 886-6052, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch (AR-18J) U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. (312) 886-6052.

SUPPLEMENTARY INFORMATION:

Background

Under section 107 of the CAA, as amended in 1977, USEPA designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For these areas, section 172(a) of the CAA required that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982.[1] part D allowed USEPA, though, the grant extensions to as late as December 31, 1987, to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its SIP. Illinois requested, and received, an extension to December 31, 1987, for attaining the ozone NAAQS for the Chicago and East St. Louis ozone nonattainment areas. Section 172 (b) and (c) of the Act, as amended in 1977, require that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT).[2]

On February 21, 1980 (45 FR 11472), USEPA approved Illinois' RACT I (or Group I) rules. These rules, (which applied statewide) all contained in State Rule 205 (Organic Material Emission Standards and Limitations) consisted of the following subsections:

(a) Storage,
(b) Loading
(c) Organic Material-Water Separation,
(d) Pumps,
(e) Architectural Coatings,
(f) Use of Organic Material,
(g) Waste Gas Disposal,
(h) Emissions During Clean-up Operations and Organic Material Disposal,
(i) Testing Method for Determination of Emissions of Organic Material,
(j) Compliance Dates,
(k) Solvent cleaning,
(l) Petroleum Refineries,
(m) Compliance Schedules,
(n) Surface Coating,
(o) Bulk Gasoline Plants, Bulk Gasoline Terminals, and Petroleum Liquid Storage Tanks,
(p) Gasoline Dispensing Facility,
(q) Cutback Asphalt, and
(r) Operation of Oil Fired and Natural Gas Afterburners.

On November 21, 1987 (52 FR 45333), USEPA approved a portion of Illinois' RACT II (or Group II) rules. The approved rules, (which applied statewide) also all contained in State Rule 205, consisted of the following subsections:

(s) Petroleum Refineries,
(t) Manufacture of Pneumatic Rubber Tires, and
(u) Dry cleaning.

Since then, Illinois has recodified its VOC rules, from Rule 205 into section 215. Certain modifications were also made in the process of recodification.

On May 26, 1988, Valdas V. Adamkus, Regional Administrator, USEPA, Region 5, notified former Governor James R. Thompson, pursuant to section 110(a)(2)(H) of the preamended CAA, that the Illinois SIP was substantially inadequate to achieve the NAAQS of ozone in parts of Illinois. This letter to the Governor further stated that Illinois was required under the Act, as amended in 1977, to correct the deficiencies and inconsistencies in its existing VOC regulations. A June 17, 1988, SIP call follow-up letter to IEPA identified the deficiencies and inconsistencies in Illinois' existing VOC stationary source RACT regulations that has been previously approved by USEPA. This letter also referred to required VOC regulations that had been submitted by Illinois to USEPA and that were undergoing USEPA review. USEPA published an information notice of September 7, 1988, (53 FR 34500) on

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[1] The requirements for an approval SIP are described in a "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). On January 22, 1981, (46 FR 7182), USEPA published guidance for the development of 1982 ozone SIPS in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension."

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator of Air and Waste Management and is cited in a General Preamble-Supplement on Control Technique Guidelines (CTGs), published at 44 FR 53761, 53762 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

The USEPA published CTGs in order to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the USEPA considers the "presumptive norm" for RACT. The Group I CTGs were issued in 1977, the Group II CTGs were issued in 1978, and the Group III CTGs were issued between 1982 and 1984.

All other sources which are not covered by Group I, II, or III CTGs are referred to as "non-CTG" sources. "Non-CTG major sources" are sources which have the potential to emit more than 100 tons of VOC per year and for which a CTG has not been published.

the call for a SIP revision and on guidance documents, including the May 25, 1988, document, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (Bluebook).

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against USEPA and sought a judgment that USEPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. *Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis. The State of Illinois intervened in this action. On January 18, 1989, the District Court ordered that USEPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, USEPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement calls for the use of a more sophisticated air quality model, allows more time for USEPA to promulgate a Federal Implementation Plan (FIP) using the model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of required VOC RACT rules for Illinois to remedy deficiencies in its State regulations.

On June 29, 1990, (55 FR 26814) USEPA took final rulemaking action to address the Part D requirement for RACT for the Chicago portion of the Illinois SIP and to satisfy requirements in the settlement agreement. This rulemaking:

(a) Adopted Federal RACT rules for inclusion in the Illinois plan,

(b) Approved certain pending State RACT rules for inclusion in the Illinois plan and

(c) Disapproved certain State rules.

This notice established a comprehensive set of RACT rules applicable to the VOC sources in Cook, DuPage, Kane, Lake, McHenry, and Will Counties in Illinois.

USEPA promulgated these Federal RACT rules to replace part or all of the federally approved individual State rules in the SIP. The resultant plan for Illinois consists of some federally approved (State) rules and some federally promulgated (Federal) rules. At the time, this mixed Federal-State rule approach provided the best model for the State to eventually secure a total federally approved State plan by indicating the corrections Illinois must make in its rules, and was consistent with the District Court's orders.

The Clean Air Act Amendments of 1990 were enacted on November 15, 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[3] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Chicago nonattainment area is classified as severe and the East St. Louis area is classified as moderate.[4] Therefore, these nonattainment areas are subject to the RACT fix-up requirement and the May 15, 1991, deadline.

On September 11, 1991, and March 15, 1993, IEPA submitted VOC RACT rules for the Chicago and East St. Louis ozone nonattainment areas. Those sections contained in the March 15, 1993, submittal supersede the same sections in the September 11, 1991, submittal. The rules submitted on March 15, 1993, have been submitted to USEPA for parallel processing because they have been submitted to, but not as yet adopted by, the IPCB. These rules have been fashioned after the Federal RACT rules and State-submitted rules that were approved on June 29, 1990, as well as other previously approved State rules.

These rules also expand the geographic coverage of Illinois VOC RACT rules to the nonattainment areas of Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County. These areas were not designated nonattainment under the pre-amended Act and, therefore, are not subject to the RACT fix-up requirement. However, these areas are subject to RACT requirements under section 182(b)(2) of the amended Act—the RACT "catch-up" provisions. To the extent USEPA is approving the State's submittal as meeting RACT, USEPA has determined that the State has met part of the RACT catch-up obligation for Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall county.

These VOC rules are primarily based on USEPA-approved and promulgated federal rules and are approvable, provided that certain clarifications to them are made.

Submitted Regulations

USEPA identified, in a May 8, 1992, letter to IEPA, the deficiencies in the VOC RACT corrections that were submitted by IEPA on September 11, 1991. In order to correct the VOC rules submitted on September 11, 1991, IEPA submitted, on March 15, 1993, proposed amendments to Title 35 of the Illinois Administrative Code (35 IAC) Parts 218 and 219 and amendments to Parts 203 and 211 that are related to the amendments to Parts 218 and 219. Part 218 is a comprehensive set of VOC regulations for the Chicago area and Part 219 is an almost identical set of VOC RACT regulations for the East St. Louis area. The amendments submitted to USEPA on March 15, 1993, were also filed with the IPCB on March 15, 1993. IEPA requested that USEPA proceed with parallel processing for this SIP submittal.

In the rules, the definition of "volatile organic material" was deleted from Part 203 and moved to Part 211. The abbreviations and units from Parts 218 and 219 were moved to Part 211. In addition, the definitions in Parts 218 and 219 have been moved to and integrated with the definitions in Part 211. The rules contained in Part 218 are listed below (a listing for Part 219 would be the same except that each section would start with "219" instead of "218"):

PART 218—ORGANIC MATERIAL EMISSION STANDARDS AND LIMITATIONS FOR THE CHICAGO AREA

Subpart A—General Provisions

Sec.
218.100 Introduction.
218.101 Savings Clause.

[3] Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post–87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[4] These areas retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694 (Nov. 6, 1991).

Sec.
218.102 Abbreviations and Conversion Factors.
218.103 Applicability.
218.104 Definitions.
218.105 Test Methods and Procedures.
218.106 Compliance Dates.
218.107 Operation of Afterburners.
218.108 Exemptions, Variations, and Alternative Means of Control or Compliance Determinations.
218.109 Vapor Pressure of Volatile Organic Liquids.
218.110 Vapor Pressure of Organic Material or Solvents.
218.111 Vapor Pressure of Volatile Organic Material.
218.112 Incorporation by Reference.

Subpart B—Organic Emissions From Storage and Loading Operations

Sec.
218.121 Storage Containers.
218.122 Loading Operations.
218.123 Petroleum Liquid Storage Tanks.
218.124 External Floating Roofs.

Subpart C—Organic Emission From Miscellaneous Equipment

Sec.
218.141 Separation Operations.
218.142 Pumps and Compressors.
218.143 Vapor Blowdown.
218.144 Safety Relief Values.

Subpart E—Solvent Cleaning

Sec.
218.181 Solvent Cleaning in General.
218.182 Cold Cleaning.
218.183 Open Top Vapor Degreasing.
218.184 Conveyorized Degreasing.
218.186 Test Methods.

Subpart F—Coating Operations

Sec.
218.204 Emission Limitations.
218.205 Daily-Weighted Average Limitations.
218.206 Solids Basis Calculation.
218.207 Alternative Emission Limitations.
218.208 Exemptions from Emission Limitations.
218.209 Exemption from General Rule on Use of Organic Material.
218.210 Compliance Schedule.
218.211 Recordkeeping and Reporting.

Subpart G—Use of Organic Material

Sec.
218.301 Use of Organic Material.
218.302 Alternative Standard.
218.303 Fuel Combustion Emission Units.
218.304 Operations with Compliance Program.

Subpart H—Printing and Publishing

Sec.
218.401 Flexographic and Rotogravure Printing.
218.402 Applicability.
218.403 Compliance Schedule.
218.404 Recordkeeping and Reporting.
218.405 Heatset-Web-Offset Lithographic Printing.

Subpart Q—Leaks From Synthetic Organic Chemical and Polymer Manufacturing Plant

Sec.
218.421 General Requirements.
218.422 Inspection Program Plan of Leaks.
218.423 Inspection Program for Leaks.
218.424 Repairing Leaks.
218.425 Recordkeeping for Leaks.
218.426 Report for Leaks.
218.427 Alternative Program for Leaks.
218.428 Open-Ended Valves.
218.429 Standards for Control Devices.

Subpart R—Petroleum Refining and Related Industries; Asphalt Materials

Sec.
218.441 Petroleum Refinery Waste Gas Disposal.
218.442 Vacuum Producing Systems.
218.443 Wastewater (Oil/Water) Separator.
218.444 Process Unit Turnarounds.
218.445 Leaks: General Requirements.
218.446 Monitoring Program Plan for Leaks.
218.447 Monitoring Program for Leaks.
218.448 Recordkeeping for Leaks.
218.449 Reporting for Leaks.
218.450 Alternative Program for Leaks.
218.451 Sealing Device Requirements.
218.452 Compliance Schedule for Leaks.

Subpart S—Rubber and Miscellaneous Plastic Products

Sec.
218.461 Manufacture of Pneumatic Rubber Tires.
218.462 Green Tire Spraying Operations.
218.463 Alternative Emission Reduction Systems.
218.464 Emission Testing.

Subpart T—Pharmaceutical Manufacturing

Sec.
218.480 Applicability.
218.481 Control of Reactors, Distillation Units, Crystallizers, Centrifuges and Vacuum Dryers.
218.482 Control of Air Dryers, Production Equipment Exhaust Systems and Filters.
218.483 Material Storage and Transfer.
218.484 In-Process Tanks.
218.485 Leaks.
218.486 Other Emission Units.
218.487 Testing.
218.488 Monitoring for Air Pollution Control Equipment.
218.489 Recordkeeping for Air Pollution Control Equipment.

Subpart V—Air Oxidation Processes

Sec.
218.525 Emission Limitations for Air Oxidation Processes.
218.526 Testing and Monitoring.

Subpart W—Agriculture

Sec.
218.541 Pesticide Exception.

Subpart X—Construction

Sec.
218.561 Architectural Coatings.
218.562 Paving Operations.
218.563 Cutback Asphalt.

Subpart Y—Gasoline Distribution

Sec.
218.581 Bulk Gasoline Plants.
218.582 Bulk Gasoline Terminals.
218.583 Gasoline Dispensing Operations.
218.584 Gasoline Delivery Vessels.
218.585 Gasoline Volatility Standards.
218.586 Gasoline Dispensing Operations—Motor Vehicle Fueling Operations.

Subpart Z—Dry Cleaners

Sec.
218.601 Perchloroethylene Dry Cleaners.
218.602 Exemptions.
218.603 Leaks.
218.607 Standards for Petroleum Solvent Dry Cleaners.
218.608 Operating Practices for Petroleum Solvent Dry Cleaners.
218.609 Program for Inspection and Repair of Leaks.
218.610 Testing and Monitoring.
218.611 Exemption for Petroleum Solvent Dry Cleaners.

Subpart AA—Paint and Ink Manufacturing

Sec.
218.620 Applicability.
218.621 Exemption for Waterbase Material and Heatset-Offset Ink.
218.623 Permit Conditions.
218.624 Open-Top Mills, Tanks, Vats or Vessels.
218.625 Grinding Mills.
218.626 Storage Tanks.
218.628 Leaks.
218.630 Clean Up.
218.636 Compliance Schedule.
218.637 Recordkeeping and Reporting.

Subpart BB—Polystyrene Plants

Sec.
218.640 Applicability.
218.642 Emissions Limitations at Polystyrene Plants.
218.644 Emissions Testing

Subpart PP—Miscellaneous Fabricated Product Manufacturing Processes

Sec.
218.920 Applicability.
218.923 Permit Conditions.
218.926 Control Requirements.
218.927 Compliance Schedule.
218.928 Testing.

Subpart QQ—Miscellaneous Formulation Manufacturing Processes

Sec.
218.940 Applicability.
218.943 Permit Conditions.
218.946 Control Requirements.
218.947 Compliance Schedule.
218.928 Testing.

Subpart RR—Miscellaneous Organic Chemical Manufacturing Processes

Sec.
218.960 Applicability.
218.963 Permit Conditions.
218.966 Control Requirements.
218.967 Compliance Schedule.
218.968 Testing.

Subpart TT—Other Emission Units

Sec.
218.980 Applicability.
218.983 Permit Conditions.
218.986 Control Requirements.
218.987 Compliance Schedule.
218.988 Testing.

Subpart UU—Recordkeeping and Reporting

Sec.
218.990 Exempt Emission Units.
218.991 Subject Emission Units.

Discussion of Regulations

As stated previously, the regulations submitted by Illinois are generally approvable (because they are primarily based upon the Chicago FIP and/or USEPA RACT guidance), provided certain clarifications are made. This part of the notice lists those required clarifications, as well as additional changes which USEPA recommends. It also states USEPA's interpretation of certain Illinois regulations. In addition, certain other aspects of these regulations are discussed, as appropriate.

Part 211: Definitions

In general, the definitions in Part 211 are the same as previously approved definitions and/or are consistent with USEPA guidance. However, USEPA recommends that the following definitions be revised as indicated to ensure that the regulations they apply to are enforceable and consistent with RACT.

• Section 211.2950 "Heavy Off-highway vehicle products coating line"—The last sentence of this definition lacks parallel structure. The intended concept (that a high temperature aluminum coating is not a heavy off-highway vehicle products coating) could be better conveyed by deleting the second sentence and adding "other than high temperature aluminum," between "functional" and "coating" in the first sentence.

• Section 211.3750 "Metal Furniture Coating Line"—The last sentence of this definition lacks parallel structure. The concept (that adhesive is not a metal furniture coating) could be better conveyed by deleting the second sentence and adding "non-adhesive" between "functional" and "coating" in the first sentence.

• Section 211.4470 "Paper Coating" and Section 211.4490 "Paper Coating Line" USEPA recommends that Illinois clarify that printing is not paper coating and printing presses are not paper coating lines.

• Section 211.5510 "Reid Vapor Pressure"—This definition could be clarified by revising the phrase "(if not referenced in the section where the term is used)" to "(if a specific method is not referenced in the section where the term is used)."

• Section 211.7090 "Vinyl Coating Line"—This definition would be more accurate and internally consistent if the phrase "means a coating line" is changed to "means a coating or printing line."

Part 218

USEPA is proposing to approve the following sections, which were previously adopted by the IPCB and submitted to USEPA on September 11, 1991: Sections 108, 142, 442, 444, 448, 451, 484, 488, 526, 561, 563, 607, 625, 626 and 630. These sections are not being revised as part of the March 15, 1993, submittal.

Section 218.101 Savings Clause—Subsection 218.101(a) ensures that prior applicability dates and control requirements in Part 215, which no longer applies to the Chicago and East St. Louis ozone nonattainment areas, remain in effect. However, this subsection refers to "emission units" formerly subject to Part 215 and dates and schedules applicable to the "emission unit" in accordance with Part 215. It is USEPA's understanding that this change in terminology regarding the regulated entity (the term "emission unit" is not used in Part 215) in no way changes the intended requirements of this subsection, namely that entities formerly subject to Part 215 shall have complied with Part 215. Also, the last sentence of this subsection should be clarified by changing it to: "The compliance dates and schedules found in 35 Ill. Adm. Code 215 are not superseded by this part and remain in full force and effect."

Subsection 218.101(b) states, "Nothing in this Part shall affect the responsibility of any owner or operator that is now or has been subject to the FIP to comply with its requirements thereunder by the dates specified in the FIP." This means that sources subject to FIP requirements are not relieved of these requirements if Part 218 is approved by USEPA. For example, 40 CFR 52.741(y)(2) (in the FIP) requires that sources subject to the major non-CTG rules in paragraphs (u), (v), (w), and (x) comply with the following:

(A) By July 1, 1991, or upon initial start-up of a new emission source, the owner or operator of the subject VOM emission source shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject emission source will be in compliance on and after July 1, 1991, or on and after the initial start-up date.

This requirement will remain in effect even after Part 218 is approved by USEPA.

Section 218.103 Applicability—The first paragraph of this section expands the applicability of Part 218 to Aux Sable Township and Goose Lake Township in Grundy County and Oswego Township in Kendall County. Cook, DuPage, Kane, Lake, McHenry, and Will Counties have previously been covered by Part 218. These areas are all nonattainment for ozone. However, the use of "or" in this paragraph must be replaced by "and" because the Chicago area is made up of all of these areas in total.

Subsection 218.103(a) discusses the applicability of Part 218 to certain parties who have challenged USEPA's June 29, 1990, rulemaking in *Illinois Environmental Regulatory Group et al.* v. *EPA*, No. 90–2778 (and consolidated cases) (7th Cir. 1990).

Subsection 218.103(b) includes a Board Note which states that this subsection (which exempts certain sources from Part 218) shall be effective at the federal level only upon approval by USEPA.

Section 218.105 Test Methods and Procedures—Subsection 218.105(b) includes new language which allows use of the topcoat protocol for primer surfacer operations at automobile or light duty truck assembly plants, as provided in 218.204(a).

Subsection 218.105(c)(1)(B) allows a longer averaging period than is contained in the Chicago FIP when using the "liquid/liquid" mass balance measurement method. The "liquid/liquid" method can be used by solvent recovery devices as an alternative to capture efficiency testing. The Chicago FIP requires that the "liquid/liquid" method be performed every day. USEPA agrees that use of the "liquid/liquid" method with a 7-day rolling period is acceptable for all solvent recovery systems. A source that believes that a 7-day rolling period is not appropriate may use an alternative multi-day rolling period, with the approval of IEPA and the USEPA.

Subsection 218.105(i)—It is recommended that the word "specific" in the fifth line of this subsection, which deals with IEPA requests for testing, be changed to "specified" in order to convey the intended meaning.

Section 218.204(a) Automobile or Light-Duty Truck Coating—Language has been added to this subsection to allow for the use of the topcoat protocol by primer surfacer operations to demonstrate compliance with this limit. This would allow the Ford Motor Company, the only source affected by

this change, to get credit for improved transfer efficiency (above 30 percent).

Section 218.405 Heatset-Web-Offset-Lithographic Printing—Subsection 218.405(a), which deals with applicability, must be modified to clarify that emissions from cleanup solvents are to be included in determining the maximum theoretical emissions. This could be done by revising subsection 218.405(a)(1)(A) as follows: "Total maximum theoretical emissions of VOM from all heatset-web-offset lithographic printing lines (including solvents used for cleanup operations associated with heatset-web-offset lithographic printing lines) at the source never exceed 90.7 Mg (100 tons) per calendar year in the absence of air pollution control equipment, or * * *"

Subsections 218.405(a)(1)(B), 218.620(a)(1)(B), 218.920(a)(2), 218.940(a)(2), 218.960(a)(2), and 218.980(a)(2) allow sources to avoid the applicability of specified printing and major non-CTG rules, provided a source has a federally enforceable permit that limits emissions to below the applicable cutoff through capacity or production limitations. These subsections are approvable because USEPA can deem a permit to be "not federally enforceable" in a letter to IEPA. Upon issuance of such a letter, the source is no longer protected by the permit referenced in the subject subsections. The source would then be subject to the SIP requirements if its "maximum theoretical emissions" exceed the applicable cutoff. This is consistent with USEPA's December 17, 1992, approval of Illinois' operating permit program which states: "In approving the State operating program USEPA is determining that Illinois' program allows USEPA to deem an operating permit not 'federally enforceable' for purposes of limiting potential to emit and to offset creditability." (57 FR 59928, 59930). IEPA has agreed to this approach and specified the applicable procedures in a March 26, 1993, letter to USEPA. In summary, these subsections are approvable because USEPA can invalidate the protection provided by an operating permit by deeming such operating permit to be "not federally enforceable" in a letter to IEPA.

Subsection 218.405(c)(A)(ii) (Recordkeeping and Reporting for Heatset-Web-Offset Lithographic Printing) should be revised so that "G" rather than "B" is defined as: "The greatest volume of cleanup material or solvent used in any 8-hour period and * * *" This revision is required to make the defined symbol consistent with the subject applicability equation.

Subparts PP, QQ, RR and TT constitute "generic" major non-Control Technique Guideline VOC rules. These subparts are contained in both Part 218 and Part 219, which contain Illinois' VOC rules for the Chicago and East St. Louis areas, respectively. Sections 926, 946, 966, and 986 specify the control requirements for these rules. Subsection (a) of each of these Sections requires an overall 81 percent reduction from each emission unit. A Board Note has been added to each subsection to clarify what is intended by the term "emission unit." A further clarification of the Board Note has been provided in a June 16, 1993, letter from Dennis Lawler, IEPA.

Section 218.990 Exempt Emission Units—Although this section refers to emission units which are exempt, it should be noted that the owner or operator of such an exempt emission unit would need to submit records for the entire source to demonstrate that maximum theoretical emissions from all non-CTG and unregulated CTG operations are below the applicable cutoff. In those cases when one or more (but not all) emission units are exempt (as in 218.920(c), 218.940(c), 218.960(c), and 218.980(c)), records must also be submitted documenting that each such emission unit is exempt.

Part 219

The discussion of Part 218, except with regard to section 218.103 (applicability), applies to Part 219. The previously adopted version of section 219.103 remains in effect.

Proposed Rulemaking Action

Illinois' VOC RACT corrections contained in Part 218 (for the Chicago ozone nonattainment area) and Part 219 (for the East St. Louis ozone nonattainment area) and the related definitions in Part 211, as submitted on September 11, 1991 and March 15, 1993, are being proposed for approval. These rules are being parallel processed, at IEPA's request, because the rules submitted on March 15, 1993, have not as yet been finally adopted by Illinois. These rules are being proposed for approval (based upon the interpretations contained in this notice) because they meet USEPA's VOC RACT requirements as specified in the Bluebook and other related guidance. USEPA will take final action on these rules after the proposed revisions have been adopted and submitted by Illinois and they have been evaluated in accordance with the CAA and applicable USEPA RACT guidance. These rules will be finally approved if they are adopted in final in their current form and include the previously identified clarifications. If Illinois does not adopt and submit these rules to USEPA, USEPA will repropose action based upon the September 11, 1991, submittal.

Interested parties are invited to submit comments on these proposed SIP revisions and on USEPA's proposed rulemaking action. Public comments received by the date indicated above will be considered in the development of the final rule.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its action concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 9, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–23197 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP-300298; FRL-4639-9]

RIN 2070-AC18

Definitions and Interpretations; Dry Bulb Onions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that the tolerance regulations (40 CFR part 180) be amended to expand EPA's interpretation of the commodity term "onions (dry bulbs only)" to include shallots (dry bulbs only) for the application of tolerances and exemptions from the requirement of a tolerance established for pesticide chemicals in or on the raw agricultural commodity dry bulb onions. The proposed amendment is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [OPP-300298], must be received on or before October 22, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

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

SUPPLEMENTARY INFORMATION: 40 CFR 180.1(h) provides a listing of general commodity terms and EPA's interpretation of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a. General commodities are listed in column A of 40 CFR 180.1(h) and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B. The commodity term "onions (dry bulbs only)" is currently listed as a general commodity in column A of 40 CFR 180.1(h). The corresponding specific commodity terms "garlic" and "onions (dry bulb only)" are listed in column B.

The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has requested that 40 CFR 180.1(h) be amended by revising the current interpretation for the general commodity term "onions (dry bulbs only)," which is listed in column A, by adding the specific commodity term "shallots (dry bulbs only)" to column B, so that the revised column B will read "garlic, onions (dry bulbs only), shallots (dry bulbs only)."

EPA has completed an evaluation of the proposed amendment and concludes that tolerances established for the raw agricultural commodity dry bulb onions are adequate to cover pesticide residues in or on dry bulb shallots as well as garlic. Dry bulb shallots, dry bulb onions, and garlic are closely related and have similar growth habits, cultural practices, and pest problems.

Shallots are a form of Allium cepa, the common onion, and both belong to the Amaryllidaceae (Amaryllis) family. When a species or a hybrid includes many cultivars that look similar to each other such as the Allium's, they are arranged in groups. Shallots belong to the "Aggregatum" group, which is characterized by bulbs which multiply freely and form a circlet of bulbs loosely joined at their bases and arise from a single bulb. Dry bulb onions belong to the "Common Onion" group and differ from the "Aggregatum" group mainly because they produce a single bulb from each planted bulb, while the aggregatums produce a cluster of bulbs from each planted bulb.

Other characteristics that are used to identify the Allium family include: the time of flowering, flower color, absence of bulbils in the inflorescence, and food storage structures. All of these characteristics are similar for both the common onion and the shallot. Every part of the shallot and onion plant is edible. Chromosome morphology and banding studies have shown them to be almost identical for onions and shallots, and both have the same chromosome number.

Both shallots and onions can be grown in nearly all parts of the U.S. Onions, garlic, and shallots all share many of the same pest problems that affect the bulb and/or its roots: insects, spider mites, annual grassy and broadleaved weeds, and plant diseases common to the Allium species.

The close botanical relationship of shallots and onions is already exemplified in the regulations by the fact that shallots are currently grouped with garlic, leeks, and onions in 40 CFR 180.34(e)(17) and also in 40 CFR 180.34(f)(9)(iii) (Bulb vegetables (*Allium spp.*) crop group). Also, in 40 CFR 180.1(h), green shallots are classified with green onions.

Based on the above information, the Agency concludes that it is appropriate to expand the current general commodity "onions (dry bulbs only)" in 40 CFR 180.1(h) by adding the corresponding specific commodity "shallots (dry bulbs only)" to the existing specific commodities garlic and onions (dry bulbs only).

Therefore, it is proposed that the changes to 40 CFR 180.1(h) be made as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300298]. All written comments filed in response to this proposal will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

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

Dated: September 8, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

2. Section 180.1(h) is amended by revising the specific commodities definition for "Onions (dry bulbs only)" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
	* * * * * * *
Onions (dry bulbs only)	Garlic, onions (dry bulbs only), shallots (dry bulbs only).
	* * * * * * *

* * * * *

[FR Doc. 93-22780 Filed 9-21-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300300; FRL-4641-4]

RIN 2070-AC18

Pentachloronitrobenzene; Proposed Revocation of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of the interim tolerance for residues of the fungicide pentachloronitrobenzene (PCNB) in or on bananas (40 CFR 180.319). EPA is initiating this action because there is no registered use for PCNB on bananas, and this use is not being supported for reregistration.

DATES: Written comments, identified by the document control number OPP-300300, must be received on or before October 22, 1993.

ADDRESSES: By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Utterback, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32K5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone: 703-308-8026.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of the interim tolerance established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the fungicide pentachloronitrobenzene in or on bananas as listed in 40 CFR 180.319.

EPA established an interim tolerance for PCNB for use on bananas pending the establishment of a permanent tolerance. However, EPA cannot establish a permanent tolerance for several reasons and as a result is proposing to revoke the interim tolerance listed in 40 CFR 180.319 for residues of pentachloronitrobenzene in bananas. The establishment of a tolerance under section 408 of FFDCA requires a finding that the tolerance will protect the public health. EPA does not have adequate data to make such a finding, and does not expect to receive such data because the use of PCNB on bananas is not being supported for reregistration. Further, there is no registered use of PCNB on bananas and there is no evidence that it has been registered for this use in the U.S. for many years. A tolerance is generally not necessary for a pesticide which is not registered for the particular food use.

The Agency believes that there are no existing stocks of pesticide products for use on bananas which need to clear the channels of trade because no pesticide products have been registered for use on bananas in recent years. Thus, EPA believes that there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. Action levels are unnecessary because PCNB has not been registered for use on bananas for at least 6 years, and the Food and Drug Administration has not detected residues of PCNB in or on bananas for several years.

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

Interested persons are invited to submit written comments on the

proposed regulation. Comments must bear a notation indicating the document control number [OPP-300300]. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

Other Regulatory Requirements

A. Executive Order 12291

PCNB has not been registered for use on bananas for many years, and the Agency believes that there are no existing stocks of PCNB for use on bananas. Further, there is no known use of PCNB on bananas outside of the U.S. Therefore, the proposed rule is not a major rule because it will not affect costs or prices for consumers, individual industries, or Federal, State or local government agencies, or geographic regions.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have any impact on small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Because there is no evidence that PCNB has been used on bananas in the U.S. for many years, it is anticipated that no economic impact would occur at any level of business enterprises if the related tolerance on bananas was revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

(Sec. 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 a(m))).

List of Subjects in 40 CFR Part 180

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

Dated: September 9, 1993.

Susan H. Wayland,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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

PART 180—[AMENDED]

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

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

§ 180.319 [Amended]

2. Section 180.319 *Interim tolerances* is amended in the table therein by amending the entry "Pentachloronitrobenzene" by removing from the list of raw agricultural commodities the entry "Bananas."

[FR Doc. 93-22781 Filed 9-21-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 8E3642/P569; FRL-4641-8]

RIN 2070-AC18

Pesticide Tolerance for Beta-(4-Chlorophenoxy)-Alpha-(1,1-Dimethylethyl)-1H-1,2,4-Triazole-1-Ethanol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as parent compound, in or on the raw agricultural commodity (RAC) imported bananas (whole) at 0.2 part per million (ppm). This proposal to establish a maximum permissible level for residues of the pesticide in or on this commodity was requested by Mobay Corp.

DATES: Comments, identified by the document control number [PP 8E3642/P569], must be received on or before October 22, 1993.

ADDRESSES: Written objections may be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: The Mobay Corp., P.O. Box 4913, Kansas City, MO 64120-0013, has submitted pesticide petition (PP) 8E3642 to EPA. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish a tolerance for the combined residues of the fungicide, *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as parent compound, in or on the RAC bananas at 0.2 ppm.

The data submitted in support of the petition and other relevant materials have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include the following:

1. A 2-year feeding/carcinogenicity study with rats using dietary concentrations of 0, 125, 500, and 2,000 ppm, equivalent to 0, 6.25, 25.0, and 100 milligrams/kilogram (mg/kg) body weight (bwt)/day in males and females. Clinical chemistry findings suggest that the target organ for toxicity may be the liver. The levels of serum glutamic oxaloacetate transaminase (SGOT) and serum glutamic pyruvic transaminase (SGPT) were consistently higher at 2,000 ppm in males and females when compared to untreated controls, and some increase in these two parameters was also observed at 500 ppm. Although

there was an accompanying small increase in liver weight at 2,000 ppm in females, there were no accompanying increases in histopathologic changes of the liver in either sex. There were only marginal effects seen on other clinical chemistry parameters, and no effect of the test compound was seen on clinically observed signs of toxicity, food consumption, hematology, or urinalysis parameters. The systemic no-observed-effect level (NOEL) is 125 ppm (6.25 mg/kg/day for males and females) based on the increase in liver enzymes (SGOT and SGPT). The systemic lowest-effect level (LEL) was 500 ppm (25 mg/kg/day for males and females). The chemical was not carcinogenic to rats under the testing conditions.

2. A 2-year chronic feeding/carcinogenicity study in mice using dietary concentrations of 0, 125, 500, and 2,000 ppm (equivalent to doses of 0, 18, 72, and 285 mg/kg/day for males and females). The results of blood chemistry, organ weights, and gross and histological examinations indicate that the liver is the target organ. There were time- and dose-related increases in serum alkaline phosphatase (SAP), SGOT, and SGPT activities in both male and female animals receiving 500 and 2,000 ppm of the test material.

In addition, increased incidence of enlarged livers, hyperplastic nodules, and increased liver weights in both male and female animals receiving 2,000 ppm of test material was detected at necropsy. Female animals receiving 2,000 ppm doses exhibited a significant increase in the incidence of liver adenomas only, a compound-related carcinogenic effect which is discussed further below. In males, there were no differences in the incidence of these lesions in treated and control males, and the incidence of liver adenomas was similar to those observed in historical controls.

Based on blood chemistry findings, the systemic NOEL and the LEL are 125 and 500 ppm, respectively (equivalent to 18 and 72 mg/kg/day for males and females).

3. A 2-year male and female dog feeding study using doses of 0, 150, 600, and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). The NOEL is 150 ppm based on changes in enzyme levels (equivalent to 3.75 mg/kg bwt/day for males and females). The LEL is 600 ppm. Although there were significant decreases in mean body weights in males receiving 150 and 2,400 ppm and in females receiving 600 and 2,400 ppm, the biological significance of these changes could not be assessed. There were noted increases in alkaline phosphatase N-demethylase and cytochrome P-450 in males receiving 2,400 ppm and significant increases in N-demethylase in females receiving 600 and 2,400 ppm and in cytochrome P-450 in females receiving 2,400 ppm when compared to controls.

4. A 6-month dog feeding study using doses of 0, 10, 30, and 100 ppm (equivalent to 0, 0.25, 0.75, and 2.5 mg/kg bwt/day for males and females). The NOEL was 2.5 mg/kg, the highest dose level tested (HDT).

5. A 3-month rat feeding study using doses of 0, 150, and 600 and 2,400 ppm (equivalent to 0, 7.5, 30 and 120 mg/kg bwt/day for males and females) demonstrated a decrease in body weight, in hematocrit values, and in eosinophil count and medium cell hemoglobin and demonstrated an increase in the high-dose group and a dose-related increase in liver weight. The NOEL is 7.5 mg/kg and the LEL is 30 mg/kg.

6. A second 90-day rat feeding study using doses of 0, 120, 600, and 3,000 ppm demonstrated piloerection lasting 1 month (month 1), decreases in body weight gain and feed efficiency lasting 1 week (week 1), alterations in serum lipids, and increases in liver weight (absolute and relative) and in incidences of liver hypertrophy and fatty changes in the high-dose group and an increase in the incidence of prostrate atrophy of slight severity in high-dose males. The NOEL was 600 ppm, equivalent to 39.6 mg/kg/day for males and 46.4 mg/kg/day for females, and the lowest-observed-effect level (LOEL) was the HDT, 3,000 ppm, equivalent to 208.5 mg/kg/day for males and 221.1 mg/kg/day for females.

7. A 3-month dog feeding study using doses of 0, 150, 600, and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). Weight gain in all male groups and in the highest dose female group was significantly less than the control. Alkaline phosphatase in males and females showed a dose-related negative trend. There were no gross pathological changes. Effects at 15 mg/kg included an increase in serum cholesterol level in males. Although the NOEL appeared to be less than 3.75 mg/kg, based on reduced body weight and decreased alkaline phosphatase in males, the Agency has concluded that effects below 15 mg/kg in the 2-year dog study were not biologically significant and the longer-term study supersedes the 90-day dog study. Therefore, the NOEL remains at 3.75 mg/kg.

8. A rat developmental study using dose levels of 0, 30, 60, and 120 mg/kg/day was determined to be core supplementary because the NOEL for developmental toxicity (supernumerary ribs) was not definitively established. The NOEL and LOEL for maternal toxicity for this study are 30 and 60 mg/kg/day, respectively, based on decreases in maternal body weight, body weight gain, and food consumption at 60 and 120 mg/kg/day. Increased embryolethality (embryotoxicity) was only observed at the highest dose level tested (120 mg/kg/day).

9. A repeat rat developmental study demonstrated a maternal NOEL of 5 mg/kg/day and a LOEL of 15 mg/kg/day due to decreased body weight gains, and a developmental NOEL of 25 mg/kg/day and a LOEL of 60 mg/kg/day due to increased incidence of extra ribs.

10. A supplementary rabbit developmental study demonstrated a NOEL for maternal toxicity of 8 mg/kg and a maternal LEL of 40 mg/kg based on decreased body weight gains and food consumption. The developmental NOEL and LEL were 40 and 200 mg/kg, respectively.

11. A repeat rabbit developmental study demonstrated a maternal NOEL of 25 mg/kg/day and a LOEL of 125 mg/kg/day due to decreases in body weight gains and food consumption, and a developmental NOEL of 125 mg/kg/day (HDT).

12. A reverse mutation assay (Ames), a dominant-lethal test in mice, DNA damage/repair, unscheduled DNA synthesis, *in vitro* and *in vivo* (rat) cytogenic assays, and a forward mutation in mice, all of which were negative for mutagenic effects.

13. A rat multi-generation reproduction study using doses of 0, 20, 100, and 500 ppm (equivalent to 0, 1, 5, and 25 mg/kg bwt/day for males and females) indicated that the NOEL and LOEL for both parental and pup toxicity are 100 and 500 ppm, respectively, based on significant body weight and organ weight changes. The NOEL for reproductive toxicity is 500 ppm, the highest dose level tested.

The Agency has concluded that the available data provide limited evidence of the carcinogenicity of *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in mice and has classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** in 1986 (51 FR 33992). This evaluation was confirmed by the Agency's Scientific Advisory Panel on December 15, 1987. Based on a review of the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs, the

Agency has determined that a quantitative risk assessment is not appropriate for the following reasons:

1. The tumors observed were benign and observed in one sex (females) and were present only at the highest dose tested.

2. The chemical was not carcinogenic when administered in the diet to rats at dose levels ranging from 125 to 2,000 ppm.

3. The chemical was negative in the genotoxic assay battery. Based on this evidence, EPA concludes that *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol poses a negligible cancer risk to humans.

The standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity was applied to *beta*-(4chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol. The provisional acceptable daily intake (PADI) based on the 2-year dog feeding studies (NOEL of 3.75 mg/kg bwt/day), and using a hundredfold uncertainty factor, is calculated to be 0.038 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from previously established tolerances and the tolerance established here is 0.000493 mg/kg/day and utilizes 1.3 percent of the PADI for the U.S. population. For the most highly exposed population subgroup, children 1 to 6, the TMRC will represent 3.0 percent of the PADI.

The nature of the residues is adequately understood for the use of *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol on imported bananas. The residues of concern consist of the parent compound *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as parent compound. There is no reasonable expectation of secondary residues in eggs, milk, meat, and meat byproducts from the use of *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol on bananas. Magnitude of the residue studies from crop trials, environmental fate and environmental effects data are required to expand the usage to the United States by registration under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

Adequate analytical methods are available for enforcement purposes. Methods are available in the "Pesticide Analytical Manual," Vol. II (PAM II) for enforcement of the tolerances on livestock commodities. The method for plants has been submitted to the Food and Drug Administration for publication in PAM II. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-4432.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

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

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3642/P569]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: September 3, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

2. Section 180.450 is amended in paragraph (a) in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.450 Beta-(4-Chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol; tolerances for residues.

(a) * * *

Commodity	Parts per million
Bananas (whole)[1]	0.2
* * * * *	

[1]There are no U.S. registrations for bananas (whole) as of September 22, 1993.

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[FR Doc. 93–22782 Filed 9–21–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300293; FRL–4633–3]

RIN 2070–AC18

Orthoarsenic Acid; Proposed Revocation of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke the tolerance in 40 CFR 180.180 for residues of the pesticide orthoarsenic acid (commonly known as arsenic acid) in or on the raw agricultural commodity cottonseed. This revocation is being proposed because all registrations of arsenic acid on cotton have been voluntarily canceled.

DATES: Written comments, identified by the OPP document control number [OPP-300293], must be received on or before October 22, 1993.

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

Programs, 401 M St., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202, Telephone: (703)-308-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

Currently, a tolerance of 4 ppm exists for residues of orthoarsenic acid in or on the raw agricultural commodity cottonseed (40 CFR 180.180). EPA is proposing to revoke the tolerance for orthoarsenic acid in or on cottonseed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.* The Agency is taking this action because the registrations of arsenic acid on cotton have been voluntarily cancelled.

II. Background

Arsenic acid, applied to cotton grown in certain regions of Texas and Oklahoma prior to harvest, desiccates the crop to facilitate harvest by mechanical stripper. After harvest and ginning, the raw cottonseed is sent to oil mills for storage prior to processing. Raw cottonseed is processed into an oil and meal for a high-protein cattle feed. Processing is generally completed before the next growing season.

Acreage treated with arsenic acid accounted for about 2 percent of total domestic cotton acreage harvested annually over the 3-year period from 1989 to 1991. Use, already declining during this period, continued to decline further because of concerns expressed by textile manufacturers about the cost of disposing of arsenic acid-contaminated textile waste. The Agency believes there is little or no use of arsenic acid on imported cotton.

EPA issued a Notice of Rebuttable Presumption Against Registration (RPAR, now called a Special Review) for the wood preservative and nonwood preservative uses of the inorganic arsenicals (including arsenic acid) on October 18, 1978 (43 FR 48267). The RPAR was based on a determination that the use of inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, teratogenicity and mutagenicity under 40 CFR 162.11, as it read in 1978 (EPA subsequently amended and recodified this rule at 40 CFR 154.7). Between 1978 and 1992, EPA completed its review of the inorganic arsenicals, except for arsenic acid.

In the **Federal Register** of October 7, 1991 (56 FR 50576), EPA proposed cancellation of arsenic acid registered as a desiccant on cotton. The Agency based its proposal on the finding that arsenic, which is classified as a known human (Group A) carcinogen, posed an unreasonable cancer risk to workers. After the close of the comment period, the registrants of arsenic acid, Elf Atochem North America and Voluntary Purchasing Groups (VPG), requested cancellation of their registrations of arsenic acid desiccant on cotton. The registrants further requested that provision be made for existing stocks. In a notice published in the **Federal Register** of May 6, 1993 (58 FR 26975), EPA granted the request for voluntary cancellation and issued a cancellation order with provisions for the sale and use of existing stocks through the 1993 use season. In a later action, Drexel Chemical Co. requested voluntary cancellation of its registration for arsenic acid desiccant, which had been suspended since 1985 because of failure to respond to data required under FIFRA section 3(c)2(B), and EPA granted this request on July 22, 1993 (58 FR 39205).

III. Current Proposal

EPA is proposing to revoke the tolerance for arsenic acid on cottonseed because the use of arsenic acid on cotton was voluntarily cancelled. However, the May 6, 1993 cancellation order also permitted existing stocks of Atochem and VPG products to be sold until October 31, 1993 and applied by end users until December 31, 1993. Because use will continue through the end of 1993, all treated raw cottonseed may not clear oil processing mills and feed markets until July 1, 1995. Therefore, to effect this revocation, EPA is proposing to establish an expiration date for the tolerance of July 1, 1995. EPA predicts there will be an insignificant or no economic impact from revoking this tolerance because EPA is allowing ample time for legally-treated commodities (i.e., treated prior to December 31, 1993) to pass through the channels of trade.

EPA believes that arsenic acid is not used on cotton grown in other countries and imported into the United States. Once the tolerance for arsenic acid on cottonseed is revoked, it will be unlawful to import into the United States any cottonseed commodities or products containing any arsenic acid.

After legally treated cottonseed has cleared the market, residues of arsenic acid resulting from pesticide application are not expected to be detected. Therefore, action levels to cover residues of arsenic from past uses of the pesticide will not be recommended.

IV. Public Comment Procedures

Any person who has registered or submitted an application for the registration of a pesticide under FIFRA, as amended, which contains arsenic acid, may request within 30 days after publication in the **Federal Register** that this proposal to revoke the arsenic acid tolerance listed in 40 CFR 180.180 be referred to an advisory committee in accordance with section 408(e) of FFDCA. Such requests should be addressed to the contact person listed at the beginning of this proposal.

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by October 22, 1993. Comments must bear a notation indicating the document control number [OPP-300293]. Three copies of the comments should be submitted to either location listed under **ADDRESSES** above. Documents considered and relied upon by EPA in reaching its decision and all written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8 a.m. until 4 p.m., Monday through Friday, except legal holidays.

V. Other Regulatory Requirements

To satisfy requirements for analysis specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the impacts of this proposal.

The complete analysis, summarized below, is available for public inspection

at the address listed at the beginning of this proposal.

A. Executive Order 12291

The Agency has determined that this proposed tolerance revocation is not a "major rule" under section 1(a)(3) of E.O. Order 12291. It will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency believes that the domestic use of arsenic acid is limited and will end this year with the voluntary cancellation and termination of the provision for sale and use of existing stocks. Further, its use, if any, on imported commodities is insignificant. Since the tolerance is being revoked eighteen months after the last legal domestic use on cotton, impacts are expected to be minimal.

This proposed rule has been reviewed by the Office of Management and Budget, as required by Executive Order 12291.

B. Regulatory Flexibility Act

The proposed tolerance revocation has been reviewed under the provisions of the Regulatory Flexibility Act and the Agency has determined that it will not have a significant adverse economic impact on small businesses, small governments, or small organizations. The proposed regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide might be used in an unregistered or illegal manner.

Since all registrations for use of arsenic acid on cotton were canceled in 1993, and legal use will end December 31, 1993, the Agency anticipates little or no impact would occur on business, government, or other entities of any size.

Therefore, I certify that this regulatory action does not require a separate regulatory analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Records and recordkeeping.

Dated: September 9, 1993

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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

PART 180—[AMENDED]

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

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

2. By revising § 180.180 to read as follows:

§ 180.180 Orthoarsenic acid.

A tolerance that expires on July 1, 1995, of 4 parts per million of combined As_2O_3 is established for residues of the defoliant orthoarsenic acid in or on the raw agricultural commodity cottonseed.

[FR Doc. 93-22784 Filed 9-21-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 721

[OPPTS-50583F; FRL-4570-4]

Sulfur Bridged Substituted Phenols; Proposed Modification of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on a modification to the TSCA section 5(e) consent order regulating that substance.

DATES: Written comments must be received by EPA by October 22, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50583F. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1990 (55 FR 32406), EPA issued a SNUR establishing significant new uses for sulfur bridged substituted phenols (P-89-396). Because of the modification to the consent order for this substance, EPA is proposing to modify this SNUR.

I. Background

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record.

PMN Number P-89-396

Chemical name: (generic) Sulfur bridged substituted phenols.

CAS number: Not available.

Effective date of modification of section 5(e) consent order: January 7, 1993.

Basis for modification of section 5(e) consent order: The original 5(e) order required certain toxicity testing to be submitted to EPA 14 weeks before manufacturing or importing a certain production volume of the PMN substance. On June 5, 1992, the toxicity data were submitted. The results are as follows:

Ames assay: Not a gene mutagen in prokaryotes in *Salmonella*/Ames assay.

Mouse micronucleus: Not a chromosome mutagen in vivo in mice in the micronucleus assay by intraperitoneal injection.

Acute oral toxicity: LD50 of the PMN substance is greater than 5,000 milligrams per kilogram (mg/kg).

28-day Oral with functional observation battery: The lowest observable effect level (LOEL) for the study is 35 mg/kg/day based on effects in the liver and clotting system in female rats. There are no specific neurological signs noted.

Developmental toxicity: Evidence of maternal toxicity after exposure to 250 mg/kg/day as demonstrated by statistically significant reduction in food consumption and mean body weight. The range finding study demonstrated

significant maternal mortality after exposure to 500 mg/kg/day. There was evidence of developmental toxicity after exposure to doses as low as 140 mg/kg/day as demonstrated by a significant increase in the incidence of rudimentary ribs. The lowest observable adverse effect level (LOAEL) for maternal toxicity was 250 mg/kg/day, and the no observable adverse effect level (NOAEL) was 140 mg/kg/day. The LOAEL for developmental toxicity was 140 mg/kg/day, and the NOAEL was 25 mg/kg/day. Based on the results of the toxicity data submitted, EPA has determined there is a potential unreasonable risk to manufacturing and process workers from dermal contact to the PMN substance.

Therefore, on January 7, 1993, the Agency modified the existing order, and is now proposing to modify the SNUR to include dermal protection for exposed workers and hazard communication requirements, and to eliminate the production limit. The modification to the order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

Toxicity concern: The substance has been shown to cause liver, blood, and developmental effects in test animals.

Recommended testing: The Agency has determined that a dermal absorption study (40 CFR 798.7100) followed by a 90–day oral subchronic toxicity test (40 CFR 798.2650) would characterize possible liver and blood effects.

CFR citation: 40 CFR 721.5880.

II. Objectives and Rationale of Proposing Modification of the Rule

During review of the PMN submitted for the chemical substance that was the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is available in the rulemaking record for this SNUR. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. In light of the toxicity data received which demonstrates that the PMN substance is expected to cause liver, blood, and developmental effects, EPA determined, that dermal protection for exposed workers and hazard communication requirements were necessary to protect human health. In addition, EPA determined that because the required data had been submitted the production limit was no longer necessary. The section 5(e) order modification added such dermal protection and hazard communication requirements and eliminated the production limit requirement. The proposed modification of SNUR provisions for this substance designated herein is consistent with the January 7, 1993, modification of the section 5(e) order.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS–50583. This record includes information considered by the Agency in developing the rule and includes the modification to the consent order to which the Agency has responded with this proposal.

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with the rule, EPA estimates that the cost for submitting a significant new use notice would be between $7,198 to $8,170, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. In addition, EPA estimates that the cost of recordkeeping requirements for ongoing uses is $583 per year. EPA believes that, because of the nature of the rule and the substance involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small business. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this proposed rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 8, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.5880 by revising paragraphs (a)(2) and (b)(1) and (2) to read as follows:

§ 721.5880 Sulfur bridged substituted phenols (generic name).

(a) * * *

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv) (specifically liver and blood effects), (g)(2)(i), (g)(2)(v), and (g)(5).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125(a) through (h) are applicable to manufacturers, importers, and processors of this substance. This section does not apply if the substance is present in a mixture at less than 1.0 percent.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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[FR Doc. 93-23210 Filed 9-21-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 721

[OPPTS-50592E; FRL-4588-2]

Hydrogenated Arylated Polydecene; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for hydrogenated arylated polydecene based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to human health.

DATES: Written comments must be received by EPA by October 22, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G99 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for hydrogenated arylated polydecene is OPPTS-50592E. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404. TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 1991 (56 FR 50592), EPA issued a SNUR establishing significant new uses for hydrogenated arylated polydecene. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

PMN Number P-90-1454

Chemical name: Hydrogenated arylated polydecene (generic).
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: April 2, 1993.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: The oral LD50 study and 28-day repeated dose test did not identify significant health effects. The Ames assay and mouse micronucleus study demonstrated no mutagenic effects.
CFR citation: 40 CFR 721.6480.

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. As a result, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS-50592 (P-90-1454). The record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of § 721.6480. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 8, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.6480 [Removed]

2. By removing § 721.6480.

[FR Doc. 93-23212 Filed 9-21-93; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB-051-P]

RIN 0938-AF68

Medicaid Program; Referrals to Child Support Enforcement Agencies of Medicaid Families

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicaid regulations governing third party liability to require a Medicaid agency to give prompt notice to the child support enforcement (CSE) agency for referral whenever medical assistance is furnished to families who may be in need of CSE services. Section 454 of the Social Security Act (the Act) requires CSE agencies to provide statutorily mandated CSE services to these Medicaid families, including establishing paternity, locating absent parents, and obtaining child and spousal support, including medical support. This proposed rule would assist CSE agencies in carrying out the provisions of section 454 of the Act by requiring Medicaid agencies to refer families to the CSE agency when appropriate.

This proposed rule would also make technical revisions to the Medicaid regulations governing cooperative agreements to address changes in the CSE regulations resulting from the requirement in section 454 of the Act.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 22, 1993.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: MB-051-P, P.O. Box 7518, Baltimore, Maryland 21207-0518.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

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

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

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB-051-P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-690-7890).

Organizations and individuals desiring to submit comments on the reporting requirements discussed under the "Collection of Information Requirements" of this preamble should direct them to the Health Care Financing Administration at one of the addresses cited above, and to the Office of Information and Regulatory Affairs, Attention: Laura Oliven, Office of Management and Budget, New Executive Office Building (room 3002), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Nakielny, (410) 966-4466.

SUPPLEMENTARY INFORMATION:

I. Background

Medicaid (title XIX of the Social Security Act (the Act)) is a State and Federally-funded program that provides medical services to certain groups of low-income needy individuals. These groups include individuals who are aged, blind, or disabled or members of families with dependent children, and who meet the financial eligibility requirements of the most closely related cash assistance program (Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI)). In addition, some States provide Medicaid to individuals who do not receive cash assistance, but whose income and resources are insufficient to cover medical expenses ("medically needy" persons). States also provide Medicaid to certain institutionalized individuals, pregnant women, and other mandatory and optional eligibility groups.

Medicaid programs are administered by the States in accordance with Federal regulations. State Medicaid agencies conduct their programs according to a Medicaid State plan approved by HCFA.

Section 1912 of the Act specifies certain State plan requirements relating to third party liability that applicants and recipients of Medicaid and the Medicaid agency must meet. Under section 1912(a)(1), Medicaid applicants and recipients, as a condition of eligibility, must: (1) Assign to the State their rights, or the rights of any individual on whose behalf an assignment may be executed, to medical support and to payments for medical care from any third party (section 1912(a)(1)(A)); (2) cooperate with the State agency, in the absence of good cause for the failure to cooperate, in establishing the paternity of any child who is eligible for Medicaid and who is born out of wedlock, and in obtaining medical support and payments (section 1912(a)(1)(B)); and (3) cooperate with the State in identifying and providing information to assist the State in pursuing any third party who may be liable to pay for medical care and services available under the State plan

(unless good cause exists for refusing to cooperate) (section 1912(a)(1)(C)).

In addition, section 1912(a)(1)(B) provides that poverty level pregnant women described in section 1902(l)(1)(A) of the Act are exempt from the cooperation requirements in section 1912(a)(1)(B) relating to establishing paternity and obtaining support. (Section 1902(l)(1)(A) of the Act describes this group as women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy) who are not members of other specified Medicaid eligibility groups and whose family income does not exceed the income level established by the State. The income level is expressed in terms of a percentage of the Federal poverty level.)

Section 1912(a)(2) of the Act requires a State plan to provide for entering into cooperative arrangements (including financial arrangements) with other entities to assist the agency or agencies administering the State plan with respect to the enforcement and collection of rights to medical support or payments assigned and any other matters of common concern. These entities include any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, the State's agency established or designated under title IV–D of the Act, and appropriate courts and law enforcement officials.

II. Child Support Enforcement Services

Title IV–D of the Act specifies requirements for the enforcement of support obligations owed by absent parents of families receiving benefits under title IV–A of the Act (AFDC). Section 454 of the Act specifies that States must provide for the establishment or designation of a single and separate organizational unit to administer the IV–D provisions for child and spousal support under the State plan. These organizations are called child support enforcement (CSE) agencies. CSE agencies are required under section 454 of the Act to provide statutorily mandated CSE services to AFDC recipients, title IV–E foster care recipients, non-AFDC Medicaid recipients, and applicants for CSE services who are not otherwise eligible for such services. These services include establishing paternity, locating absent parents, and obtaining child and spousal support, including medical support.

Federal regulations at 45 CFR part 232 and § 235.70 set forth the AFDC program requirements for the collection and referral of information to CSE agencies. Specifically, § 235.70(a) requires AFDC agencies to provide prompt notice to the CSE agency whenever aid is furnished to a child who has been deserted or abandoned by a parent, or when aid is furnished to the parent(s) with whom the child lives. Prompt notice is defined in § 235.70(b)(2) as a written notice that is provided within 2 working days of the furnishing of aid or the determination of eligibility for benefits.

Section 9142 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, amended section 454 of the Act by adding a requirement that CSE agencies must provide the statutorily mandated CSE services to families who receive Medicaid, in addition to those families receiving AFDC. CSE regulations published in the **Federal Register** on February 26, 1991 (56 FR 7988) incorporated this statutory provision by revising 45 CFR 303.30 and 303.31 to mandate CSE agencies to provide medical support enforcement services to all Medicaid recipients referred to CSE agencies.

In addition, regulations at 45 CFR part 306 specify that such activities may be conducted in accordance with optional cooperative agreements between CSE agencies and State Medicaid agencies. CSE agencies are not required to have a cooperative agreement with the State Medicaid agencies in order to perform these activities. However, a cooperative agreement is required for performance of additional, non-statutory activities.

III. Proposed Changes to the Regulations

A. Medicaid Referrals to CSE Agencies

In order for CSE agencies to perform the requirements of section 454 of the Act by providing CSE services to those Medicaid families in need of such services, the CSE agencies must be aware of who those families are. Although CSE agencies are required to provide CSE services to Medicaid families, States are currently not required to refer Medicaid families to CSE agencies. Consequently, information derived from program reviews from both HCFA regional offices and CSE agencies has shown that there is a lack of consistency among States in making this referral. The result is that some Medicaid families in need of CSE services do not receive them, while other families who are not in need of such services are being inappropriately referred.

To assist CSE agencies in carrying out the provisions of section 454 of the Act, we are proposing, in a new 42 CFR 433.160, that Medicaid agencies be required to provide prompt notice to the CSE agency for referral whenever medical assistance is furnished to families who may be in need of CSE services. For purposes of this section, we are defining "prompt notice" as communication of all relevant information, as prescribed by the CSE agency, by the most efficient and cost-effective means available, using manual or automated systems, no later than 2 working days after a determination of medical assistance eligibility has been made. For consistency, these are the same timeliness requirements for referrals found in the AFDC regulations at 45 CFR 235.70(b)(2).

We also are proposing to require that the State Medicaid agency develop criteria and procedures, in conjunction with the State CSE agency, to implement the referral requirements. Because many States have already developed criteria and administrative procedures for working with CSE agencies for the purpose of enforcement of rights to and collection of medical support or payments, we want to extend States maximum flexibility in implementing the proposed requirements for case referrals. Therefore, we are proposing general requirements for referrals that can be implemented through criteria and procedures developed by the State Medicaid agency in conjunction with the State CSE agency. We believe that State CSE agencies must be involved when State Medicaid agencies develop criteria and procedures for referral so that only appropriate cases are referred to the CSE agency. In addition, the type of information needed by the CSE agency and the method of transmitting the information may vary from State to State. Therefore, we believe a more favorable outcome would be achieved if the State Medicaid agency coordinates its criteria and procedures with the State CSE agency.

While we are proposing general requirements for the development of the referral criteria and procedures, we are proposing that, at a minimum, the criteria and procedures must incorporate a methodology for identifying the Medicaid cases that would be appropriate for referral to the CSE agency, and provide for review of the criteria and procedures when both the State Medicaid agency and the State CSE agency agree that such revision is warranted. In addition, we propose to require that such criteria and procedures be described in the State plan.

B. Cooperative Agreements

We are proposing changes to 42 CFR 433.151, Cooperative agreements and incentive payments—State plan requirements, to address revisions that were made in the CSE regulations. Current regulations at § 433.151 require Medicaid agencies to enter into cooperative agreements with specified entities in accordance with the requirements stipulated for cooperative agreements under regulations at 45 CFR part 306. In accordance with section 1912(a)(2) of the Act, these entities include any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, the State CSE agency), and appropriate courts and law enforcement officials.

Section 433.152(b)(2) also requires State Medicaid agencies to make reimbursement for services performed by the CSE agency under a cooperative agreement that are not reimbursable under title IV–D, and that are necessary for the collection of amounts for the Medicaid program. As discussed earlier in this preamble, CSE regulations at 45 CFR part 306 provide for optional cooperative agreements between CSE agencies and Medicaid agencies that include the medical support enforcement and collection activities CSE agencies are required to perform under title IV–D. However, in accordance with 45 CFR 304.23(g) (Expenditures for which Federal financial participation (FFP) is not available), Federal funding under the IV–D program is not available for these required activities if they are performed under an optional cooperative agreement with the Medicaid agency under 45 CFR part 306. Thus, if a CSE agency performs medical support enforcement services, as it is now mandated to do, without a cooperative agreement, it will be reimbursed under title IV–D. However, if it performs these services under an optional cooperative agreement, it cannot be reimbursed under title IV–D. Because title IV–D funds are not available in this situation, Medicaid is required to pay CSE agencies for activities which they are required to perform under title IV–D.

In addition, Medicaid agencies are required to pay incentive payments under 42 CFR 433.153, to a political subdivision, a legal entity for the subdivision, or another State, for the enforcement of rights to and collection of medical support or payments under the mandatory Medicaid cooperative agreement. County or local CSE agencies administering the cooperative agreement between the State Medicaid agency and the State CSE agency would receive the required incentive payment, in addition to the Medicaid reimbursement, for any activities covered under the cooperative agreement with the State agency.

The intent of our current regulations concerning mandatory cooperative agreements was to ensure that medical support enforcement and collection activities were performed for Medicaid recipients. Because several of the functions previously performed under cooperative agreements are now mandatory for CSE agencies, with or without a cooperative agreement, we believe there is no longer a need to require State Medicaid agencies to have cooperative agreements with the State CSE agencies. Therefore, we are proposing to revise § 433.151 to make cooperative agreements with CSE agencies optional instead of mandatory. We also propose to revise this section to add a State plan requirement that the State must meet the referral requirements in new § 433.160, regardless of whether the State enters into a cooperative agreement. For consistency and clarity in making these changes, we propose to redesignate the cooperative agreement requirements currently found in § 433.151 (a) and (b) as new § 433.151(b) (1) and (2).

CSE regulations at 45 CFR 302.34 additionally require CSE agencies to enter into cooperative arrangements with appropriate courts and law enforcement officials. We believe that this requirement, coupled with the requirement to provide CSE services to Medicaid families, eliminates the need for State Medicaid agencies to enter into mandatory cooperative agreements with these same entities, as currently required in § 433.151. Therefore, our proposed change to § 433.151 to make cooperative agreements optional instead of mandatory also encompasses these other entities, as well as CSE agencies.

C. Additional Proposed Revisions to the Regulations

We propose to revise § 433.136 to define the term "political subdivision" as a county or locality within a State. We have interpreted "political subdivision" as a county or locality since 1977. Our interpretation is based upon the Conference Committee report accompanying the 1977 Medicare-Medicaid Anti-Fraud and Abuse Amendments, Public Law 95–142. In the report, when discussing the addition of sections 1903(p) and 1912 to the Act, Congress differentiated local governments from those entities that are not State-level, denominating the former as "political subdivision(s) of a State" and "localities". (H.R. Conf. Rep. No. 673, 95th Cong., 1st Sess. 45, reprinted in 1977 U.S. Code Cong. & Admin. News 3113, 3119 (1977)).

In addition, Departmental regulations at 45 CFR 74.3 include in the definition of "State" as it applies to Medicaid State plans, "any agency or instrumentality of a State exclusive of local governments." This section also provides a definition of "local government" that appears to encompass the concept of "political subdivisions" and "localities." Under 45 CFR 74.3, local government means a "local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (whether or not incorporated as a non-profit corporation under State law), sponsor or sponsoring local organization of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interstate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), Applicability of this part." We believe that our proposed definition of "political subdivision" not only reflects Congressional intent, but is also consistent with other Departmental regulations that reflect the interpretation that a "political subdivision" means a county or locality.

In addition, we propose to—

- Revise § 433.135, Basis and purpose, to add a reference to the referral requirement; and
- Revise § 433.137, State plan requirements, to add the requirement of referrals to CSE agencies.

IV. Collection of Information Requirements

The new regulation at § 433.160 contains information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The information collection requirements concern the development of State plan amendment material concerning the referral of certain Medicaid families to CSE agencies. The respondents who will provide the information include State Medicaid agencies. Public reporting burden for this collection of information is estimated to be one hour per amendment.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the OMB official

whose name appears in the ADDRESSES section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the DATES section of this preamble, and we will respond to the comments in the final rule.

VI. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule." A major rule is one that would result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or any geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we do not consider States or individuals to be small entities.

These proposed regulations require that Medicaid agencies refer appropriate Medicaid families to CSE agencies for the enforcement and collection functions to be performed by the CSE agency. The terms of the referral would be determined by the State Medicaid agency and the State CSE agency. The intent of these regulations is merely to ensure that Medicaid agencies refer all Medicaid recipients in need of CSE services to the CSE agency. In addition, the intent of the modifications proposed to the regulations governing cooperative agreements is to limit the transfer of program payment from title XIX to title IV–D for activities performed by the CSE agency that are mandated under title IV–D.

While this proposed rule will have some overall effect on Medicaid program expenditures, we do not believe that the impact will be significant. Therefore, we have determined, and the Secretary certifies, that this proposed rule is not a major rule under Executive Order 12291, and would not have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Executive Order 12606 requires an analysis in formulating and implementing policies and regulations that may have significant impact on family formation, maintenance, and general well-being. These proposed regulatory provisions are expected to have an overall beneficial family impact.

Section 454 of the Act requires CSE agencies to provide CSE services to Medicaid families. However, under existing regulations, Medicaid agencies are not required to refer Medicaid families to CSE agencies. Consequently, information derived from program reviews from both HCFA regional offices and CSE agencies has shown that there is a lack of consistency among States in making this referral. The result is that some Medicaid families in need of CSE services do not receive them, while other families who are not in need of such services are being inappropriately referred.

We believe that the proposed regulatory provision that requires Medicaid agencies to provide prompt notice (within 2 working days) to the CSE agency for referral of certain families to receive all appropriate CSE services will greatly enhance the general well-being of families. Specifically, these families will receive access to CSE services that are in excess of medical support and payment collection, such as establishing paternity, locating absent parents, and obtaining child and spousal support.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

Part 433 of chapter IV of title 42 would be amended as set forth below:

1. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1912, and 1917 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), 1396k, and 1396p).

2. In § 433.135 the introductory text and paragraph (a) are republished, paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 433.135 Basis and purpose.

This subpart implements sections 1902(a)(25), 1902(a)(45), 1903(d)(2), 1903(o), 1903(p), and 1912 of the Act by setting forth State plan requirements concerning—

(a) The legal liability of third parties to pay for services provided under the plan;

(b) Assignment to the State of an individual's rights to third party payments;

(c) Cooperative agreements between the Medicaid agency and other entities for obtaining third party payments; and

(d) Referrals of certain Medicaid families to child support enforcement agencies.

3. In § 433.136, the introductory text is republished and a new definition is added in alphabetical order to read as follows:

§ 433.136 Definitions.

For purposes of this subpart—

* * * * *

Political subdivision means a county or locality within a State.

* * * * *

4. In § 433.137, the introductory text of paragraph (b) is republished and paragraph (b)(2) is revised to read as follows:

§ 433.137 State plan requirements.

* * * * *

(b) A State plan must provide that—

* * * * *

(2) The requirements of §§ 433.151 through 433.160 are met for cooperative agreements and incentive payments for third party collections, and referrals of certain Medicaid families to child support enforcement agencies.

* * * * *

5. The undesignated heading following § 433.148 is revised to read as follows:

Cooperative Agreements, Incentive Payments, and Referrals to Child Support Enforcement Agencies

6. Section 433.151 is revised to read as follows:

§ 433.151 Cooperative agreements and incentive payments—State plan requirements.

For medical assistance furnished on or after October 1, 1984—

(a) A State plan must specify whether or not the State has entered into cooperative agreements (including financial arrangements) with other entities to assist the agency or agencies administering the State plan with respect to the enforcement and collection of rights to medical support or payments assigned and any other matters of common concern. These cooperative agreements may be with any of the following entities: Any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, the State's agency designated under title IV–D of the Act); and appropriate courts and law enforcement officials.

(b) If a State elects to enter into a cooperative agreement, as specified in paragraph (a) of this section, the State plan must provide that—

(1) The agreement is in accordance with the provisions of § 433.152; and

(2) The requirements for making incentive payments and for distributing third party collections specified in §§ 433.153 and 433.154 are met.

(c) Regardless of whether a State enters into a cooperative agreement, as specified in paragraph (a) of this section, it must meet the requirements specified in § 433.160 for referring certain Medicaid families to the child support enforcement agency.

7. A new § 433.160 is added to read as follows:

§ 433.160 Referrals to child support enforcement agencies.

(a) *Requirements for referral.* (1) The Medicaid agency must provide prompt notice to the child support enforcement (CSE) agency for referral whenever medical assistance is furnished to families who may be in need of CSE services, as determined under the criteria and procedures specified in paragraph (b) of this section.

(2) For purposes of this section, *prompt notice* means communication of all relevant information, as prescribed by the CSE agency, by the most efficient and cost-effective means available, using manual or automated systems, no later than 2 working days after a determination of medical assistance eligibility has been made.

(b) *Criteria and procedures.* The State Medicaid agency, in conjunction with the State CSE agency, must develop criteria and procedures to implement the requirements in paragraph (a) of this section. At a minimum, the criteria and procedures must—

(1) Incorporate a methodology for identifying the Medicaid cases that would be appropriate for referral to the CSE agency; and

(2) Provide for revision of the criteria and procedures when both the State Medicaid agency and the State CSE agency agree that such revision is warranted.

(c) *State plan requirement.* The State Medicaid agency must describe the criteria and procedures specified in paragraph (b) of this section in its State plan.

(Catalog of Federal Domestic Assistance Program, No. 93.778, Medical Assistance Program.)

Dated: April 12, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: June 7, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–23118 Filed 9–21–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 93–240; FCC 93–424]

Accounting for Judgments and Other Costs Associated With Litigation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted a Notice of Proposed Rulemaking and Order (Notice) proposing to adopt accounting rules and ratemaking policies applicable to antitrust judgments, antitrust settlements, and other antitrust litigation expenses, and inviting comment on whether, and to what extent, such rules should be applicable to other areas of the law. Recognizing that the accounting and ratemaking treatment of antitrust judgments, settlements, and associated litigation expenses affect the sharing mechanism incorporated in Local Exchange Carriers' (LECs) price cap plan, and the requirement that carriers must maintain their books of account in accordance with the rules and policies of this Commission, the Commission invites comments on the proposed rules. The proposed rules are intended to address the Commission's concern that certain litigation costs should not be routinely passed on to ratepayers. As an interim measure, the Commission requires the carriers to place any antitrust judgments or settlements for which they become liable in the interim period between release of the Notice and adoption of rules in a balance sheet deferral account.

DATES: Comments must be filed on or before October 15, 1993 and reply comments must be filed on or before November 5, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sonja J. Rifken, Common Carrier Bureau, Accounting and Audits Division, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking and Order in Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–240, FCC 93–424, adopted August 23, 1993 and released September 9, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The full text will be published in the *FCC Record* and may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Summary:

1. In the *Litigation Costs Proceeding,*[1] the Commission established accounting rules and ratemaking policies for litigation costs incurred by carriers in federal antitrust lawsuits and other cases involving violations of federal statutes. The United States Court of Appeals for the District of Columbia Circuit vacated and remanded these rules and policies to the Commission. In the court's view, the Commission had

[1] Notice of Proposed Rule Making to amend Part 31 Uniform System of Accounts for Class A and Class B Telephone Carriers to Account for Judgments and Other Costs Associated with Antitrust Lawsuits, and Conforming Amendments to the Annual Report Form M, *Report and Order,* 52 FR 20599 (June 2, 1987) (*Litigation Costs Order*), *recon.,* 54 FR 22756 (May 26, 1989) (*Litigation Costs Recon. Order*) (collectively, *Litigation Costs Proceeding*), *vacated and remanded sub nom.,* Mountain States Tel. and Tel. Co. v. FCC, 939 F.2d 1035 (D.C. Cir. 1991) (*Litigation Costs Decision*).

neither sufficiently justified the scope of the rules and policies, nor fully considered their probable effects upon carriers' behavior. In light of the court's remand, we consider anew the issue of the accounting rules and ratemaking policies applicable to litigation costs.

2. The guiding principle for the accounting rules adopted in the *Litigation Costs Proceeding* was that certain litigation costs were not "normally the byproduct of activities that benefit ratepayers." The Commission divided litigation costs into three categories: judgments; settlements; and other litigation expenses, *e.g.*, trial expenses. Specifically, the rules required judgments and settlements to be recorded in a nonoperating or below-the-line account, Account 7370, Special Charges, 47 CFR 32.7370. Recording an expense in a nonoperating account generally signifies that the expense is presumptively excluded from carriers' revenue requirements. Other litigation expenses were to be recorded in operating or above-the-line accounts, such as Account 6725, Legal expenses. Recording expenses in operating accounts generally creates a presumption of inclusion of these expenses in carriers' revenue requirements.

3. At the same time, the Commission announced ratemaking policies that, in some cases, altered the presumptions that attach to the accounts in which these litigation costs were recorded. For pre-judgment settlements, a carrier could presumptively include in its revenue requirement the "nuisance value" of the case. Other litigation expenses associated with either an adverse judgment or a post-judgment settlement were to be subject to "recapture." The recapture policy presumptively required these expenses to be excluded from a carriers' revenue requirement in the subsequent access tariff filing and the related AT&T tariff filings.

4. On appeal, the court reversed the Commission's Orders for two limited reasons. First, the court found that, although the Commission had adopted accounting classifications and presumptions with respect to all violations of federal statutes, it did not adequately justify the application of the litigation costs rules beyond the antitrust context. Second, the court found that the Commission had not sufficiently considered the incentive effects the rules and policies had on carriers' behavior.

5. AT&T, the Bell Operating Companies (BOCs), and a number of other large local exchange carriers (LECs) are now under price cap regulation. Presumptions regarding the inclusion or exclusion of expenses in a carrier's "revenue requirement" do not affect the development of rates under our price cap formulas. Nevertheless, we tentatively conclude that there is a continued need for litigation costs rules. AT&T and the LECs must still maintain regulated books of accounts, and the accounts must continue to be kept in accordance with the rules and policies of this Commission. Moreover, price cap LECs are subject to a sharing mechanism. Under this mechanism, a price cap LEC must share with ratepayers a portion of its regulated interstate earnings above a certain level. The operating/nonoperating distinction is a factor in determining whether a price cap LEC is within that sharing zone. Thus, the rules continue to affect the price cap LECs. Finally, there are still over 1300 LECs subject to rate of return regulation. Litigation costs rules are still needed to prevent these LECs from recovering through regulated rates expenses incurred as a result of unlawful conduct that does not benefit ratepayers.

6. In the *Litigation Costs Proceeding*, the Commission explained that the activity which leads to an adverse antitrust judgment, anticompetitive behavior, "rately, if ever, produces any benefit for ratepayers." As a result, the Commission concluded, such expenses should be recorded in a nonoperating account and should not routinely be passed on to ratepayers. The court in the *Litigation Costs Decision* agreed with this rationale and with this accounting treatment. We continue to believe this principle, and propose to require antitrust judgments be recorded in a nonoperating account, 47 CFR 32.7370. We invite comment on this proposal.

7. The court also agreed that this Commission could require carriers to record antitrust settlements in a nonoperating expense account. We also continue to believe that this approach is most consistent with the underlying principle that expenses not incurred for the benefit or ratepayers should not be routinely passed on to ratepayers. We therefore propose to require carriers to record antitrust settlements in Account 7370 and to amend the language in that account to include settlements. We seek comment on this proposal.

8. We also seek comment on whether we should readopt a ratemaking policy that allows a carrier presumptively to include in its revenue requirement the "nuisance value" of a lawsuit if a settlement is reached prior to judgment. Although the court accepted the concept of a nuisance value exception to the presumption against recovery of settlements, it found that the Commission had not adequately considered the incentive effects of the pre-judgment/post-judgment distinction. We tentatively conclude that the incentive to litigate that we would create by readopting the pre-judgment/post-judgment distinction is not so harmful to ratepayers that it warrants abandoning that distinction. We seek comment on this conclusion and invite parties to suggest ways in which we might limit the effects of this incentive.

9. In the *Litigation Costs Order*, the Commission decided that litigation expenses were to be accounted for in operating accounts, but that they were to be subject to recapture if the case they were associated with resulted in an adverse judgment or post-judgment settlement. The court agreed that this Commission could "reasonably erect a presumption against the recovery of litigation expenses wherever [we] may do so with respect to judgments and settlements."

10. After careful consideration of the recapture policy, we believe a different approach to the treatment of other antitrust litigation expenses would more fairly balance the interests of carriers and ratepayers. We propose to require carriers to accrue other antitrust litigation expenses in a balance sheet deferral account until the case is resolved, Account 1439, 47 CFR 32.1439. Upon entry of an adverse nonappealable final judgment or post-judgment settlement, these expenses would be charged to Account 7370. Should the case be resolved in favor of the carrier, the expenses would be amortized above-the-line for a reasonable period. We tentatively conclude that this approach treats carriers and ratepayers fairly. We seek comment on our proposal. We also ask commenters to address the effects that deferral accounting for litigation expenses could have on carriers' incentives to settle or litigate.

11. In the *Litigation Costs Proceeding*, the Commission did not subject other antitrust litigation expenses to recapture if they were associated with a pre-judgment settlement. This policy was to encourage settlement "where such action would be in the best interest of the ratepayers." Because we tentatively conclude that this approach is consistent with the ratepayer benefit principle to which we adhere, we propose to allow antitrust litigation expenses charged to Account 1439 to be booked in operating accounts in the event of a pre-judgment settlement. The court, however, indicated that this approach may provide an excessive

incentive for carriers to settle prior to judgment so that they can recover some portion of their litigation expenses. We therefore ask commenters to address the incentives this approach creates.

12. In the *Litigation Costs Proceeding*, the Commission extended its litigation costs rules to litigation involving civil or criminal violations of any federal laws because (1) violations of federal statutes are not normal business expenses, (2) federal statutes raise public policy considerations, and (3) application at the federal level provides uniformity. The court ruled, however, that the Commission may erect a presumption against recovery of these types of litigation costs only if the carrier's action underlying the lawsuit does not benefit ratepayers. Moreover, the court found that it may be the case that violation of federal law could benefit ratepayers.

13. In light of the court's remand, we seek comment on whether and how the Commission could extend these rules beyond the federal antitrust context. We tentatively conclude that the proposed litigation costs rules should apply to both federal and state antitrust lawsuits. We see no basis for distinction since we have concluded that anticompetitive behavior does not benefit ratepayers, and anticompetitive behavior underlies both state and federal antitrust statutes. We seek comment on our proposal.

14. We also tentatively conclude that the litigation costs rules should apply beyond the antitrust context to lawsuits involving violation of federal statutes in which the actions giving rise to the suit did not benefit ratepayers. We seek comment on two options for implementing this proposal. One option would be for the Commission to review on a case-by-case basis the circumstances of any lawsuit involving a federal statutory claim in which a settlement or judgment exceeded some threshold amount. The threshold amount could be set as an absolute amount, such as $5 million, or as a percentage of total operating expenses. We invite comment on this option, and ask commenters to address the incentives created by this proposal. We also seek comment on three options for the treatment of litigation expenses related to lawsuits subject to case-by-case review: (1) require deferral accounting for all litigation expenses involving claimed violations of federal statutes, so as to preserve the possibility of later disallowance in those cases in which judgments or settlements are ultimately disallowed; (2) require deferral accounting for such lawsuits once litigation expenses in a given case exceed some threshold level; or (3) allow above-the-line accounting.

15. The second option would be for the Commission to adopt in this proceeding a list of other federal statutes for which it can reasonably be assumed that actions in violation of the statute did not benefit ratepayers. Judgments, settlements, and litigation expenses for these suits would be treated, both for accounting and ratemaking purposes, the same as in antitrust cases. We ask interested persons to propose lists of such statutes and to explain the rationale for their lists. Finally, commenters should discuss the incentives created by this approach.

16. With the vacation by the court, there are currently no litigation costs rules in place. We are concerned that carriers could pass on to ratepayers judgments and settlements which should not properly be borne by ratepayers during the period between release of this Notice and a Final Order. Thus, we require carriers to record any antitrust judgments and settlements incurred during this interim period in Account 1439, deferred charges, 47 CFR 32.1439. Upon completion of this rulemaking, carriers would then be allowed to treat these expenses in accordance with the new rules.

17. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. 5 U.S.C. 603(a). Because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not "small entities" as defined by that act. The Secretary shall send a copy of this Notice of Proposed Rulemaking and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of that act.

18. Accordingly, *It Is Ordered* pursuant to sections 4(i), 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219, 220, and 403, notice is hereby given of proposed amendments to part 32 of the Commission's Rules, 47 CFR 32.1 *et seq.* as described in this Notice of Proposed Rulemaking and Order.

List of Subjects in 47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

William F. Caton,

Acting Secretary.

Part 32 of the Commission's Rules and Regulations, 47 CFR part 32 is proposed to be amended as follows:

Uniform System of Accounts for Telecommunications Companies

1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 219, 220.

2. Section 32.7370 is amended by revising paragraph (d) to read as follows:

§ 32.7370 Special Charges.

* * * * *

(d) Penalties and fines paid on account of violations of statutes. This account shall include penalties and fines paid on account of violations of antitrust statutes including judgments and payments in settlement of suits alleging such violations.

* * * * *

[FR Doc. 93-23246 Filed 9-21-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-226, FCC 93-373]

Restrict Rounding of Distance Separation Calculations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making in MM Docket No. 93-226 seeks comments on a proposal to amend agency regulations. Specifically, the FCC proposes to restrict rounding of distance separation calculations to the nearest one hundredth of a kilometer (two decimal places) in instances where an applicant is not in compliance with the FCC's minimum distance separation requirements. The intended effect of this Notice of Proposed Rule Making is to significantly reduce the potential for interference and inconsistencies from station to station. Furthermore, the degree of rounding yields a precision of 10 meters which more closely conforms to the degree of precision associated with the FCC's requirement that transmitter site coordinates be specified to the nearest second.

DATES: Initial Comments are due on or before October 18, 1993. Reply Comments are due on or before November 2, 1993.

ADDRESSES: Submit original and four copies of all comments, reply comments, and supporting comments to: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary P. Schonman, FCC Mass Media Bureau, (202) 632–6402.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Proposed Rule Making in MM Docket No. 93–226, adopted on July 27, 1993, and released on August 27, 1993. The complete text of the Notice of Proposed Rule Making is available for inspection and copying during normal business hours at: FCC Reference Room, Federal Communications Commission, room 239, 1919 M Street, NW., Washington, DC 20554. Copies of all documents in this proceeding may be purchased from the FCC's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036 (Telephone: 202–452–1422).

Synopsis of Notice of Proposed Rule Making

The FCC sought comment on a proposal to amend 47 CFR 73.208(c)(8). The FCC stated that an applicant is currently entitled to demonstrate compliance with minimum distance separation requirements (*e.g.*, § 73.207, § 73.213(c), § 73.215(e)) by rounding off to the nearest kilometer (km) the distance between its proposed transmitter site and a particular reference point (*e.g.*, the transmitter site of an existing co-channel or adjacent channel station). The FCC proposes *no* change to its rules in that regard. However, the FCC stated that its rules should be amended to specify that if the applicant is unable to demonstrate such compliance by virtue of the rounding-off provision in § 73.208, the extent to which it is short-spaced should be specified with greater precision. Accordingly, the FCC sought comment on a proposal to amend § 73.208(c)(8) as follows:

§ 73.208 Reference points and distance computations.

(c) * * *

(8) Round the distance to the nearest kilometer. However, if, after rounding the distance to the nearest kilometer, an applicant is not in compliance with any Commission minimum distance separation requirement (*e.g.*, §§ 73.207, 73.213(c), 73.215(e)), the extent to which it is short-spaced shall be specified to the nearest one hundredth of a kilometer (two decimal places).

Initial Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposal suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with ¶ 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1980).

Reason for the Action: This action is taken to clarify that applicants for FM facilities may not round off distances to the nearest km under § 73.208 of the Commission's Rules when computing the extent to which they are short-spaced.

Objective of this Action: By this action, the Commission seeks to clarify and rationalize the use of § 73.208 of the Commission's Rules.

Legal Basis: Authority for this action is found in sections 4, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 4, 303, 403.

Number and Type of Small Entities Affected by the Proposed Action: All applicants for FM facilities that propose transmitter sites which are not in compliance with the Commission's minimum distance separation rules.

Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Action: None.

Federal Rules which Overlap, Duplicate or Conflict with the Proposed Action: None.

Any Significant Alternative Minimizing Impact on Small Entitites and Consistent with the Stated Objective of the Action: We are seeking comment to determine whether any significant alternatives exist.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23115 Filed 9–21–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Pahrump Poolfish (Empetrichthys latos latos) From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has reviewed the status of the Pahrump poolfish (*Empetrichthys latos latos*) and proposes to reclassify this species from endangered to threatened throughout its range under the Endangered Species Act of 1973, as amended (Act). The Pahrump poolfish (also known as the Pahrump killifish) is a small, relatively slender fish, endemic to the Pahrump Valley in southern Nye County, Nevada. In 1975, the sole natural population of Pahrump poolfish was extirpated from Manse Spring, Nye County, Nevada, when ground water pumping caused the spring to dry. Aside from water diversions and excessive ground water pumping, threats to the species include predation and competition from exotic fishes and encroachment of vegetation. Because of recovery efforts, the species now occurs in three relatively stable populations that have been artificially established in Clark and White Pine Counties, Nevada. If made final, the proposed action would reclassify the Pahrump poolfish from endangered to threatened status. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 22, 1993. Public hearing requests must be received by November 8, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, Reno Field Office, 4600 Kietzke Lane, C–125, Reno, Nevada 89502–5093. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul J. Barrett at the above address (telephone 702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

The Pahrump poolfish (*Empetrichthys latos latos*) was described along with

two other subspecies of *E. latos* in 1948 (Miller 1948). All three subspecies occurred only in springs found in Pahrump Valley, southern Nevada. The Raycraft Ranch springfish (*E. l. concavus*) and the Pahrump Ranch killifish (*E. l. pahrump*) are now extinct. The only congener, the Ash Meadows poolfish (*E. merriami*), became extinct in the 1940's. Thus, the Pahrump poolfish is the sole remaining representative of the genus *Empetrichthys*.

This species was originally called the Pahrump killifish. Robbins *et al.* (1991), following the recommendation of J.E. Williams, recently assigned the common name "poolfish" to fishes in the genus *Empetrichthys*. Nevertheless, the majority of the literature refers to the fish as the Pahrump killifish.

The ancestral home of the Pahrump poolfish was Manse Springs in Nye County, Nevada. In 1975, local ground water pumping for agricultural development dried the spring, destroying the only natural population of the Pahrump poolfish. Similarly, ground water pumping caused the extinction of the Raycraft Ranch springfish in the mid-1950's and the Pahrump Ranch killifish in 1958. Prior to the pumping of Manse Springs, populations of the Pahrump poolfish were established in two separate areas: Corn Creek Springs on the Desert National Wildlife Range, north of Las Vegas, Nevada, and Shoshone Springs southeast of Ely, Nevada. Subsequent to the loss of Manse Springs, a third population was established in an irrigation reservoir at Spring Mountains Ranch State Park west of Las Vegas, Nevada. Researchers attempted to establish another population in Latos Pool, near Lake Mohave, in Nevada, but the poolfish were lost during floods in the late 1970's.

All three extant populations of Pahrump poolfish occur on public lands. The Service has applied for vested water rights at Corn Creek Springs based on historical use. The Nevada Department of Wildlife has State appropriative water rights at Shoshone Ponds while the Nevada Division of State Parks has appropriated water rights for Sandstone Spring, the water source for the Spring Mountain Ranch irrigation impoundment in which the Pahrump poolfish occur.

The Act contains both recovery and protection provisions. Section 4(f) of the Act provides for the development and implementation of recovery plans for listed species. The Pahrump Killifish Recovery Plan (Plan) was published by the Service on March 17, 1980. Although information gathered since its publication may have altered the priorities of tasks identified in the Plan, its ultimate objective, the establishment of 3 populations of 500 fish each, remains valid. The species is less likely to be subject to catastrophic perturbations simultaneously at three separate sites than at the single location it historically occupied. Implementation of recovery tasks identified in the Plan has significantly improved the status of the species. These tasks have been funded and/or carried out by the Service and by numerous Federal and State agencies and academic institutions. The cumulative effect of these efforts and the efforts of the many individuals, organizations, and government agencies at Federal, State, and local levels has been a progressive increase in numbers, as well as the secure establishment of three populations of Pahrump poolfish.

The Plan included provisions to monitor the poolfish populations twice annually. After publication of the Plan it became apparent that Pahrump poolfish are inactive during winter and early spring and therefore cannot be effectively sampled (Deacon 1984a). As a result, researchers have attempted annual summer monitoring of all three populations of Pahrump poolfish since the mid-1980's.

The primary objective of the recovery effort is the establishment of a minimum of three subpopulations of the Pahrump poolfish. Each subpopulation should maintain a minimum of 500 adults for 3 years, and the population's habitats would have to be free of immediate and potential threats before the species could be considered for reclassification to threatened status. Subsequent to reclassification as threatened, if the populations continue to exceed 500 individuals per year at each of the 3 locations for an additional 3 years, consideration should be given to delisting the species. Data collected by the Nevada Department of Wildlife indicates that there have been continual populations of over 500 individuals at all 3 sites since at least 1986. In 1988, either the populations greatly expanded, censusing techniques became more efficient, or both. From 1988 through 1992, individual ponds within each location have contained far greater than 500 individuals.

The Shoshone Ponds population is located on Federal land managed by the Bureau of Land Management (Bureau). Although Shoshone Ponds was originally considered a temporary holding site until other suitable sites could be identified, there has been a population of Pahrump poolfish in the ponds continually since August of 1976 (Logan 1977). One management objective of the Bureau's Habitat Management Plan for the Shoshone Ponds area is the development of a refugium for the Pahrump poolfish (Cain 1970). In 1970, the Bureau also designated the ponds and 1,240 acres surrounding the ponds as the Shoshone Ponds Natural Area. Due to the apparent long-term viability of the population, and the Bureau's commitment to the maintenance of the species in Shoshone Ponds, the Service has included the Shoshone Pond population when considering the requirements for reclassification of the Pahrump poolfish.

In 1979, when the Plan was written, only two locations contained Pahrump poolfish, Corn Creek and Shoshone Ponds. Both populations were relatively young, 8 and 3 years respectively, and the Corn Creek location contained several exotic predators and competitors, as well as problems associated with the encroachment of macrophytes. Management recommendations were made to address these problems.

The Corn Creek ponds were drained to remove exotic fishes and cattails (Zeller 1985). The cattails are occasionally treated with herbicide to prevent reinfestation of the ponds. The chemical treatment has had no apparent effect on the Pahrump poolfish, while the vegetation removal has improved the poolfish habitat (Sjoberg 1989). Continual evaluation and treatment as necessary of the vegetation will be required if the ponds are to remain suitable for Pahrump poolfish.

The Plan identified Spring Mountain Ranch State Park as a site that could be renovated and used to establish a third population of Pahrump poolfish. In June of 1983, exotic fishes were eradicated from the irrigation reservoir at Spring Mountain State Park and 426 Pahrump poolfish were introduced (Haskins 1983). By June 1984, both adult and fry were present (Deacon 1984b). The population has exceeded 500 individuals every year since 1985. Although Spring Mountain Ranch State Park has no formal agreement to maintain the Pahrump poolfish population in perpetuity, it has no immediate plans to move the poolfish or introduce other species of fish (Jan Prida, personal communication, August 20, 1992).

The Service believes that the available data do not indicate that the recovery goals established in the Plan have been met. Therefore, delisting of the Pahrump poolfish is not warranted. However, the Service does believe that goals identified in the Plan as necessary to consider reclassifying the Pahrump poolfish from endangered to threatened

pursuant to the Act have been met. The Service believes reclassification is warranted and proposes to reclassify the Pahrump poolfish as threatened throughout its range.

Previous Federal Action

Federal action began on this species when it was listed as endangered under the Endangered Species Preservation Act of 1966, on March 11, 1967. With the 1973 passage of the Endangered Species Act, the fish retained its endangered status and gained further protection, pursuant to the Act. A recovery plan for the Pahrump poolfish (as the Pahrump killifish) was published by the Service in 1980.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of five factors described in section 4(a)(1). These factors and their application to the Pahrump poolfish (*Empetrichthys latos latos*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat conservation and expansion efforts, including management practices by Federal and State agencies and universities, have increased the number of Pahrump poolfish populations and expanded the species' range since the early 1970's. These efforts led to the establishment of three populations of poolfish at locations from which they were historically absent. One of these, Shoshone Ponds, included the construction of a new pond by impounding an artesian well. All three populations are located on land owned and managed by Federal or State agencies. With constant water supplies and periodic renovation of the impoundments to reduce excess vegetation, each location will provide adequate habitat to ensure the continued existence of the Pahrump poolfish. The Service has filed for a vested water right at Corn Creek. Should the hydrologic basin be adjudicated, and the vested right recognized, the water supply for the Pahrump poolfish will be ensured. Both the Shoshone Springs and Spring Mountain Ranch State Park have water rights certified by the State of Nevada. The water rights were granted to the Nevada Department of Wildlife for the former and the Nevada Division of State Parks for the latter.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known commercial or recreational use of the Pahrump poolfish. The Service has exercised, and will continue to exercise, very strict control over scientific and educational activities involving Pahrump poolfish. With reclassification to threatened, the Service could issue permits for limited exhibition and educational purposes, for selected research work not directly related to the recovery of the species, and for other special purposes consistent with the purposes and policies of the Act [50 CFR 17.22 (a)(1)]. These activities, which can be permitted for threatened species, are in addition to permits for endangered species that can only be issued for research, rehabilitation, and propagation directly related to recovering the species [50 CFR 17.32 (a)(1)] (see Available Conservation Measures).

C. *Disease or predation.* Disease is not a significant problem for the Pahrump poolfish. Prior to the introduction of poolfish into each of the three sites, all previously established fish were removed; however, the potential reestablishment of populations of competitors or predators remains a threat. If populations of undesirable species do become established, Pahrump poolfish could be trapped and salvaged, and the impoundments could then be treated to remove other species. This occurred at the Corn Creek location in 1975 when mosquitofish (*Gambusia affinis*) were eradicated. Management actions, such as fencing and public education, could reduce the likelihood of an introduction, are less costly, and have less potential to harm the poolfish.

Predators other than fish were also thought to have a potentially damaging effect on the poolfish. For example, the Plan assumed that a bullfrog (*Rana catesbiana*) infestation in Corn Creek may have a detrimental impact on the poolfish. Subsequently, several investigations of stomach contents of bullfrogs taken from the ponds at Corn Creek have shown little predation on Pahrump poolfish (Withers 1985, 1986, 1988; Heinrich 1991).

Parasites of the three populations have also been the subject of studies. Heckmann (1987, 1988) found generally low parasite loads in all three populations. However, he did find what is thought to be the first record of a blood nematode in North American freshwater fishes in both the Shoshone Ponds and Spring Mountain Ranch populations. Subsequently, Dr. Heckmann located another nematode in the coelomic cavity of the poolfish in the Corn Creek and Spring Mountain Ranch populations. Dr. Heckmann does not believe that these parasites would be an impediment to the transfer of individuals between populations (R. Heckmann, personal communication, August 14, 1992).

D. *The inadequacy of existing regulatory mechanisms.* Pahrump poolfish and their habitats receive some protection via the Act. Section 7(a)(1) is a protective provision of the Act that directs all Federal agencies to "* * * utilize their authorities * * * for the conservation of endangered species and threatened species * * *" Section 7(a)(2) directs each Federal agency to "* * * insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species * * *" Section 9 contains the specifically prohibited harmful acts. The Corn Creek and Shoshone Pond habitats occur on Federal Land. Any Federal action that would impact these areas would be subject to provisions of the National Environmental Policy Act (NEPA) of 1969 and the Act. Reclassification to threatened status would not change the current protection afforded the species by the Act.

All three poolfish populations occur within the State of Nevada, and the Pahrump poolfish is protected pursuant to Chapter 503.584 of the Nevada Revised Statutes (NRS). This statute prohibits all species or subspecies of native fish, wildlife, and other fauna threatened with extinction from capture, removal, or destruction at any time by any means except under a special permit issued by the department.

The most critical threat to the Pahrump poolfish has been the destruction of habitat through water diversion. The Shoshone Ponds and Spring Mountain State Park populations exist in waters with State-certified appropriations. These appropriations help ensure the continued existence of the respective poolfish habitats. The Service has filed an application for a vested water right at Corn Creek springs. Vested rights are rights based on laws that were in place prior to the development of the existing permit system. In Nevada, vested rights are those where appropriations procedures were initiated prior to March 22, 1913 (NRS 533.085). Should a court adjudicate water rights of the hydrologic basin, the vested rights will be examined. However, the Service has documentation for the use of the Corn Creek waters from approximately 1900

onward and, therefore, believes the water rights at Corn Creek Springs are secure.

E. *Other natural or manmade factors affecting its continued existence.* Due to the historically isolated nature of the Pahrump poolfish and its lack of commercial value, loss of habitat, as discussed in Factor A above, is the major threat to the poolfish. No other natural or manmade factors appear to affect its continued existence.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to reclassify the Pahrump poolfish (*Empetrichthys latos latos*) as threatened, pursuant to the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat for this species is not presently prudent for that reason. Such a determination would result in no known benefit to the species. The species distribution is restricted to three sites, two of which are managed by Federal agencies. It is likely that any Federal action that would adversely affect Pahrump poolfish would result in a jeopardy opinion under section 7(a)(2) of the Act. Therefore, no additional protection would be afforded the species through the designation of critical habitat. Protection of this species' habitat will continue to be addressed through the recovery process and the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these activities), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any threatened species not covered by a special rule. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing threatened species permits are at 50 CFR 17.32. Unless otherwise provided by a special rule, such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition, educational purposes, special purposes consistent with the Act, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final action concerning this proposal will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Reno Field Office (see **ADDRESSES** section).

National Environmental Policy Act

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

References Cited

A complete list of all references cited herein is available upon request from the Reno Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Paul J. Barrett, U.S. Fish and

Wildlife Service (see ADDRESSES section); telephone 702/784–5227.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

§ 17.11(h) [Amended]

2. It is proposed to amend § 17.11(h) by revising the entry under FISHES for "Poolfish, Pahrump" to read "T" under "Status."

Dated: August 18, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–23105 Filed 9–21–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 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.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Recreation Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice, as required by the Federal Advisory Committee Act (5 U.S.C. App. 2), of the times and location of the second meeting of the Recreation Access Advisory Committee.

DATES: The second meeting of Recreation Access Advisory Committee is scheduled for Saturday, October 23, 1993 (1 pm–5 pm); Sunday, October 24, 1993 (8:30 am–5 pm); and Monday, October 25, 1993 (8:30 am–12:30 pm).

ADDRESSES: On October 23, 1993, the meeting will be held at the San Jose Convention Center, 408 Almaden Avenue, San Jose, California. On October 24 and 25, 1993, the meetings will be held at the Westin Hotel, 5101 Great America Parkway, Santa Clara, California.

FOR FURTHER INFORMATION CONTACT: Peggy H. Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 ext. 34. (Voice); (202) 272–5449 (TTY). These are not toll free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Access Board established a Recreation Access Advisory Committee to provide advice on issues related to making recreational facilities and outdoor developed areas readily accessible to and usable by individuals with disabilities. This advice will be used by the Access Board to develop accessibility guidelines under the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 for newly constructed and altered recreational facilities and outdoor developed areas. The advisory committee is composed of owners and operators of various recreational facilities; persons who design recreational facilities or manufacture related equipment; Federal, State and local government officials responsible for parks and other outdoor developed areas; and individuals with disabilities and organizations representing the interests of such persons.

At its first meeting on July 15 and 16, 1993, the Recreation Access Advisory Committee formed subcommittees to assist in its work. The subcommittees include: Amusement Parks; Golf; Play Area Settings; Recreational Boating and Fishing; Developed Outdoor Recreation Facilities and Areas; and Sports Facilities. Subcommittee meetings will be held during the October 23 to 25, 1993 meeting of the advisory committee and at other schedule dates. The public is encouraged to attend subcommittee meetings and to provide input in the form of written material. Information about these subcommittees can be obtained from Peggy Greenwell at the address indicated at the beginning of this notice.

This meeting is open to the public and meeting sites will be accessible to individuals with disabilities. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments.

Lawrence W. Roffee,
Executive Director.

[FR Doc. 93–23130 Filed 9–21–93; 8:45 am]
BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 0120–01]

Action Affecting Export Privileges; Iran Air

In the Matter of: Iran Air, Respondent.

Order Imposing Civil Penalty

Whereas, on October 18, 1990, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), charged Iran Air with committing one violation of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. 103–10, March 27, 1993)) (the Act), namely, that, in violation of 15 CFR 787.2, Iran Air caused the shipment of three U.S.-made signal generators from Germany to Iran without obtaining the required reexport authorization from the Office of Export Licensing, Bureau of Export Administration, U.S. Department of Commerce;

Whereas, an administrative proceeding was conducted before an Administrative Law Judge (ALJ) pursuant to part 788 of the Regulations, in which the ALJ found that the shipment of the U.S.-made signal generators to Iran was inadvertent and without knowledge that shipment of these items to Iran was in violation of the Export Administration Regulations;

Whereas, the Acting Under Secretary for Export Administration (Under Secretary), on August 21, 1992, issued a Final Order in the matter finding that Iran Air had committed the violation alleged and imposing certain civil penalties and other administrative sanctions against Iran Air for the violation;

Whereas, Iran Air appealed the Final Order to the U.S. Court of Appeals for the District of Columbia Circuit;

Whereas, on July 2, 1993, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in which the Court stated that the ALJ had appraised the errors of Iran Air in ordering and shipping the generators as inadvertent slips;

Whereas, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the Under Secretary's determination that Iran Air had violated the Regulations, but vacated the sanctions imposed and remanded the matter to the Under Secretary for a reasoned determination of the appropriate sanction consistent with the ALJ's assessment of the facts and circumstances of Iran Air's violation;

Whereas, the matter will be remanded to the Under Secretary upon issuance of the mandate from the U.S. Court of Appeals for the District of Columbia Circuit;

Whereas, the time for the issuance of the mandate from the U.S. Court of Appeals for the District of Columbia Circuit has not yet run;

Whereas, the Department and Iran Air have made a joint submission in which Iran Air has represented that, if I issue an Order on or before August 13, 1993, imposing a civil penalty of $50,000, Iran Air will not seek further review of the July 2, 1993 Opinion of the U.S. Court of Appeals for the District of Columbia Circuit; and

Whereas, the terms of the Joint Submission on Penalty are hereby approved by me;

Now, therefore, it is ordered,

First, That a civil penalty of $50,000 is assessed against Iran Air for the violation it has been found to have committed. No other penalty, forfeiture, or restriction is imposed. Iran Air shall pay the civil penalty to the Department within 30 days from the date that this Order becomes effective. Payment shall be made in the manner specified in the attached instructions.

Second, That a copy of this Order shall be served upon Iran Air and published in the **Federal Register**.

This Order is effective upon issuance of the mandate by the U.S. Court of Appeals for the District of Columbia Circuit in *Iran Air* v. *Kugelman*, No. 91–1596 (July 2, 1993).

Dated: August 12, 1993.

Barry E. Carter,

Acting Under Secretary for Export Administration.

[FR Doc. 93–23129 Filed 9–21–93; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

[Docket No. 930799–3199; I.D. 060493A]

Fishing Vessel Monitoring Systems Proposed Standards

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

ACTION: Notice of proposed standards and request for comments.

SUMMARY: NMFS proposes to endorse, where appropriate, the use of satellite-based fishing vessel monitoring systems to determine positions of fishing vessels, collect real-time catch and environmental data and to specify minimum standards for these systems. This notice advises the public that uniform standards will be promulgated for VMS. NMFS has determined that standards are necessary to assure VMS compatibility. The use of satellite-based fishing vessel monitoring systems (VMS) to collect catch data and determine vessel positions will contribute to reducing overfishing and maintaining currently productive fisheries. Such systems may also contribute significantly to NOAA's global environmental and climate monitoring activities.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Send comments on this proposed policy to: Steven C. Springer, Chief, Enforcement Programs Division, National Marine Fisheries Service, Office of Enforcement, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steven C. Springer, 301–427–2010.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson Fishery Conservation and Management Act (Act) (16 U.S.C. 1801) established Regional Fishery Management Councils (Councils) and gave them authority to prepare fishery management plans (FMPs) for the conservation and management of fishery resources. The Secretary of Commerce may also prepare FMPs under circumstances specified in the Act. NMFS implements FMPs and is responsible for collecting data and monitoring FMP compliance. In recent years, some U.S. commercial marine fishery resources have been overharvested. Many others are being fished at or near the point of maximum sustainable yield, and there is real danger that these could become overharvested as well. Because of this, NMFS is endeavoring to improve the accuracy and timeliness of catch and effort data, and improve compliance with cost-effective management measures. Some Councils and NMFS are beginning to use VMS for compliance and data collection in domestic fisheries.

Quotas are exceeded in two ways. First, catch data are often received from fishing vessels by NMFS after catch quotas have been exceeded, yet before NMFS was able to determine that the quota had been reached and notify vessels to stop fishing. Second, illegal fishing during closed seasons and in closed areas contributes to quotas being exceeded. Illegal fishing is difficult to detect without conducting frequent, costly, at-sea aerial and surface patrols.

Improving the timeliness of catch and effort data reporting would permit NMFS to calculate ongoing harvests more accurately and close fisheries when quotas are reached. Improving compliance without substantially increasing the cost of enforcement would improve the effectiveness of management regulations intended to prevent overfishing. VMS technology has proven effective in helping NMFS determine the location and activity of foreign driftnet vessels fishing in the Pacific Ocean, and has been used to transmit data from these vessels in a timely, accurate and confidential manner. Given the experience with VMS technology aboard driftnet vessels, NMFS has determined that it can be successfully used in other fisheries to enhance management and enforcement efforts.

Proposed Implementation

NMFS proposes to endorse the use of, and define specifications and criteria for, satellite-based fishing vessel monitoring systems as appropriate, to determine positions of fishing vessels and collect real-time catch and environmental data.

Several companies manufacture and distribute VMS throughout the United States and worldwide. Not all systems, however, are compatible with each other. NMFS must require system compatibility for several reasons. First, fishing vessels that engage in multiple fisheries should not be required to install multiple VMSs. Further, it would not be cost-efficient for NMFS to install multiple fishing vessel monitoring center/systems in order to monitor vessel activities from multiple VMSs. In order to assure such compatibility, NMFS proposes basic VMS and related performance criteria and system specifications. However, recognizing that regulatory requirements for a VMS may be promulgated on a fishery-by-fishery basis, all VMSs shall be certified by NMFS to meet applicable requirements. These systems would be implemented as appropriate through Secretarial and Council recommended Fishery Management Plans (FMPs).

The real-time reporting of catch data that a VMS can provide would significantly improve the ability to monitor and manage quotas and allocations in certain fisheries. In fisheries managed by individual fishing quotas (IFQs) or individual transferable quotas (ITQs), mandatory remote monitoring of vessel catches and locations can improve management by providing fishery managers with timely information on catches (by area, if required) and transfers of quotas that can be effected and monitored while the vessel is at sea. In fisheries where real-

time catch reporting is not essential for effective resource management, but time or area closures are, the position tracking component of a VMS could provide a more cost-effective means of enforcing such closures.

All required information regarding fishing vessel activity would be communicated from ship to shore through a secure, confidential satellite communication system described below and processed in NMFS regional data processing centers. Vessel position and catch data would be used by NMFS Regions and Centers to monitor fishing quotas and fishing activities, and identify suspected violations of time or area regulations.

The system would provide for monitoring U.S. vessels and, where appropriate, foreign vessels conducting harvesting operations in the U.S. exclusive economic zone and on the high seas.

In determining the feasibility of requiring a VMS for vessel tracking purposes, Councils and NMFS will need to identify time and area management measures, evaluate their degree of significance in achieving the goals and objectives of the FMP, assess costs and benefits, review fishery-related agreements, treaties or similar arrangements, and estimate the amount and effectiveness of enforcement surveillance and patrol resources needed to gain compliance. In most cases, deployment of costly enforcement resources could be optimized by identifying violations through a VMS and deploying further resources accordingly (i.e., targeting apparent violations vs. random patrolling).

NMFS proposes to link VMS requirements to the issuance of Federal fishing permits. In fisheries requiring a VMS, a permit may not be issued to a vessel until a certified VMS is purchased, installed and is fully operational on such vessel. Failure of a vessel to carry an operating VMS may result in permit sanctions. In fisheries where there is no Federal permit, but VMS are required, the regulations could be amended to prohibit fishing without a fully operational VMS on board the vessel.

NMFS would establish one or more fisheries monitoring centers (FMCs) to receive and process data transmitted by the VMS. FMCs would specify data requirements for vessel terminals, ensure confidentiality of data in accordance with applicable rules and regulations, and distribute data to NMFS offices, the U.S. Coast Guard and other users as appropriate.

If the Councils or NMFS determine there is a need for real-time catch data, costs associated with changes in data collection, management and analysis infrastructure beyond the selection of a VMS should be assessed, as well as benefits. Any self-reported data reporting system must include comprehensive validation mechanisms, especially where the incentives for misreporting are high. The statistical, computer, compliance and analytical staffing resources must be integral components of the need and justification of a VMS. If a VMS is deemed an appropriate tool, the NMFS would require that the following system criteria and specifications apply.

System Specifications (Standards)

Determinations by the Councils or NMFS may require a VMS for tracking purposes only, data reporting only, or for both vessel tracking and data reporting purposes. Some performance specifications and criteria may not apply to a VMS that is required for vessel tracking only or data reporting only.

The following system specifications and criteria would be applied to a VMS for any fishery for which NMFS or the Councils determine a need for vessel tracking, monitoring and/or reporting:

1. The VMS shall be tamperproof, i.e., shall not permit the input of false positions.

2. VMS equipment shall be fully automatic and operational at all times regardless of weather and environmental conditions.

3. VMS equipment shall be capable of tracking vessels throughout their range and shall provide position accuracy to within 400 m. (1,300 ft).

4. The VMS shall have the capability of transmitting and storing information including vessel identification, date time latitude and longitude.

5. The VMS shall provide accurate position transmissions, the interval between which can be determined by NMFS and set or changed remotely. In addition, the VMS shall allow NMFS to poll individual vessels or any set of vessels at any time and receive position reports in real time.

6. Under certain conditions the VMS may be required to provide network message communications between the vessel and shore. (This specification may not be applicable to tracking-only systems). Such communications shall include, but not be limited to, transmitting and receiving telex and full or compressed data messages to and from shore. The VMS shall allow NMFS to initiate communications or data transfer at any time.

7. Shore station software shall reliably retrieve position records, as defined in item 4 above, and display such data on a computer monitor. The software must also provide a means for printing such data. The software must include on-screen displays of charts capable of showing boundaries of fishery management areas. The software must be capable of accurately displaying vessel positions on such charts. The software must be capable of providing an alarm, signal, or other notice to shore station operators when a vessel is within 1 nautical mile (1.9 km) of designated closed areas or management area boundaries. The software must provide printer/plotter support for drawing charts. It must have the capacity to archive vessel position histories for a minimum of 1 year.

Costs

The potential cost of VMS is of concern to NMFS. The full range of VMS equipment manufacturers is unknown. Of the leading known manufacturers NMFS has contacted, the cost of hardware equipment ranges from $1,000 to $15,000. However, NMFS expects the average vessel-tracking-only hardware to cost between $5,000 and $8,000 for equipment meeting these VMS specifications. Data reporting only or vessel tracking and data reporting applications may require the addition of a personal computer and possibly a printer. This could add $1,000 to $3,000 to the system cost.

The other major cost involved with the VMS is that of transmitting data to and from the vessel. NMFS estimates that the cost of vessel position reports will range between $500 and $1,000 per year per vessel as the frequency of position reports will vary from one fishery to another. Costs associated with transmitting catch data and other business and personal data over vessel monitoring systems vary from one system to the next and cannot be estimated accurately. However, most systems impose a monthly service fee ($70–$80) that includes a limited number of position reports and messages. Additional charges accrue based on the number of messages and their length.

NMFS is particularly seeking comments on the ability of vessel owners to pay costs associated with the purchase, installation and daily operation of the VMS. The issue of what costs the vessel owners or operators will be responsible for and what costs NMFS or other agencies will be responsible for will need to be more fully defined when a VMS is recommended for a particular fishery.

Past Experience and Anticipated Benefits

In 1990, the NMFS Office of Enforcement embarked on a satellite-based enforcement program that successfully determined and monitored the positions of as many as 800 high-seas driftnet fishing vessels from Japan, South Korea and Taiwan. These position data were accurately transmitted via satellite to ground receiving stations, then to a processing center and finally to the NMFS Office of Enforcement, U.S. Coast Guard and officials from the vessel's country. These officials were responsible for responding to and taking enforcement action regarding closed area violations. Additionally, NMFS instituted a VMS pilot program on four longline vessels fishing off Hawaiian waters, and, in conjunction with the U.S. Coast Guard, is monitoring their positions from a FMC in Honolulu, Hawaii.

Benefits

As a result of its success in using VMS, NMFS concludes that the use of VMS can:

1. Improve the efficiency of fisheries monitoring by identifying potential violations of certain fishing regulations, thereby enabling NMFS officials working jointly with the U.S. Coast Guard and state enforcement agencies to analyze relevant details in order to deploy vessels and aircraft to respond directly to specific areas and vessels in a more efficient manner;
2. Increase fishermen's compliance, including voluntary compliance, with quota, time and area requirements as a result of enhanced communication and more effective monitoring;
3. Improve interjurisdictional fisheries management (at the interstate, state/Federal and international levels) due to improved compliance with established boundaries;
4. Reduce the paperwork burdens associated with some current vessel reporting requirements;
5. Improve conservation and enhance ability to achieve FMP goals and objectives by focusing in greater detail on time and area management techniques;
6. Increase vessel safety through special distress signalling capabilities that would alert the U.S. Coast Guard and other vessels of an emergency under the Global Maritime Distress Safety System (GMDSS);
7. Provide dependable, confidential two-way communications for the master and crew for all business and personal matters;
8. Provide improved fleet management by vessel owners who, with VMS data, would know exactly where their vessels are and the amounts of their catches on a real-time basis;
9. Decrease costs in fisheries where observer coverage can be reduced by using a VMS;
10. Enhance reporting of catch data, where appropriate, by providing for real-time computerized monitoring of catches, thus potentially reducing current paperwork burdens associated with vessel reporting;
11. Enable enforcement officials to monitor catches under IFQs or ITQs and assist efforts to verify the accuracy of catch reports when the vessel completes its offloading; and
12. Enhance NOAA's global climate and environmental monitoring activities by reporting environmental data via a VMS.

To the extent that the owners of such fishing vessels are willing to collect and provide environmental data, such data would be delivered to users through the VMS under terms of contractual agreements between users and NOAA and/or the VMS contractor. Under no circumstances shall the providing of such data compromise the security of the VMS or the confidentiality of data required to be transmitted through the VMS.

Conclusion

The use of high-technology, satellite-based VMSs would substantially increase NMFS' ability to manage fisheries under U.S. jurisdiction when integrated with a comprehensive data collection, monitoring and enforcement strategy. Systems now on the market either meet NMFS specifications or could meet those specifications with some modification.

Classification

This notice is exempt from Administrative Procedure Act requirements under 5 U.S.C. 553(b)(A) as a statement of policy or practice so that notice and comment provisions do not apply. However, NMFS specifically request comments from interested parties on both standards and costs for VMS.

This notice does not implement or require VMS. However, it announces standards that will apply to any VMS requirement implemented through amendments to the various fishery management plans. This notice does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

When rules requiring VMS are proposed, regulatory impact review will accompany such actions.

Dated: September 14, 1993.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 93–23120 Filed 9–21–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Telecommunications Service Priority (TSP) System Oversight Committee

AGENCY: National Communications System.

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Wednesday, October 20, 1993, from 9 a.m. to 4 p.m. The meeting will be held at Bellcore, 2101 L Street, Northwest, room 600, Washington, District of Columbia 20037. The agenda is as follows:

—Opening/Administrative Remarks
—Review June 4, 1993 Meeting Summary and Status of Actions
—TSP Program Office Update
—TSP Ad Hoc Working Group Report
—Review of Action Items
—Old Business/New Business

Anyone interested in attending or presenting additional information to the Committee, please contact the National Communications System TSP Program Office, Bernard Farrell (703) 746–5375 or Susan Flint (703) 692–0040, by October 4, 1993.

Dated: September 17, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–23179 Filed 9–21–93; 8:45 am]

BILLING CODE 5000–04–M

Privacy Act of 1974; Notice of an Addition of a Record System

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice of an addition of a record system.

SUMMARY: The Office of the Secretary of Defense proposes to add one system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on October 22, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management

Division, Room 5C315, Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, OSD Privacy Act Officer at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** and are available from the address above.

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, was submitted on September 9, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993).

Dated: September 16, 1993.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDP 09

SYSTEM NAME:

PERSEREC Export Violations Database.

SYSTEM LOCATION:

Records in the system are located at Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been convicted of violating U.S. export control laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts of reports, court records, newspaper, magazine, and other open source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; DODD 5210.79, Defense Personnel Security Research and Education Center; and ASD(C3I) July 20, 1993 memo, Subject: Exemption from DOD Directive 5200.27.

PURPOSE(S):

To analyze factors which may contribute to acts of illegal technology transfer in violation of U.S. export controls and to assemble a body of knowledge useful for improving security procedures. This information will permit examination of trends in illegal technology transfer since 1981 and help identify personal and situational variables of interest to policy makers and others concerned with counteracting export control violations. Aggregate statistics will be reported in a technical report. The report will include some vignettes of the more famous cases, using the individual's name, based on material found in open sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVABILITY:

Records are retrieved by individual's name.

SAFEGUARDS:

Records are stored under lock and key in secure containers, and in a computer system with intrusion safeguards.

RETENTION AND DISPOSAL:

Analyses and research reports are permanent and will be transferred to the National Archives after 25 years; database information will be retained for five years or until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry should include full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address a written request to Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry must include full name.

CONTESTING RECORD PROCEDURES:

OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Justice Department Export Control Cases listing, newspaper and magazine articles and other open source documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–23123 Filed 9–21–93; 8:45 am]

BILLING CODE 5000–04–F

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Department of the Treasury and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Proposed computer matching program between the Department of the Treasury and the Defense Manpower Data Center of the Department of Defense (DoD).

SUMMARY: DMDC, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a proposed computer matching program between the Department of the Treasury and DMDC that their records are being matched by computer. The record subjects are delinquent debtors of the Bureau of the Public Debt, Department of the Treasury, who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by the Bureau of the Public Debt so as to permit the Bureau of Public Debt to pursue and collect the debt by voluntary repayment or by administrative or salary

offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective October 22, 1993, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the Department of the Treasury and DMDC have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by the Bureau of Public Debt under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal government so that the Bureau can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between the Department of the Treasury and DMDC is available to the public upon request. Requests should be submitted to the address caption above or to the Debt Collection Officer, Bureau of Public Debt, Department of the Treasury, Washington, DC 20239–0001.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on September 9, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated June 25, 1993 (58 FR 36075, July 2, 1993). This matching program is subject to review by OMB and Congress and shall not become effective until that review period of 30 days has elapsed.

Dated: September 16, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program between the Bureau of Public Debt, Department of the Treasury, and the Defense Manpower Data Center of the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Bureau of Public Debt, Department of the Treasury and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The Bureau of Public Debt is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate the Bureau's delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by the Bureau of Public Debt so as to permit the Bureau to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 – 3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; Section 206 of Executive Order 11222; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 – 550.1108, Collection by Offset from Indebted Government Employees (OPM); 31 CFR part 5, subparts B and D (Treasury).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. The Bureau of Public Debt will use the record systems identified as Treasury/BPD.002, entitled "United States Savings Type Securities," last published in the **Federal Register** April 17, 1992, at 57 FR 14123. Treasury/BPD.003, entitled "United States Securities (Other than Savings Type Securities)" last published in the **Federal Register** April 17, 1992, at 57 FR 14125; and Treasury/DO.002, entitled "Treasury Integrated Management Information System (TIMIS)," last published in the **Federal Register** April 17, 1992, at 57 FR 13903.

2. DMDC will use the record system identified as S322.11 DMDC, entitled "Federal Creditor Agency Debt Collection Data Base," last published in the **Federal Register** on February 22, 1993, at 58 FR 10875.

The categories of records in the Treasury record systems are delinquent debtors. The categories of records in the DoD system consists of employment records of active and retired military members, including the Reserve and Guard, and the OPM government-wide Federal active and retired civilian records. Both record systems contain an appropriate routine use disclosure provision required by the Privacy Act permitting the disclosure of the affected personal information between the Department of the Treasury and DoD. The routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. *Description of computer matching program:* A magnetic computer tape provided by the Bureau will contain data elements of the debtor's name, SSN, internal account number and total amount owed on approximately 3,500 delinquent debtors. The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and the Guard, and the OPM government-wide Federal civilian records of current and retired Federal employees. DMDC will

match the SSN on the Bureau's tape by computer against the DMDC database. Matching records, hits based on SSNs, will produce data elements of the individual's name, SSN, service or agency, and current work or home address.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by the Bureau to those individuals matched (hits) consisting of the Bureau's verification of debt; 30–day written notice to the debtor explaining the debtor's rights; provision for debtor to examine and copy the agency's documentation of the debt; provision for debtor to seek the Bureau's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the Bureau for repayment. Only when all of the steps have been taken will the Bureau disclose, pursuant to a routine use, to effect an administrative or salary offset. Unless the individual notifies the Bureau otherwise within 30 days from the date of the notice, the Bureau will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will be construed as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, unless OMB or the Treasury Department request a match twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between the Department of the Treasury and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 93–23126 Filed 09–21–93; 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974; Notice to Add a System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a record system to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 22, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 9, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993).

Dated: September 16, 1993.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

S600.20 MMDI

SYSTEM NAME:

Firefighter/Emergency Medical Technician (EMT) Records.

SYSTEM LOCATION:

Records are maintained by the heads of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

In addition, records are maintained at DDRW-Sharpe Facility, Building 135, PO Box 960001, Stockton, CA 95296–0731, and DDRW-Tracy Facility, Building 234, PO Box 960001, Stockton, CA 95296–0731.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigned firefighting and emergency medical technician duties within DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the individual's name, Social Security Number, education and training data, professional certifications, home address and telephone number, emergency notification data, religion, and driver's license number and expiration date.

In addition, the file contains personal health information such as physical limitations, allergies, medications, height, weight, blood type, need for eye glasses or contact lenses, tobacco use, and health insurance data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 302(b)(1), Delegation of authority; 10 U.S.C. 136, Assistant Secretaries of Defense; E.O. 9397; and Department of Defense Instruction 6055.6, Department of Defense Fire Protection Program.

PURPOSE(S):

The file is used to in managing the DLA fire protection program and to provide data concerning the professional qualifications, training requirements, and health and readiness of DLA firefighters and emergency medical technicians.

File is also used for identification and emergency notification in case of accident or casualty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To local fire departments for training or assistance in firefighting operations.

To local hospitals and medical personnel for emergency treatment in case of accident or casualty.

To Federal and nonfederal schools, academies, and similar institutions for training or certification purposes.

To the General Services Administration and the U. S. Departments of Interior and Agriculture when responding to forest, acreage, or building fires or emergencies on Federally owned or controlled property.

To the Environmental Protection Agency in situations involving toxic or hazardous materials.

To local, state, and Federal disaster relief agencies for mutual aid.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, employee number, or station number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Data is maintained in the system until superseded or no longer needed. Records are destroyed 30 days after termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

Heads of the DDRW-Sharpe Facility, Building 135, PO Box 960001, Stockton, CA 95296–0731, and DDRW-Tracy Facility, Building 234, PO Box 960001, Stockton, CA 95296–0731, and the heads of the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject, training and educational institutions, and medical personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–23125 Filed 9–21–93; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–946–000, et al.]

Northeast Utilities Service Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 16, 1993.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Co.

[Docket No. ER93–946–000]

Take notice that on September 13, 1993, Northeast Utilities Service Company (NUSCO) on behalf of the Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), and Public Service Company of New Hampshire (PSNH) tendered for filing a letter agreement that amended their sales agreement with Long Island Lighting Company (LILCO).

NUSCO states that a copy of this information has been mailed to LILCO.

NUSCO requests that the Commission waive its regulations to the extent necessary.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Portland General Electric Co.

[Docket No. ER93–945–000]

Take notice that on September 13, 1993, Portland General Electric Company (PGE) tendered for filing 1993–94 Operating Procedures relating to service under the Pacific Northwest Coordination Agreement (PNCA).

Copies of this filing have been served on the parties to the PNCA.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Philadelphia Electric Co.

[Docket No. ER93–947–000]

Take notice that on September 13, 1993, Philadelphia Electric Company (PE) tendered for filing as an initial Rate Schedule a Transmission Service Contract, including certain interconnection and maintenance provisions, between Montenay Montgomery Limited Partnership (MMLP) and PE dated as of April 28, 1993. The contract sets forth the terms under which PE will transmit electric output from MMLP's generating facility located in Plymouth Township, Pennsylvania, to Public Service Electric and Gas Company (PSE&G) in New Jersey.

PE requests that the Commission allow this initial Rate Schedule to become effective 60 days after its filing.

PE states that a copy of this filing has been served by mail upon MMLP, the Pennsylvania Public Utility Commission, the New Jersey Board of Regulatory Commissioners, and PSE&G.

Comment date: September 30, 1993, in accordance with Standard Paragraph E end of this notice.

4. Niagara Mohawk Power Corp.

[Docket No. ER93–944–000]

Take notice that on September 13, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. (Con Edison), dated August 31, 1993 providing for certain transmission services to each other.

An effective date of November 10, 1993 is proposed.

Copies of this filing were served upon Con Edison and the New York State Public Service Commission.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Co.

[Docket No. ER93-949-000]

Take notice that on September 13, 1993, Carolina Power & Light Company tendered for filing with the Commission a contract amendment to a Rate Schedule contained in CP&L's Interconnection Agreement with Yadkin, Inc., dated June 1, 1961, as amended (CP&L Rate Schedule FERC No. 46). This contract amendment has been filed for the purpose of adding Service Schedule C-1993, Economy Interchange the purpose of which is to allow the parties to participate in economy energy transactions.

A copy of this filing has been sent to the affected utility, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. The Cincinnati Gas & Electric Co.

[Docket No. ER93-948-000]

Take notice that on September 13, 1993, The Cincinnati Gas and Electric Company (CG&E), tendered for filing a Modification which would extend the term of a Short Term Agreement (Agreement) with the City of Hamilton, Ohio. During the term of the Agreement, Hamilton may reserve up to but not exceeding 30 MW of Service. Service shall be either the provision of (i) short term power and associated energy to be generated by CG&E, or (ii) short term point-to-point transmission service for power and energy to be purchased by Hamilton, from a specified third-party source, or any combination thereof not exceeding 30 MW in total.

The reason stated by CG&E for the Modification is to meet the request and special needs of Hamilton, through December 31, 1993.

Copies of the filing were served upon the City of Hamilton, Ohio and the Public Utilities Commission of Ohio.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ES93-50-000]

Take notice that on September 1, 1993, UtiliCorp United Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $400 million, in the aggregate at any one time outstanding, of unsecured notes and other evidences of indebtedness on or before December 31, 1995, with a final maturity date no later than December 31, 1996. Such obligations would be used exclusively to provide financing for future utility property acquisitions prior to the placement of permanent financings.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ES93-49-000]

Take notice that on September 1, 1993, UtiliCorp United Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $250 million, in the aggregate at any one time outstanding, of unsecured notes and other evidences of indebtedness, including financial guarantees of subsidiaries' or affiliates' securities, on or before December 31, 1995, with a final maturity date no later than December 31, 1996.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. PSI Energy, Inc.

[Docket No. ER93-943-000]

Take notice that on September 13, 1993, PSI Energy, Inc. (PSI) tendered for filing the Transmission and Local Facilities Agreement Calendar Year 1992 Reconciliation. Per the Commission's Order, issued April 22, 1993, in Docket No. EL93-2-000, this agreement and the annual reconciliations were considered jurisdictional.

PSI notes that it also filed a Motion for Clarification, Alternative Request for Rehearing and Motion for Extension of Time related to the April 22nd order in the above referenced docket on May 24, 1993. In addition, PSI made a compliance filing on June 7, 1993 per the commission's Order in the above referenced docket, issued April 22, 1993.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corp.

[Docket No. ER93-942-000]

Take notice that on September 10, 1993, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Burlington Electric Department (BED). The agreement provides for the sale of up to 10 megawatts of electric energy by NYSEG to BED as the parties mutually agree. Service under this agreement is scheduled to commence on the later of September 13, 1993 or the day after NYSEG files the agreement with the Federal Energy Regulatory Commission and to continue until November 30, 1993. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Vermont Public Service Board and BED.

Comment date: September 30, 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. 93-23135 Filed 9-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER93-765-000, et al.]

Potomac Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 15, 1993.

Take notice that the following filings have been made with the Commission:

1. The Potomac Edison Co.

[Docket No. ER93-765-000]

Take notice that on September 13, 1993, tendered for filing a Supplement No. 2 to proposed Changes in its FERC Electric Tariff, First Revised Volume No. 3. This Supplement is filed to modify previous adjustments to the settlement cost of service study and to effect a tax

adjustment agreed to by all affected Customers. The proposed effective date for Supplement No. 2 is September 15, 1993.

Copies of the filing were served upon the jurisdictional customers and state regulatory commissions.

Comment date: September 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. **Niagara Mohawk Power Corp.**

[Docket No. ER93–937–000]

Take notice that on September 9, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed agreement between Niagara Mohawk and Vermont Public Power Supply Authority (VPPSA) and its representatives; The Town of Hardwick Electric Department, The Village of Hyde Park Electric Department, The Village of Ludlow Electric Light Department, The Village of Stowe Water & Light Department and The Village of Swanton Electric Department for sales of system capacity and energy.

A copy of this filing has been served upon VPPSA and the New York State Public Service Commission.

Comment date: September 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. **The Washington Water Power Co.**

[Docket No. ER93–941–000]

Take notice that on September 10, 1993, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 amendments to the Pacific Northwest Coordination Agreement. WWP requests that the Commission accept the amendments for filing, effective as of the date of the amendments.

A copy of the filing was served upon Public Utility District No. 1 of Douglas County Public Utility District No. 1 of Douglas County, Public Utility District No. 2 of Grant County, Public Utility District No. 1 of Chelan County and the Bonneville Power Administration.

Comment date: September 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. **Midwest Power Systems, Inc.**

[Docket No. ER93–560–000]

Take notice that on September 9, 1993, Midwest Power Systems, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 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. 93–23134 Filed 9–21–93; 8:45 am]

BILLING CODE 6717–01–M

Senior Executive Service; Performance Review Board

AGENCY: U.S. Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 1993.

Abruzzo, Matthew T.
Acharya, Sarbeswar
Ackerly, Lawrence R.
Adams, William D.
Adler, Ira M.
Ailshie, Stephen A.
Alessi, Victor E.
Allen, Grover L.
Amick, Richard C.
Andersen, Arthur T.
Anderson, Phyllis L.
Annan, Robert H.
Anttonen, John H.
Aquilina, Nick C.
Baca, Frank A.
Bacher, Stephen Eugene
Baker, Kenneth E.
Bamberger, Craig S.
Barber, Robert W.
Barker, Jr., William L.
Barrett, Lake H.
Barrow, Raymond S.
Bartholomew, John W.
Bartley, William C.
Baublitz, John E.
Bean, Earl W.
Bethtel, Thomas F.
Beckett, Thomas H.
Beckner, Everet H.
Beecy, David J.
Bell, George E.
Bellows, Jerry L.
Benedict, George W.
Bennett, John W.
Bergholz, Jr., Warren E.
Bernard, Peter A.
Berniklau, Vladimir V.
Bernsdorf, William B.
Berube, Raymond P.
Bickel, James E.
Bielan, Douglas J.
Bingham, Carleton D.
Bishop, Yvonne M.
Bixby, Willis W.
Black, Richard L.
Blackwood, Edward B.
Borgstrom, Carol M.
Borgstrom, Howard G.
Bowman, Gerald C.
Boyd, Gerald G.
Bradley, Jr., Theron M.
Bresee, James C.
Breznay, George
Brice, James F.
Brodman, John R.
Brogan, John J.
Brolin, Edson C.
Brown, Frederick R.
Brown, Jr., Charles H.
Brown, Richard W.
Brush, Peter N.
Byrant, McKinley E.
Buffum, Elizabeth
Burns, Jr., Thomas F.
Canter, Howard R.
Carabetta, Ralph A.
Cardinali, Henry A.
Carey, Jr., Edwin F.
Carlson, Lynda T.
Caruso, Guy F.
Chapman, Naomi R.
Chappell, Gerald F.
Chaput, Ernest S.
Chernock, Warren P.
Christensen, William J.
Christopher, Robert K.
Chun, Sun W.
Church, Bruce W.
Cipriano, Joseph R.
Claflin, Alan B.
Clagett, William H., IV
Clark, Charles F.
Clark, John R.
Clausen, Max Jon
Cole, George F., III
Coleman, Howard S.
Coleman, James S.
Combs, Marshall O.
Cone, Ronald E.
Conley, Michael W.
Constant, Richard E.
Cook, John S.
Cornwell, Thomas F.
Costello, William J.
Cote, Joel S.
Cowan, Stephen P.
Crandall, David H.
Crawford, Timothy S.
Crowe, Richard C.
Croxton, Charles L.
Culpepper, James W.
Cumesty, Edward G.
Curtis, David I.
Curtis, James H.
Cygelman, Andre I.

Dagostino, Thomas S.
Davies, James D.
Davies, Nelia A.
Davis, James T.
Decker, James F.
DeGrasse, Jr., Robert W.
Dehanas, Thomas W.
Demaire, Judith M.
Dennison, William J.
Der, Victor K.
Dials, George E.
Diaz, Jr., Romulo L.
Diebold, Robert E.
Dienes, Nicholas S.
Difiglio, Carmen
Dirks, Timothy M.
Divone, Louis V.
Doherty, Donald P.
Domagala, Martin J.
Dorsey, William A.
Dreyfus, Daniel A.
Durnan, Denis D.
Edmondson, John J.
Egli, Richard
Engel, Walter P.
Eppelmann, Andrew D.
Erb, Donald E.
Esvelt, Terence G.
Evans, Thomas W.
Fausett, Stephen A.
Feibus, Howard
Feider, James C.
Fiore, James J
Fiori, Mario P
Fitzgerald, Jr., Joseph E
Fleming, Gene K
Ford, James L
Ford, John A
Forrister, Derrick L.
Forsythe, Larry A
Foster, Thomas L
Frank, Clyde William
Franklin, John R
Frei, Mark W
Friedman, Gregory H
Frye, Keith N
Furiga, Richard D
Fygi, Eric J
Gaddis, Carl K
Garson, Henry K
Gauldin, Michael
Gebus, George R
Geidl, John C
Geisbush, Jon C
Gertz, Carl P
Gibbs, Garry W
Gibson, Jr., William C
Gicale, Jr., Louis J.
Gilbert, Francis C
Gilbertson, Mark A.
Goldenberg, Neal
Goldenberg, Ralph D
Goldman, David Tobias
Goldsmith, Robert
Gollomp, Lawrence A
Graham, A. Diane
Greeves, Robert E
Greiner, Lloyd M.
Grewis, Eugene G
Griffith, Jerry D
Gruenspecht, Howard K
Guidice, Carl W
Guidice, Stephen J
Guyer, Arthur E
Haberman, Norton
Hacskaylo, Michael S.
Hahn, Richard D
Hale, Douglas R
Hall, James C
Halsted, Jr., Charles G
Hamer Jr, David L
Hamric, Jon P
Hanessian, Souren
Hanson, Ronald D
Hardin, Michael G
Hardy, Randall W.
Harris, Jessie J
Hartman, James K
Harvey, Gordon W
Haspel, Abraham E.
Hawkins, Francis C
Haymond, George R
Heath, Charles C
Heenan, Thomas F
Heffernan, James H
Henderson, Lynwood H
Hendrie, David L
Hensley, Jr., Willie F
Hess, Wilmot N.
Heusser, Roger K
Hickey, Sue F
Hickok, Steven G
Hine, Thomas A.
Hirahara, James S
Hoffman, Allan R.
Hogan, Danny A
Hopkins, T. J.
Howell, Jerry C
Hunt, Arlen E
Hunter, John R
Hunter, Ray A
Hutzler, Mary Jean
Ianniello, Louis C
Inge, Jr., Edwin F
Inlow, Rush O
Isaacs, Thomas H.
Jaffe, Harold
Jamison, Warren L
Jewett, David S
Jicha, Jr., John J
Johnson, Milton D
Johnson, Owen B
Johnston, Marc
Jones, C. Rick
Jones, David A
Jones, James L
Jordy, George Y
Joseph, Antionette Grayso
Juckett, Donald A.
Karol, Michael S
Kaspar, Paul W.
Katz, Maurice J
Keating, John J
Keheley, Wayne E
Keliher, John G
Kennedy, John P
Kessler, Roland R
Kight, Gene H
Kilgore, Webster C
Kilpatrick, Michael A.
Kingsbury, Robert L
Klein, Keith A
Knuth, Donald F.
Koontz, Max A
Krenz, Dennis L
Kuznick, Susan Klein
Lagrone, Joe B
Landers, James C
Lane, Anthony R
Lanes, Stephen J
Langan, William T
Langenfeld, Cherri J.
Larson, Jr., Victor R
Laughon, Kermit O.
Lavin, Ann W.
Leclaire, David B
Lee, Wayne R
Lewis, Jr., Howard E
Lewis, Lenora J
Lewis, Roger A.
Lien, Stephen C.T.
Lightner, Ralph G
Lique, E Diane W
Little, Leo E
Longton, Joseph N
Loose, Ronald R
Lorenz, Milton C
Lowe, Owen W.
Lynch, Oliver D. T. Jr.
Lytle, Jill Ellman
Magruder, James K
Maher, Joseph R
Mangeno, James J
Mann, Sally A
Mann, Thomas O
Manning, William F
Marchese, Andrew R.
Marianelli, Robert S
Marlay, Robert C
Maroldo, James H
Marquess, Paul T
Marquez, Richard A
Martin, Charles F
Mason, Charles C.
Maupin, Gary T
Maxey, Kenneth G.
Mayhew, Delmar D
McCallum, Edward J
McAllister, Jr., John A.
McCammon, Helen M
McCoy, Frank R. III
McFadden, Jr., George L
McGoff, David J
McIntyre, Donald D
Michelsen, Stephen J
Miller, Clarence L
Millhone, John P
Milner, Ronald A
Miranda, Leonel V.
Misso, Paul M.
Mock, John E
Moore, Kenneth G
Morris, Marcia L
Mournighan, Stephen D
Mravca, Andrew E
Murphy, Robert E
Nealy, Carson L.
Neilsen, Finn K
Nelson, David B
Nelson, Jr., Robert M
Nelson, Rodney R
Nettles, Jr, John J.
Newhouse, Alan R
Newman, David G
Nichols, Clayton R
Nicks, James R
Nolan, Elizabeth A.
Nulton, John D
O'Brien, Jr., Robert A
O'Fallon, John R
Oliver, Lawrence R
Olson, Gary C
Parnes, Sanford J.
Patrinos, Aristides A.
Patterson, II, John R
Patton, Gloria S
Pauole, Alvin H.
Pearman, Jr., Donald W

Pelletier, Raymond
Perin, Stephen G
Peters, Franklin G
Petersen, Jimmie
Pettengill, Harry J
Pettis, Lawrence A
Pitrolo, Augustine A
Plaisance, Jr., Paul J
Podonsky, Glenn S
Pollock, III, Walter E.
Powers, James G.
Price, Jr., Robert S
Pride, E Eugene
Prudom, Gerald H.
Przybylek, Charles S
Pye, David B
Rabben, Robert G
Rader, Robert G
Raiken, Howard H
Ramey, Prince M
Reddick, William C
Redenius, Richard D.
Reicher, Dan W.
Reid, James E
Repke, Wolfgang C
Resendez, Ignacio
Rhoades, Daniel R
Richardson, Steven D.
Riggs, John A.
Roberts, Michael
Robertson, John S
Rock, Bernard J
Rodeheaver, Thomas N
Rodekohr, Mark E
Rollow, Thomas A
Rooney, John M
Rosen, Sol
Rosenzweig, Richard
Rosselli, Robert M
Rousso, Samuel NMI
Rozzi, Dolores L
Rudins, George
Rudolph, John E
Rudy, Gregory P.
Rumsey, Terry Cornwell
Sabre, Randolph E
Salm, Philip E
Saltzman, Jerome D.
Salvador, Louis A
Samber, Martin
San Martin, Robert L
Scarborough, Muriel L
Scheetz, Karl G
Schmitt, Carl H
Schmitt, Eugene C
Schmitt, William A
Schmoker, Daniel N
Schnapp, Robert
Schneider, Sandra L
Schueler, Jr., Dorner T
Scott, David G
Scott, Randal
Season, Jr., Harry T
Sewell, Philip G
Shafer, John M
Shelor, Dwight E
Shirley, Sr., John W
Siebert, Jr., Arlie B
Siegel, Jack S
Sienkiewicz, Jr, E W
Silverman, Mark N.
Simon, Robert M.
Simpson, Charles Kyle
Singer, Marvin I
Sitzer, Scott B
Sjoblom, Glen L.
Sjostrom, Leonard C
Smedley, Elizabeth E
Smith, David A
Smith, Linda M
Smithwick, Grover A
Sohinki, Stephen M.
Spence, David R
Spigal, Harvard P
Stadler, Silas D.
Stagliano, Vito A
Stallman, Robert M.
Stark, Richard M
Stello, Jr., Victor
Stephens, Richard E
Stevenson, F Dee
Stewart, John B
Stewart, Jr., Frank M
Stewart, Jr., Jake W.
Stone, Philip M
Stout, James A
Strakey, Jr Joseph P
Streb, Alan J
Stumbaugh, David C
Sulak, Stanley R
Swink, Denise F
Sye, Linda G.
Taboas, Anibal L
Taillie, Dennis K
Taimi, Kathleen I.
Tavares, Antonio F.
Teclaw, Charles E.
Tedrow, Richard T
Thomas, Iran L
Thompson, Jerry F
Tierney, Charles R
Tillman, Luther J
Torkos, Thomas M
Tseng, John C
Tucker, William E
Turi, James A
Turner, James M
Tuttle, III, Edward H
Twining, Bruce G
Upchurch, Tony Coleman
Uthus, Douglas B
Vaeth, Terry A
Vagts, Kenneth A
Voelker, Gary E
Volpe, Frederick J
Wagenhoffer, Thomas V
Wagoner, John D
Walsh, Jeremiah E Jr
Walsh, Robert J
Walter, Donald K
Walton, Howard L
Warnick, Walter L
Weiner, Lawrence A.
Westerbeck, Gerald W
White, James K
Whiteman, Albert E
Whitfield, Roger P
Wieber, Paul R
Wieker, Thomas L
Wilcynski, John M
Wilken, Daniel H.
Williams, Edward R
Williams, Mark H.
Williamson, Richard H
Willis, John W
Wilmot, Edwin L
Wilson, John S
Wisenbaker, Jr., William
Witherill, Vern F
Wood, Robert W
Wooley, John C

Issued in Washington, D.C.

Linda G. Sye,

Acting Assistant Secretary for Human Resources and Administration.

[FR Doc. 93–23240 Filed 9–21–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP93–3–000]

Arkla Energy Resources, A Division of Arkla, Inc.; Informal Settlement Conference

September 16, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on September 22, 1993, at 1 p.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 issues in this proceeding.

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).

For additional information, contact Arnold H. Meltz (202) 208–2161 or Russell B. Mamone at (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23133 Filed 9–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–719–000]

El Paso Natural Gas Co.; Application

September 16, 1993.

Take notice that on September 13, 1993, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–719–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon five injection/withdrawal well and the associated well-tie pipe at the Washington Ranch Storage Facility in Eddy County, New Mexico, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso states that the storage facility has been in operation since 1982. The subject wells pose future operational difficulties including groundwater contamination, minimal injection/withdrawal capability, and excessive water production. El Paso proposes to

plug and permanently abandon the W.I. Federal Nos. 6, 8, 12, and 18 Wells. El Paso states that it informed the Commission by letter on July 9, 1993, that it plugged the W.I. Federal Well No. 2 to prevent serious damage. The abandonment of the five wells will yield a reduction of only 7 MMcf/d in deliverability from the storage facility. The capacity of the facility to withdraw at an inventory level of 31 Bcf is about 210 MMcf/d. The loss of 7 MMcf/d would not affect El Paso's operations. It is asserted that the cost to rework the five wells is about $690,000 versus $150,000 which is the cost to plug and abandon the subject wells.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 7, 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, of 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 El Paso to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23166 Filed 9–21–93; 8:45 am]

BILLING CODE 5717–01–M

[Docket No. CP93–703–000]

K N Interstate Transmission Co.; Request Under Blanket Authorization

September 16, 1993.

Take notice that on September 9, 1993, K N Interstate Gas Transmission Company (KNI), P.O. Box 281304 Lakewood Colorado 80228, filed in Docket No. CP93–703–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a new delivery tap, under KNI's blanket certificate issued in Docket No. CP83–140–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

KNI states that the proposed delivery point would be located on KNI's main transmission system in Holt County, Nebraska and would facilitate the delivery of natural gas to K N for distribution to new direct retail customers.

KNI states further that the design capacity of the proposed point would be 12,000 Mcf per day and the estimated cost of construction is $500.00.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23132 Filed 9–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–717–000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

September 16, 1993.

Take notice that on September 13, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–717–000 a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate a delivery point in Plaquemines Parish, Louisiana, on an existing right-of-way, under Tennessee's blanket certificate issued in Docket No. CP82-413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee is proposing to construct, operate, and maintain a two-inch tie-in assembly in Plaquemines Parish, Louisiana, to function as a delivery point to Vantage Point Operating Company (Vantage Point). It is stated that Tennessee entered into a gas transportation agreement with Tenngasco Corporation (Tenngasco), a producer, pursuant to Tennessee's blanket authority in Docket No. CP87–115. It is further stated that the transportation agreement obligated Tennessee to deliver up to 500 Dt of natural gas per day, on an interruptible basis, under Tennessee's Rate Schedule IT to Vantage Point for gas lift purposes.

The proposal states the Vantage Point will install, operate and maintain the interconnecting piping and measurement facilities. Tennessee estimates that its construction cost for its portion of this project to be $3,983, which Tennessee states will be reimbursed by Vantage Point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23165 Filed 9–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA92-3-001]

Western Resources; Filing

September 15, 1993.

Take notice that on February 11, 1993, Western Resources tendered for filing its compliance filing in the above-referenced 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 September 28, 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. 93-23131 Filed 9-21-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 93-59-NG]

Bonus Gas Processors, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

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 Bonus Gas Processors, Inc. authorization to import up to 220 Bcf and to export up to 220 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first delivery of either imports or exports.

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, September 7, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-23239 Filed 9-21-93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4733-9]

Workshop on Benchmark Dose Methodology

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA), under a cooperative agreement with the International Life Sciences Institute/Risk Science Institute (ILSI/RSI), and in conjunction with the American Industrial Health Council (AIHC), is holding a Workshop on Benchmark Dose Methodology.

DATES: The workshop will be held September 28-30, 1993, and will begin at 8:30 a.m. on Tuesday, September 28, and will recess at approximately 3 p.m., Thursday, September 30.

ADDRESSES: The ILSI/RSI, under a cooperative agreement with EPA, has organized and is providing logistical support for the workshop. The workshop will be held at the Holiday Inn/Fair Oaks, 11787 Lee-Jackson Highway, Fairfax, Virginia 22033. Members of the public may attend as observers, however, space is limited. Members of the public wishing to register to attend the meeting may phone Diane Dalisera at ILSI/RSI at 202-659-3306 between 9 a.m. and 4 p.m. Eastern Daylight Time. Observers will be given an opportunity to make brief oral comments during the workshop. Members of the public may also submit written comments and other materials relevant to the topic to: Dr. Hugh Spitzer, ILSI/Risk Science Institute, 1126 Sixteenth Street, NW., Washington, DC 20036; facsimile 202-659-8654. Copies of written comments will be available at the meeting site.

FOR FURTHER INFORMATION CONTACT: Dr. Carole Kimmel, Human Health Assessment Group, Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone 202-260-7331; facsimile 202-260-8719.

SUPPLEMENTARY INFORMATION: The EPA currently derives reference doses (RfDs) and reference concentrations (RfCs) for non-cancer endpoints on the assumption that there exists a threshold for adverse non-cancer health effects. Generally, the method applies uncertainty factors to an exposure level which has been observed to cause no effect in animals. Over the past few years, attention has become focused on better utilization of the toxicological information through use of quantitative dose-response models. One method in particular, the benchmark dose concept, has been the subject of much discussion and research. The objectives of the workshop are to: (1) Assess the methodology through a case study approach; (2) assess the impact of benchmark methodology on the calculation of RfDs and RfCs; (3) determine which endpoints are amenable to the benchmark approach; and (4) identify issues important for implementing its use in risk assessment for non-cancer endpoints. The meeting will begin with a series of talks. Following these plenary talks, the invited participants and observers will be divided into subgroups charged with discussing and preparing answers to a series of questions on the four objectives. A report will be developed after the workshop.

Dated: September 16, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93-23201 Filed 9-21-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4735-6]

Clean Air Scientific Advisory Committee; Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Clean Air Scientific Advisory Committee will hold a conference call from 1 p.m. until 4 p.m. on October 1, 1993 and on October 21, 1993 from 1 p.m. until 4 p.m.

To access the conference call on October 1, 1993, dial (202) 260-4235. To access the conference call on October 21, 1993, dial (202) 260-3624.

On the first call, the Committee will receive briefings from Agency personnel on the requested retrospective analysis of air quality models required by the Clean Air Act Amendments of 1990. During the subsequent call, the Committee will review appropriate documents and provide comments.

The conference call lines are open to the public, but the number of lines is limited. Callers will be able to access the conference until all lines are in use.

Any member of the public wishing further background information on this call should contact, Mr. Jim DeMocker of EPA's Office of Air and Radiation at (202) 260–8980. Any member of the public who wishes to submit oral or written comments should contact the Designated Federal Official, Mr. Randall C. Bond, Science Advisory Board (A–101), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–8414; FAX (202) 260–1889.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 93–23306 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–M

[PP 2G4122/T651; FRL 4642–4]

Monsanto; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the herbicide (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl) methyl ester) and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Monsanto Agricultural Company.

DATES: These temporary tolerances expire July 27, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6900.

SUPPLEMENTARY INFORMATION: Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167, has requested in pesticide petition (PP) 2G4122, the establishment of temporary tolerances for the combined residues of the herbicide (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl) methyl ester) and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difluoromethyl)-4-(2-methylpropyl)-6-trifluromethyl)-, methyl ester and 3-pyridinecarboxylic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-5-([(2-sulfoethyl)amino] carbonyl)-6-(trifluoromethyl) and expressed as parent equivalents in or on the raw agricultural commodities citrus, whole fruit at 0.05 part per million (ppm); cotton seed at 0.05 ppm and cotton forage at 0.2 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 524–EUP–75, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Agricultural Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 27, 1995. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

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

Authority: 21 U.S.C. 346a(j).

Dated: September 3, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–22785 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66183; FRL 4644–5]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 20, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 33 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000279 NJ–87–0002	Talstar 10WP Insecticide/Miticide	(2-Methyl[1,1'-biphenyl]-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1
000279 OH–91–0002	Furadan 15 G Insecticide Nematicide	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000279 TX–83–0001	Furadan 15 G Insecticide-Nematicide	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000352–00362	Dupont Lannate WP Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352–00460	Dupont Technical Rabon Insecticide	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
000352 AL–90–0001	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine -2,4(1*H*,3*H*)-dione
000352 AL–90–0002	Dupont Velpar L Herbicide	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine -2,4(1*H*,3*H*)-dione
000352 LA–82–0017	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 LA–89–0009	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 LA–89–0010	Dupont Velpar L Herbicide	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine -2,4(1*H*,3*H*)-dione
000352 MS–77–0004	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
		cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000352 MS–85–0003	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MS–89–0002	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 MS–89–0003	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 PA–92–0003	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000464–00356	Sirlene Feed Grade Propylene Glycol	1,2-Propanediol
000802–00507	Lilly's Go West Meal	2,4,6,8-Tetramethyl-1,3,5,7-tetroxocane
		Sodium fluosilicate
000802–00510	Lilly Go West Slug Pellets	2,4,6,8-Tetramethyl-1,3,5,7-tetroxocane
		Sodium fluosilicate
001769–00234	National Chemsearch Cimacide	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
001769–00245	National Chemsearch Atomicide	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
004816–00067	Rotenone Solution FK-11	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Rotenone
		Cube Resins other than rotenone
		Phenol
		Sodium phenate
008590–00036	Agway Malathion 5E	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
011292–00003	Whirlpool Emulsion Bowl Cleaner and Disinfectant	Oxalic acid
		Hydrogen chloride
011556–00015	Co-Ral 1% Cattle Duster	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00017	Co-Ral Cattle Duster	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00019	Co-Ral Cattle Insecticide 5.0% Dust	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00024	Co-Ral Brand of Coumaphos Livestock Duster	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
012477–00011	CL-90	Trichloro-*s*-triazinetrione
014802–00005	Algae Clean Out	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
056077–00027	Butoxone Ester	Isooctyl 4-(2,4-dichlorophenoxy)butyrate
056077–00029	Rhodia 2,4-DB Isooctyl Ester Technical	Isooctyl 4-(2,4-dichlorophenoxy)butyrate
056077–00032	Rhodia 2,4-DB Butyl Ester (technical)	Butyl 4-(2,4-dichlorophenoxy)butyrate
062719–00018	Mosquito Fogging Concentrate	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration

should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000464	Dow Chemical Co., Reg. Compliance/Health & Environmental, 1803 Building, Midland, MI 48674.
000802	Chas H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
004816	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 97645.
008590	Agway Inc., c/o Universal Cooperatives Inc., Box 460, Minneapolis, MN 55440.
011292	Chemifax, 11641 Pike St., Santa Fe Springs, CA 90670.
011556	Miles Inc., Animal Health Division, Box 390, Shawnee Mission, KS 66201.
012477	Economy Service & Sales Co., 4252 Whitaker Ave., Philadelphia, PA 19124.
014802	Fritz Chemical Co., Drawer 17040, Dallas, TX 75217.
056077	Cedar Chemical Corp., 5100 Poplar, Suite 2414, Memphis, TN 38137.
062719	DowElanco, Quad IV, 9002 Purdue Rd., Indianapolis, IN 46268.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, two pesticide active ingredients will not longer appear in any registered products. Those who are concerned about the potential loss of these active ingredients for pesticidal use ar encouraged to work directly with the registrants to explore the possibility of their withdrawing the request for cancellation. These active ingredients are listed in the following Table 3 with the EPA Company Number of their registrants:

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
6753–24–8	Butyl 4-(2,4-dichlorophenoxy)butyrate	056077
16893–85–9	Sodium Fluosilicate	000802

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 20, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, product registrations.

Dated: September 13, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–23213 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP-190003; FRL-4645-2]

Final Notice for Federal Disposal of 2,4,5-T/Silvex

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of closure of the 2,4,5-T/silvex disposal program.

SUMMARY: This notice announces the closure of EPA's program to accept certain 2,4,5-T/silvex products for disposal. Those individuals still holding eligible pesticide products containing 2,4,5-T or silvex have 60 days from the date of this notice to receive approval and complete shipment of their product to Laidlaw (TES), Inc. in La Porte, Texas. After that date, anyone still holding eligible pesticide products containing 2,4,5-T or silvex will need to arrange disposal of their stocks privately.

DATES: November 22, 1993 is the last date that EPA will accept shipments at Laidlaw (TES), Inc. of 2,4,5-T/silvex products which have been approved for shipment.

FOR FURTHER INFORMATION CONTACT: By mail: Marcia Collins, Disposal and Analysis Section (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (703) 305-5534.

SUPPLEMENTARY INFORMATION:

I. Background

Based on information concerning potential human health risks, the Administrator issued an emergency suspension order under section 6(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) on February 28, 1979, for certain uses of pesticide products containing either 2,4,5-T or silvex prohibiting the continued use, sale, or distribution of a 2,4,5-T or silvex product labeled for the suspended use. By February 11, 1985, all registrations of pesticide products containing 2,4,5-T or silvex were canceled. Those products whose uses were emergency suspended under the emergency suspension order and whose registrations were subsequently canceled became eligible for disposal under section 19 of FIFRA (prior to its amendment in 1988).

In the **Federal Register** of April 8, 1987 (52 FR 11319), EPA announced the procedures for submitting claims for indemnification and disposal. Holders of eligible products received letters of acceptance and guidance packages with handling and shipping instructions. EPA began accepting shipments in December 1988.

Since then, the Agency has accepted approximately 30,000 gallons and 307 tons of suspended and canceled 2,4,5-T and silvex pesticides. These pesticides have been stored at Laidlaw (TES), Inc. in La Porte, Texas, because there was no facility that had obtained a permit under the Resource Conservation and Recovery Act (RCRA) to dispose of these F027 wastes. In late April 1993, a disposal option became available when an incinerator received the first permit in the United States to dispose of these wastes commercially. EPA is now arranging for disposal of the suspended and canceled 2,4,5-T and silvex pesticide products.

II. 2,4,5-T and Silvex Disposal Program End

Individuals still holding eligible pesticides products containing either 2,4,5-T or silvex have until November 22, 1993 to deliver their stocks to Laidlaw (TES). Only approved products will be accepted at Laidlaw (TES).

Holders who have not yet received approval for disposal under FIFRA may submit a request for disposal, but the Agency cannot assure that the requests will be processed in time to meet the 60-day deadline. Therefore, holders are encouraged to contact EPA at the address referenced under **FOR FURTHER INFORMATION CONTACT** if they wish to be considered for this program. Any shipments to Laidlaw (TES) without EPA approval will be rejected.

Holders should be aware that they must bear the cost of shipment to Laidlaw (TES). EPA will bear any storage costs after acceptance at the loading dock at Laidlaw (TES) and the ultimate disposal costs.

Any holder failing to receive EPA's approval on their disposal request and ship their products to Laidlaw (TES) by the 60-day deadline will need to arrange for disposal of their products privately. After EPA completes disposal of any remaining stocks stored at Laidlaw (TES), EPA will have fulfilled its obligation under FIFRA section 19 to safely dispose of suspended and canceled 2,4,5-T and silvex pesticide products.

List of Subjects

Environmental protection, pesticide products.

Dated: September 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-23211 Filed 9-21-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

Please note: The Commission has requested emergency review of this item by September 16, 1993, under the provisions of 5 CFR 1320.18.

OMB Number: None

Title: FCC Rate Regulation Impact Survey

Action: New collection

Respondents: Businesses or other for-profit

Frequency of Response: Other: One-time survey

Estimated Annual Burden: 25 responses; 10 hours average burden per response; 250 hours total annual burden

Needs and Uses: Section 623 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act") required the Commission to establish rules to govern rate regulation of cable services offered by cable systems that are not subject to effective competition. On 4/1/93, the Commission adopted its cable rate regulation Report and Order in MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, wherein we adopted rules to implement section 623, subscriber rate regulation. On 4/1/93, the Commission adopted a 120-day rate freeze which was subsequently extended until 11/15/93. In connection with these orders, the Commission will conduct a survey on the impact of these new rate regulations. The purpose of this

survey is to determine the effect of our regulations on the rates for regulated cable services since the 9/1/93 effective date. This survey will be sent to the top 25 multiple system operators. They will be required to complete the survey for their 10 largest systems. Surveying the 10 largest systems of the largest 25 multiple service operators will permit a review of rate practices under our regulations of cable operators providing a majority of cable service in the United States. The consequences of not conducting this survey would be to impair our ability to assess whether our rate regulations have been effective.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-23247 Filed 9-21-93; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 15, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0219.

Title: Section 90.49(b), Communications standby facilities "Special Eligibility Showing."

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 200 responses; .75 hours average burden per response; 150 hours total annual burden.

Needs and Uses: A communications common carrier normally providing safety-related communication landline circuits may request licensing on private radio service frequencies to be used as standby facilities for carrying these safety-related communications when normal (i.e., common carrier) circuits are inoperative due to circumstances beyond the control of the carrier. Applicants are required to submit information that is used to ensure that the requested facilities are necessary for the protection of life or public property.

OMB Number: 3060-0225.

Title: Section 90.131(b), Amendment or dismissal of applications.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 25 responses; .17 hours average burden per response; 4 hours total annual burden.

Needs and Uses: Section 90.131(b) enumerates the applicant's right to dismiss any pending application without prejudice by sending a written request for dismissal to the Commission. The information will alert Commission personnel of the applicant's desire to discontinue processing an application.

OMB Number: 3060-0258.

Title: Section 90.176, Interservice sharing of frequencies in the 150-174 and 450-470 MHz bands.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 1,050 responses; 2 hours average burden per response; 2,100 hours total annual burden.

Needs and Uses: Private radio frequencies are arranged in a block allocation format with each block serving a particular type of user. Frequencies allocated to one service, however, may be sparsely used in a specific geographic area, and can be used to meet a demand for frequencies by other radio services in that same area. Therefore, it is desirable to allow applicants to cross the boundary from one service frequency pool to another on a case-by-case basis. To determine if such interservice sharing is in the public interest in a particular case, the applicant is required to submit information that such sharing is necessary and that interference will not result to the primary users of the frequency requested. The information is used by Commission licensing personnel to make the public interest determination described above.

OMB Number: 3060-0263.

Title: Section 90.177, Protection of certain radio receiving locations.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 300 responses; 0.5 hours average burden per response; 150 hours total annual burden.

Needs and Uses: This rule section requires that applicants proposing new or modified transmitting facilities in the vicinity of the National Radio Astronomy Observatory, the Table Mountain radio receiving zone, and Federal Communications Commission monitoring stations, consult with those parties to avoid interference to radio equipment at these sites. The rule enumerates threshold conditions which trigger the requirement that applicants notify these respective receiving sites of their proposal. This requirement is needed to preserve the interference-free reception conditions necessary at these sensitive sites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-23248 Filed 9-21-93; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 16, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this

submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.

Title: Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services, Second Report and Order and Third Further Notice of Proposed Rulemaking, CC Docket No. 91–141.

Action: New collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting requirement and Other: One-time tariff filing to be made by 11/18/93.

Estimated Annual Burden: 16 responses; 124.75 hours average burden per response; 1,996 hours total annual burden.

Needs and Uses: In the attached Order, the Commission concluded that the LECs should be required to provide certain cost support to justify the rate levels for the tariff charges to be paid by interconnectors for expanded interconnection. The Commission required the price cap LECs to provide cost support for the connection charges using the same methodology employed to support new services under the price cap rules. The Commission required the LECs to develop and justify consistent methodologies for deriving the direct cost of providing similar types of offerings, including expanded interconnection services covered by the connection charge elements. The Commission also required the LECs to justify any deviations from uniform overhead loadings that they propose for pricing connection charges, although it did not specify a particular methodology in advance. Under this approach, if a LEC proposes to price connection charges to reflect fully distributed overhead loadings, the Commission will compare such loadings to the overhead loadings used for other services and require justification for any differences. Rate of return LECs must support their rates under traditional cost support requirements. Without this information, the FCC would be unable to determine whether the rates for these services are just, reasonable, nondiscriminatory, and otherwise in accordance with the law. Tariffs will also be used by parties using expanded interconnection and switched transport offerings to ascertain the charges and other terms and conditions applicable to those offerings.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23249 Filed 9–21–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1967]

Petition for Reconsideration of Action In Rulemaking Proceeding

September 17, 1993.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is 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 this petition must be filed by October 7, 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: Amendment of Rule 73.202 (b) Table of Allotments, FM Broadcast Stations (Dublin and Marlin, Texas) (MM Docket No. 89–128, RM No. 6655 and 6996)

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23245 Filed 9–21–93; 8:45 am]

BILLING CODE 6712–01–M

[REPORT NO. 1966]

Petition for Reconsideration of Action In Rulemaking Proceeding

September 15, 1993.

Petitions for reconsideration 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 must be filed October 7, 1993. See section 1.4(b)(1) of the Commssion'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: Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992: Equal Employment Opportunities. (MM Docket No. 92–261)

Number of Petitions Filed: 2

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23116 Filed 9–21–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before November 22, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0224.

Title: Application for National Warning System Service.

Abstract: The Civil Defense Warning System (CDWS) provides the capability through Federal, State, and local government resources to disseminate peacetime emergency information to Federal, State, and local government officials, selected military organizations, and the civilian population. The CDWS is also used to disseminate an attack warning or accidental missile launch warning. Pursuant to the authorities of

the Federal Civil Defense Act of 1950, as amended, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, FEMA established and operates the National Warning System (NAWAS). NAWAS is a nationwide private telephone line system which has the capability of passing warnings to 2,100 network subscribers. NAWAS is the primary nationwide emergency response mechanism. The application for NAWAS services is used by State and local governments and selected Federal agency installations to request Federal assistance to support NAWAS services. FEMA uses the application to evaluate and approve or disapprove requests for NAWAS services based on eligibility requirements in CPG 1–14, Principles of Warning and Criteria Governing Eligibility of National Warning Systems Service.

Type of Respondents: State and local governments; Federal agencies or employees.

Estimate of Total Annual Reporting and Recordkeeping Burden: 50 Hours.

Number of Respondents: 50.

Estimated Average Burden Time per Response: 1 Hour.

Frequency of Response: One-time to apply for Federal assistance.

Dated: September 13, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–23227 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1003–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1003–DR), dated September 10, and related determinations.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 10, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from Hurricane Emily on August 31, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Credle of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of North Carolina to have been affected adversely by this declared major disaster:

Dare County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–23228 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–973–DR]

New Jersey; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA–973–DR), dated December 18, 1992, and related determinations.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ihor Husar of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Stephen Kempf, Jr., as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–23230 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3113–EM]

Texas; Emergency Declaration and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Texas (FEMA–3113–EM), dated September 10, 1993, and related determinations.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 10, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from extreme fire hazards on August 30, 1993, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under title V, section 501(a), of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Texas.

You are authorized to coordinate all emergency fire hazard efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to mobilize and prestage Federal fire

suppression resources, including helicopters and air tankers, and reimburse for costs associated with employing these resources in controlling fires which occur in, or threaten, urban areas which are so large that State and local resources have no possibility of bringing them under control. Further, you are authorized to reimburse State and local governmental expenses for fire suppression when such fire suppression is conducted as part of an incident that includes Federal fire suppression resources for the duration of time that such resources are in use.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leland Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared emergency:

Anderson, Archer, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brown, Burleson, Burnet, Caldwell, Callahan, Clay, Coke, Coleman, Collin, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallas, Dawson, De Witt, Denton, Dickens, Dimmitt, Duval, Eastland, Edwards, Ellis, Erath, Falls, Fayette, Fisher, Floyd, Foard, Freestone, Frio, Garza, Gillespie, Glassock, Goliad, Gonzales, Grayson, Grimes, Guadalupe, Hamilton, Hardeman, Haskell, Hays, Henderson, Hill, Hood, Houston, Howard, Irion, Jack, Jackson, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, La Salle, Lampasas, Lavaca, Lee, Leon, Limestone, Live Oak, Llano, Lubbock, Lynn, Madison, Martin, Mason, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Motley, Navarro, Nolan, Palo Pinto, Parker, Reagan, Real, Robertson, Rockwall, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wichita, Wilbarger, Williamson, Wilson, Wise, Young, and Zavala.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–23229 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–02–M

Board of Visitors for the National Fire Academy; Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: October 8–10, 1993.

Place: Building H Conference Room, National Emergency Training Center, Emmitsburg, Maryland.

Time: October 8, 1993, 9 a.m.–5 p.m.; October 9, 1993, 9 a.m.–1 p.m.; October 10, 1993, 9 a.m.–2 p.m.

Proposed Agenda: October 8: Quarterly meeting—Prepare Annual Report. October 9—Agenda completion. October 10—Attend National Fallen Firefighters Memorial Services.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before September 30, 1993.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 9, 1993.

Edward M. Wall,

Deputy Administrator, U.S. Fire Administration.

[FR Doc. 93–23231 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Cargonauts, Inc., 7331 NW. 54 Street, Miami, FL 33166
Officers: Alberto Spencer, President; Claudio Vicuna, Director

Maritime Terminal, Inc., Whalers' Wharf, New Bedford, MA 02740
Officers: David Wechsler, President; Richard Gwinn, Director; Frederick P. McBrier, Director/Vice President; Jonas af Jochnick, Director; Adolf af Jochnick, Director

Ryan Freight Services, Inc., 1702 Minters Chapel Rd., ste. 104, Grapevine, TX 76051
Officers: Jack Elliott Ryan, President/Director; David M. Thomas, Secretary/Treasurer/Director

Gemini Warehouse, Inc., 8535 Posey Rd., Jacksonville, FL 32220
Officers: Ralph J. Martinez, President; Harvin W. Lane, Vice President; Patricia C. Martinez, Secretary/Treasurer/Director; Robert J. Martinez, Director

Air-Sea International, Inc. 218 Marsh Island Drive, Chesapeake, VA 23320
Officers: Michael R. Streibel, President; Catherine M. Streibel, Treasurer

Preferred Distribution Service, Inc., 1220 Barranca, suite #3, El Paso, TX 79935
Officers: John Shannon Haycraft, President/Director; Nellie M. Davis, Vice President; Maria G. Estrada, Vice President Finance

Cargo U.K. Inc., 4790 Aviation Parkway, Atlanta, GA 30349
Officers: Roger Harold Botting, President/Stockholder; Regina Jacqueline Botting, Secre./Treas./Stockh.

By the Federal Maritime Commission.

Dated: September 16, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–23113 Filed 9–21–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Frama International of Florida, Inc., 3274 NW. 22nd Ave., Ft. Lauderdale, FL 33309
Officer: Maria P. Thorne, President

Key Cargo Marine, Inc., 4000 N. Federal Highway, ste. 201, Boca Raton, FL 33431

Officers: William L. Cohen, President/Secretary; Cynthia A. Newlan, Vice President

RJT Express, Inc., 1019 Grandview Dr., So. San Francisco, CA 94080

Officers: Roland J. Thompson, President; Jean Thompson, General Manager/Stockholder

Ben Odihirin Company, Inc., 690 Wainwright Street, Union, NJ 07083

Officer: Ben Odihirin, President/Director

Loba Corporation, 3200 NW. 77th Court, Miami, FL 33122

Officers: Juan Ramon Poll, President; Demetrio Pina, Vice President; Vilma Pina, Secretary; Raul Cabrera, Treasurer

J and L Worldwide, 520 Spring Breeze, League City, TX 77573

Maria N. Wallington, Sole Proprietor

Tri-Link International, Inc., 4891 Cypress Point Circle, Virginia Beach, VA 23455

Officer: Patrick Ambrosio, President/Secretary

Transfair, Inc., 18900 Des Moines Way So., Seattle, WA 98148

Officers: Greg Vernoy, President; Ferdinand Zigahn, Vice President; Phyllis Stieglitz, Secretary/Treasurer

By the Federal Maritime Commission.

Dated: September 16, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-23112 Filed 9-21-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 28. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 5 p.m., with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee on

(1) the key elements of the Administration's directive to the agencies to provide clearer guidance to financial institutions and set new standards on how CRA performance will be evaluated; and

(2) legislative proposals to reform CRA.

Community Banking and Financial Institutions Fund Proposals. Discussion led by the Community Affairs and Housing Committee on legislative proposals to create a fund to help finance community development financial institutions.

Models for Economic Development. Report by the Community Affairs and Housing Committee on examples of how the Community Reinvestment Act can assist in stimulating economic development in distressed communities; the committee will describe successful models and how they attract private capital.

Small Business Credit Availability. Discussion led by the Consumer Credit Committee on ways the financial services industry can better meet the needs of small business borrowers, with a focus on women business owners.

Members Forum. Presentation of individual Council members' views on whether there are visible signs of an economic upturn present within their industries or local economies, and whether it is getting easier to obtain a loan.

Council Member Perspectives. Remarks by Council members identifying special areas of importance and concerns regarding the provision of financial services to consumers and communities.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Committee Reports. Reports from Council committees on their work in 1993.

Other matters previously considered by the Council or initiated by Council members also may be discussed.Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, October 22, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, (202) 452-3544.

Board of Governors of the Federal Reserve System, September 16, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-23168 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 15, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Wisconsin Corporation, Milwaukee, Wisconsin; to merge with First Financial Associates, Kenosha, Wisconsin, and thereby indirectly acquire First National Bank of Kenosha, Kenosha, Wisconsin.

2. FC Banc Corp., Bucyrus, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Citizens Bank, Bucyrus, Ohio.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. AmSouth Bancorporation, Birmingham, Alabama; to merge with Parkway Bancorp, Inc., Ft. Myers,

Florida, and thereby indirectly acquire Parkway Bank, Ft. Myers, Florida.

2. *McConnell & Co. and Eberhardt, Inc.*, Elberton, Georgia; to become a bank holding company by acquiring 25 percent of the voting shares of Pinnacle Financial Corporation, Elberton, Georgia, formerly First Elbert Corporation, and thereby indirectly acquire the First National Bank in Elberton, Elberton, Georgia.

3. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 100 percent of the voting shares of SouthTrust of Mississippi, Inc., Pascagoula, Mississippi, and thereby merge with CNB Capital Corp., Pascagoula, Mississippi, and thereby acquire Citizens National Bank, Pascagoula, Mississippi.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hoosier Hills Financial Corp., ESOP*, Osgood, Indiana; to become a bank holding company by acquiring between 30-40 percent of the voting shares of Hoosier Hills Financial Corp., Osgood, Indiana, and thereby indirectly acquire Ripley County Bank, Osgood, Indiana.

2. *Prophetstown Banking Co.*, Prophetstown, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers National Bank of Prophetstown, Prophetstown, Illinois.

3. *Trivoli Bancorp, Inc.*, Trivoli, Illinois; to acquire 100 percent of the voting shares of Hanna City State Bank, Hanna City, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First United Bancshares, Inc.*, El Dorado, Arkansas; to acquire 100 percent of the voting shares of Commerce Financial Corporation, Alma, Arkansas, and thereby indirectly acquire Commerce Bank at Alma, Alma, Arkansas.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Neosho Bancshares Employee Stock Ownership Plan*, Neosho, Missouri; to become a bank holding company by acquiring 30 percent of the voting shares of Neosho Bancshares, Inc., Neosho, Missouri, and thereby indirectly acquire Community Bank & Trust, Neosho, Missouri.

2. *Packers Management Company, Inc.*, Omaha, Nebraska; to merge with Nebraska National Corporation, Omaha, Nebraska, and thereby indirectly acquire Nebraska National Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, September 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-23169 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

Fuji Bank, Limited, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 15, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Fuji Bank, Limited*, Tokyo, Japan; to acquire through its subsidiary, Heller Financial, Inc., Chicago, Illinois, certain assets of Imperial Premium Finance, Inc. (A Delaware corporation), Imperial Premium Finance, Inc. (A California corporation), Imperial Premium Funding Corp., and Imperial Premium Financial Holding Corp. and thereby engage in financing insurance premium payments pursuant to 225.25(b)(1)(iv) of the Board's Regulation Y.

2. *KeyCorp*, Albany, New York, and Key Bancshares of Alaska, Anchorage, Alaska; to acquire Jackson County Federal Bank, FSB, Medford, Oregon, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. In addition, KeyCorp seeks prior approval to acquire, under certain circumstances, up to 19.9 percent of the voting shares of Jackson County Federal Bank, FSB.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida, and Barnett Subsidiary, Jacksonville, Florida; to enter into a joint venture with Mac Partners, Atlanta, Georgia, to acquire Main America Capital, L.C., Atlanta, Georgia, and thereby engage in lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire American Home Savings and Loan Association, St. Louis, Missouri, and thereby 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 Missouri.

Board of Governors of the Federal Reserve System, September 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-23170 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

Paul Jennings, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 12, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Paul Jennings*, David Jennings, Lynn Jennings Adcock, and Steven Jennings; to each acquire 25 percent, for a total of 100 percent of the voting shares of Spring Grove Investments, Inc., Spring Grove, Minnesota, and thereby indirectly acquire Onsgard State Bank, Spring Grove, Minnesota.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *William Herman May*, as Trustee for The Herman May et ux Living Trust, Farmersville, Texas, to acquire 4.28 percent for a total of 7.47 percent; Wayne Herman May, as Trustee for the Wayne May et ux Living Trust, Farmersville, Texas, to acquire 3.11 percent, for a total of 5.43 percent; and May Furniture & Appliance, Inc., Farmersville, Texas, to acquire 1.16 percent of for a total of 2.02 percent of the voting shares of Farmersville Bancshares, Inc., Farmersville, Texas, and thereby indirectly acquire First Bank Farmersville, Farmersville, Texas, and First Bank, McKinney, Texas.

Board of Governors of the Federal Reserve System, September 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-23171 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

Northern Illinois Financial Corporation, et al.; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Illinois Financial Corporation*, Wauconda, Illinois; to acquire certain assets and liabilities of the secondary mortgage operation at American National Bank and Trust Company of Waukegan, Waukegan, Illinois, and to the engage *de novo* through American Suburban Mortgage Corporation, Waukegan, Illinois, in the origination and sale of residential first mortgage loans to investors consisting of national and regional financial institutions pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Northern Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Security Richland Bancorporation*, Miles City, Montana; to engage *de novo* through its subsidiary, FirstWest Insurance, Inc., in providing management consulting to non-affiliated depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the states of Montana, Wyoming, North Dakota, and South Dakota.

Board of Governors of the Federal Reserve System, September 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-23172 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Criteria for Selection of Clinical Practice Guidelines and Topics Under Consideration for Development of Clinical Practice Guidelines

The Agency for Health Care Policy and Research (AHCPR) is requesting comments on the topics specified below which are under consideration for the development of clinical practice guidelines in 1994, and is inviting recommendations with supporting rationale for additional guideline topics for development. The AHCPR also is describing its process and methodology for establishing priorities for guideline topics, based on statutory criteria. As a part of the process, AHCPR intends to publish each year a list of clinical practice guideline topics under consideration and invite recommendations for additional guideline topics.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c-6 and 1320b-12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines.

Section 911 of the Act (42 U.S.C. 299b) established within AHCPR the Office of the Forum for Quality and Effectiveness in Health Care (Forum). Section 912 (42 U.S.C. 299b-1(a)) directs the Administrator of AHCPR, acting through the Forum, to arrange for the development, periodic review, and

updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and health care consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed.

Section 912 of the Act (42 U.S.C. 299b-1(b)), as amended by Public Law 102–410, also requires that the guidelines:

1. Be based on the best available research and professional judgment;

2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;

3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;

4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and

5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health conditions, where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b-2) describes two mechanisms through which AHCPR may arrange for development of guidelines: 1. Private sector panels of qualified health care experts and consumers may be convened; and 2. Contracts may be awarded to public and private non-profit organizations. Contractors are assisted by panels of experts and consumers approved by AHCPR.

Section 914(a) of the Act (42 U.S.C. 299b-3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines including the extent to which the guidelines would:

1. Improve methods for disease prevention;

2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;

3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and

4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Section 914(a) (42 U.S.C. 299b-3(a)) further requires that the Administrator develop and publish a methodology for establishing priorities for guideline topics. It also requires that, using this methodology, the Administrator shall establish and publish annually in the **Federal Register** a list of guideline topics under consideration.

In addition, section 914 provides that the methodology may include the considerations under section 904 of the PHS Act, relevant to establishing priorities for technology assessments, as well as those under section 914(a)(2), and other considerations determined by the AHCPR Administrator to be appropriate. There is overlap between the two sets of statutory criteria. Section 904(d)(2) provides that criteria for determining priorities for technology assessments include: the prevalence of a particular health condition; variations in current practice; the economic burden posed by the prevention, diagnosis, treatment, and clinical management of a health condition, including the impact on publicly funded programs; aggregate cost of the use of the technology(ies) involved; the morbidity and mortality associated with the health condition; and the potential to improve health outcomes or affect costs associated with the prevention, diagnosis, or treatment of the condition.

Also, in accordance with several title IX provisions, such as sections 912(e) and 914(a)(2)(B) of the PHS Act, and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Further, Section 921 of the Act (42 U.S.C. 299c) established the National Advisory Council for Health Care Policy, Research, and Evaluation whose activities include making recommendations to the Administrator regarding the priorities for a national agenda and strategy for the development and periodic review and updating of guidelines for clinical practice, standards of quality, performance measures, and medical review criteria. Thus the recommendations of the National Advisory Council for Health Care Policy, Research, and Evaluation also will be considered in selecting guideline topics.

Clinical Practice Guidelines Completed and Under Development

The following guidelines have been released and disseminated widely:

1. Acute Pain Management: Operative or Medical Procedures and Trauma.

2. Urinary Incontinence in Adults.

3. Pressure Ulcers in Adults: Prediction and Prevention.

4. Cataract in Adults: Management of Functional Impairment.

5. Depression in Primary Care: Volume I: Detection and Diagnosis, and Volume II: Treatment of Major Depression.

6. Sickle Cell Disease: Screening, Diagnosis, Management, and Counseling in Newborns and Infants.

The following guidelines are under development by private sector panels of experts and consumers.

1. Diagnosis and Treatment of Benign Prostatic Hyperplasia.

2. Management of Cancer-Related Pain.

3. Treatment of Pressure Ulcers in Adults.

4. Evaluation and Management of Early HIV Infection.

5. Low Back Problems.

6. Quality Determinants of Mammography.

7. Screening for Alzheimer's and Related Dementias.

8. Diagnosis and Treatment of Anxiety and Panic Disorders.

9. Smoking Prevention and Cessation in the Primary Care Setting.

The following guidelines are under development by non-profit contractors, with assistance from panels of experts and consumers.

1. Otitis Media with Effusion in Children.

2. Heart Failure: Evaluation and Care of Patients with Left Ventricular Systolic Dysfunction.

3. Post Stroke Rehabilitation.

4. Cardiac Rehabilitation.

5. Diagnosis and Management of Unstable Angina.

Criteria for Selection of Guideline Topics.

In selecting topics for the development of clinical practice guidelines, AHCPR considers the statutorily prescribed factors outlined above with particular importance given to:

1. Amenability of a particular condition to prevention;

2. Potential for reducing clinically significant variations in the prevention, diagnosis, management, or outcomes related to the condition;

3. Adequacy of science-based evidence on which to develop a guideline;

4. Number of individuals affected by the condition;

5. Cost of the condition to all payers, including patients; and

6. Specific needs of the Medicare and Medicaid populations.

Process for Selection of Guideline Topics

The AHCPR's current method for setting priorities and selecting guideline topics consists of a process of seeking public input on guideline topics under consideration and new topics, assessing topics proposed against AHCPR's criteria and the guidelines recently developed or in process by professional or provider organizations, securing expert advice on prioritizing topics, and determining the availability of resources. This process is outlined below.

1. Inviting suggestions for guideline topics with supporting information which addresses the above criteria;

2. Determining what consensus statements, practice parameters, and evidence-based guidelines recently have been developed or are under development by other organizations in order to avoid unnecessary duplication of effort;

3. Studying the topics proposed and the supporting documentation to determine compliance with AHCPR criteria and legislative requirements;

4. Requesting advice of public and private sector experts on setting priorities for the proposed topics which meet AHCPR's criteria and legislative requirements; and

5. Determining resource availability from AHCPR and other sources to develop the priority guidelines for the current and forthcoming fiscal years.

The AHCPR's Office of the Forum for Quality and Effectiveness in Health Care reviews information and findings gathered in steps 1 through 5 above. The Forum then recommends the topics to the Administrator who, in consultation with AHCPR's National Advisory Council for Health Care Policy, Research, and Evaluation, determines new guideline topics which meet the selection criteria; do not significantly duplicate guidelines recently completed or being developed by other groups; are considered high priority by health care practitioners, researchers, and patients; and can be accomplished with the resources of AHCPR or other available sources.

Suggestions for clinical practice guideline topics are solicited from many sources. To consider topic recommendations, AHCPR requires that supporting information be submitted which addresses the AHCPR criteria cited above. Organizations contacted to provide suggestions and supporting information include: the Health Care Financing Administration, Public Health Service agencies, medical and nursing specialty societies, other health care organizations, and professional review organizations. For example, in 1992 the American Medical Association requested, on behalf of AHCPR, suggestions from 25 specialty societies which in turn proposed 75 topics. Also, through this notice and in future annual **Federal Register** notices, AHCPR requests individuals and organizations to provide recommendations on topics for clinical practice guidelines with supporting documentation.

Periodically AHCPR requests the National Library of Medicine, the National Institutes of Health, the U.S. Preventive Services Task Force, and medical specialty societies to provide information on consensus statements, evidence-based clinical guidelines, and practice parameters that recently have been developed or are currently being developed. Guideline topics under consideration are compared to these to determine if other organizations have recently completed or are currently developing guidelines on the same topics. In each such case, the extent to which the focus of the topic overlaps the focus of the guideline under consideration is determined as well as the methodology used, date of completion, endorsements sought or received, and dissemination planned or underway. A decision is then made by AHCPR as to whether its arranging for the development of an evidence-based guideline with a similar focus is warranted.

In order to determine how well the proposed topics meet AHCPR's guideline criteria, the topics and the supporting documentation must be assessed regarding: (1) Adequacy of the available scientific evidence, (2) prevalence and cost of each condition, with particular concern for the Medicaid and Medicare populations; (3) potential for reducing clinically significant and unexplained variations in the prevention, diagnosis, treatment, management, and outcomes of health services; and (4) potential for improvement of methods of prevention.

The AHCPR also convenes meetings of private sector and government experts to obtain their individual advice and comments on setting priorities on guideline topics. Information collected on the major conditions or disorders of the clinical topic in question is shared with the experts to assist in their deliberations. In 1991 and 1992, for example, three workshops were held for multidisciplinary groups of practitioners involved in cardiovascular, infectious disease/immunology, and gastrointestinal conditions. In early 1993 additional meetings for prenatal care, musculoskeletal, and neurological conditions were convened. These meetings assist AHCPR in establishing priorities among numerous important conditions.

Available funding determines the number of new clinical practice guidelines initiated in any fiscal year. For some topics, other Public Health Service agencies or non-governmental organizations may join in the funding of the development of guidelines.

Topics of New Guidelines Being Considered for Development

The following topics for the development of new clinical practice guidelines are currently being considered by AHCPR. Topics chosen may be narrowed in focus to permit the guidelines to be completed in 15 to 18 months. The AHCPR requests comments on these topics using the above selection criteria.

- Dysrhythmia
- Acute Myocardial Infarction
- Hypertension in Diabetics
- Stable Angina
- Silent Ischemia
- Diabetes
- Bacteremia
- Antibiotic Therapy
- Management of Surgical Wound Infections
- Community Acquired Pneumonia
- Peptic Ulcer
- End Stage Liver Disease
- Diarrhea in Preschool Children
- Biliary Tract Disease
- Gastroesophageal Reflux Disorder
- Addictive Behavior during Pregnancy
- Risk Assessment of Complicated Pregnancies
- Screening and Counselling for Sexually Transmitted Diseases and Reproductive Health
- Genetic Screening and Counselling for Genetic Diseases during Prenatal Care
- Tests of Uteroplacental Insufficiency in Prenatal Care
- Prevention/Detection/Management of Preterm Labor
- Dysfunctional Uterine Bleeding
- Osteoporosis
- Osteoarthritis
- Rheumatoid Arthritis
- Musculoskeletal Pain
- Management of Acute Stroke
- Traumatic Brain Injury
- Epilepsy
- Prevention of Falls and Mobility Impairment in the Elderly
- Chronic Mood Disorder

Request for Nominations of Additional Topics for Guidelines Development

This notice also requests nominations from interested individuals and

organizations of other topics for development of clinical practice guidelines with AHCPR support. Nominations of topics must include the specific topic recommended and a statement on the rationale for the recommendation that addresses AHCPR's criteria described in this notice. If organizations or individuals are interested in supporting the development and dissemination of the guidelines proposed, an expression of that interest also is requested.

The nominations received will be reviewed by AHCPR's Office of the Forum for Quality and Effectiveness in Health Care. The Forum will initiate the topic selection process and topics will be approved, as described above.

To be considered, nominations of clinical practice guidelines and supporting documentation must be received by November 22, 1993, at the following address: Kathleen A. McCormick, Ph.D., R.N., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Boulevard, suite 310, Rockville, Maryland 20852.

FOR ADDITIONAL INFORMATION: Additional information on the guideline development process is contained in the AHCPR Fact Sheet "AHCPR Supported Clinical Practice Guidelines," dated April 1993. More detailed information on the guideline process and criteria for selecting panels is contained in the AHCPR Program Note "Clinical Guideline Development," dated August 1993. These documents may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8457, Silver Spring, MD 20907; or call Toll Free: 1-800-358-9295.

For further information on the process of developing guidelines or the selection of guideline topics, contact Kathleen A. McCormick, Ph.D., R.N., Director, Office of the Forum for Quality and Effectiveness in Health Care, AHCPR, at the above address.

Dated: September 15, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93-23180 Filed 9-21-93; 8:45 am]

BILLING CODE 4160-90-U

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC): Request for Nominations of Candidates

SUPPLEMENTARY INFORMATION: The "Workers' Family Protection Act" (29 U.S.C. 671a), hereafter, referred to as "the Act," was enacted on October 26, 1992, as section 209 of Public Law 102-522, the "Fire Administration Authorization Act of 1992." The purpose of the Act is to protect the health of workers and their families from hazardous chemicals and substances, including infectious agents, transported from the workplace to the home on equipment, clothing, or the worker's person. Under the Act, NIOSH is to conduct a study to evaluate the prevalence of contamination in workers' homes with hazardous chemicals and substances, including infectious agents, transported from the workplace. NIOSH is also to evaluate the potential for such contamination occurring and to evaluate other issues relating to protecting the family from transported hazardous chemicals and substances, including infectious agents. NIOSH activities, as mandated under the Act, will include the following: (1) Evaluating the scientific literature and records of past investigations performed by NIOSH, OSHA, and other governmental agencies; (2) evaluating current industrial hygiene and other control measures in use by small, medium, and large industries to prevent or remediate home contamination; (3) compiling a summary of existing research and a summary of case histories; and (4) identifying the role of governmental agencies in responding to incidents of home contamination. The summaries of existing research and case histories will address the effectiveness of workplace housekeeping and personal protective equipment, the health effects of exposure through take-home contamination, the effectiveness of normal housekeeping and laundry procedures for preventing or remediating contamination, the literature on indoor air quality as it applies to the fate of chemicals transported into the home, and methods of differentiating between take-home toxins and confounding environmental factors.

NIOSH is mandated under the Act to establish a working group, to be known as the Workers' Family Protection Task Force. This task force will review the report prepared by NIOSH and determine if additional data are needed. If additional data are needed, the task force will develop an investigative strategy for obtaining additional information. This investigative strategy will: (1) Identify data gaps that can and cannot be filled; (2) identify assumptions and uncertainties associated with various components of the strategy; (3) specify a timetable for implementation of the strategy; and (4) describe the methodologies to be used to gather the required data.

The Director of NIOSH will publish the investigative strategy developed by the task force and invite public comments. The Director of NIOSH will also use other techniques to obtain comments on the investigative strategy, including technical conferences or seminars.

NIOSH is soliciting nominations for membership on the proposed Workers' Family Protection Task Force. The task force will review a report on contamination of workers' homes by hazardous chemicals and materials, including infectious agents, carried home from the workplace, and develop an investigative strategy for obtaining additional data. The task force will be composed of no more than 15 individuals representing workers, industry, scientists, industrial hygienists, the National Research Council, and government agencies. Workers and industry shall have an equal number of representatives, and there will be no more than one member from any one government agency.

Close attention will be given to minority and female representation; therefore, nominations from these groups are encouraged.

The following information is requested: name, affiliation, address, telephone number, and a current curriculum vitae. Nominations should be sent, in writing, and postmarked by October 15, 1993, to: Steven Galson, M.D., M.P.H., Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C-14, Cincinnati, Ohio 45226, 513/533-8302. Telephone or facsimile submissions cannot be accepted.

Dated: September 16, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-23167 Filed 9-21-93; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

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:

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee)

Date, time, and place. October 8, 1993, 9 a.m., Hubert H. Humphrey Bldg., rm. 729–G, Washington, DC.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 2 p.m.; open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 4 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

General function of the committee. The committee is required by law to advise the Secretary and the Assistant Secretary for Health concerning certain studies of herbcides.

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 September 23, 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 requested to make their comments.

Open committee discussion. The committee will critique the Air Force's response to the Institute of Medicine's report entitled "Veterans and Agent Orange—Health Effects of Herbicides Used in Vietnam," and will review the Air Force Health study entitled " An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides, Mortality Update—1993." A final agenda will be available September 24, 1993, from the contact person.

Food Advisory Committee

Date, time, and place. October 14 and 15, 1993, 8:30 a.m., Sheraton National Hotel, South Ballroom, Columbia Pike and Washington Blvd., Arlington, VA.

Type of meeting and contact person. Open committee discussion, October 14, 1993, 8:30 a.m. to 12 m.; open public hearing, 12 m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; open committee discussion, October 15, 1993, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; Catherine M. DeRoever, Advisory Committee Staff (HFS–22), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251 or 202–205–4150.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

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 October 4, 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. If necessary, comments may be limited to 5 minutes.

Open committee discussion. On October 14, 1993, the Folic Acid Subcommittee and the Food Advisory Committee will discuss various proposed regulatory initiatives pertaining to folic acid and neural tube defects: (1) health claims and label statements; (2) amendment of standards of identity for enriched grain products to require folic acid addition; and (3) amendment to the food additive regulation for folic acid (folacin). On October 15, 1993, the Food Advisory Committee will develop its recommendations to the agency on these issues.

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. October 18, 1993, 8:30 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 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.; Michael Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

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 the practice of psychiatry and related fields.

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 October 11, 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. The committee will discuss the safety and effectiveness of LUVOX® (fluvoxamine maleate), new drug application (NDA) 20–243, Solvay Pharmaceuticals, for use in the treatment of obsessive compulsive disorder.

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. October 21, 1993, 8:30 a.m., Piccard Bldg., first floor conference rm., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 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 4 p.m.; Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2194.

General function of the committee. The committee review and evaluates data on the safety an effectiveness of marketed and investigational devices and makes recommendations for their regulation.

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 October 12, 1993, and submit a brief statement of the general nature of the evidence or argument 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. The committee will discus a premarket approval application for a laser fiber with the new intended use to treat bladder outlet obstruction secondary to benign prostatic hyperplasia.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. October 28, 1993, 9 a.m., and October 29, 1993, 8:30 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 28, 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.; open public hearing, October 29, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

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 October 14, 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 October 28, 1993, in the morning, the committee will discuss the results of the studies requested by the committee on the relationship of oral contraceptives of various compositions to protection against ovarian cysts. In the afternoon, the committee will discuss the safety and utility of 50 µg estrogen-containing oral contraceptives. On October 29, 1993, the committee will discuss the suitable content of the revised patient package insert for oral contraceptives.

FDA public advisory committee meetings 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. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open 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.

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: September 15, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–23106 Filed 9–21–93; 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:

Subcommittee Meeting of the Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. October 7, 1993, 8:30 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 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 1 p.m.; closed committee deliberations; 1 p.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 reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

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 September 24, 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. The committee will discuss new drug application (NDA) 20–214 Zemuron® (rocuronium bromide injection),

Organon, Division of AKZO, for use in anesthesia and surgery as a neuromuscular blocking agent.

Closed committee deliberations: The committee will review trade secret and/or confidential commercial information relevant to pending new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time and place. October 25 and 26, 1993, 8 a.m., National Institutes of Health, Bldg. 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 25, 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 public hearing, October 26, 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 3 p.m.; closed committee deliberations 3 p.m. to 6 p.m.; Nancy Cherry or Stephanie Milwit, Scientific Advisors and Consultants Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines 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 October 18, 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 October 25, 1993, the committee will participate in a general discussion of gene therapy with the main focus on the safety of retroviral and adenoviral vectors for gene therapy. On October 26, 1993, the committee will discuss the licensure of Bacille Calmette-Guerin (BCG) vaccines for the prevention of tuberculosis. The issues to be discussed are: (1) Safety, (2) clinical data needed to support licensure, and (3) indications for use.

Closed committee deliberations. On October 26, 1993, the committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications and product licensing applications. 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. October 28 and 29, 1993, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD, and October 29, 1993, 9 a.m., Parklawn Bldg., Chesapeake Conference rm., 5600 Fishers Lane, Rockville, 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, October 28, 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.; October 29, 1993, closed committee deliberations, 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 (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 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 October 1, 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 October 28, 1993, the committee will discuss new drug application (NDA) 18–343 S/64, Bristol–Myers Squibb, Capoten (captopril) tablets for treatment of diabetic nephropathy.

Closed committee deliberations. On October 29, 1993, the committee will review trade secret and/or confidential commercial information relevant to pending new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time and place: October 28 and 29, 1993, 8:30 a.m., Holiday Inn, Grand Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, October 28, 1993, 8:30 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, October 29, 1993, 8:30 a.m. to 12 m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2080.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

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 October 2, 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 October 28, 1993, the committee will discuss general issues relating to a premarket approval application (PMA) for a surgical device. There will be an update presented to the panel on the clinical section of the International Standard Organization's guidance document for intraocular lenses and an update on the Multifocal Intraocular Lens guidance document. There will be a discussion on intraocular lens labeling and a discussion on a petition for reclassification of the Neodymium:Yttrium:Aluminum:Garnet (Nd:YAG) laser for iridotomy. In addition, an update on the

preamendment glaucoma valve implants will be presented.

There will also be updates presented on the following contact lens issues: (1) Extended wear contact lenses, (2) background information on a monovision policy, (3) announcement on the use of nonpreserved and preserved salines with rigid gas permeable contact lenses, and (4) an update on the status of reclassification of daily wear contact lenses.

Closed committee deliberations. On October 29, 1993, the committee will discuss trade secret and/or confidential commercial information relevant to PMA's for contact lenses, surgical and diagnostic devices, and intraocular lenses. 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 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: September 16, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–23110 Filed 9–21–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of October 1993:

Name: HRSA AIDS Advisory Committee.

Time: October 5–6, 1993, 8:30 a.m.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20205.

The meeting is open to the public.

Purpose: The Committee advises the Secretary with respect to health professional

education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

Agenda: Discussions will be held concerning access to care issues of the Health Resources and Service Administration's AIDS programs and issues related to reauthorization of the Ryan White Comprehensive AIDS Resources and Emergency Act of 1990.

Anyone requiring information regarding the subject Committee should contact Pearl Katz, Ph.D., AIDS Program Office, Health Resources and Services Administration, room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4588.

Agenda Items are subject to change as priorities dictate.

Dated: September 16, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–23107 Filed 9–21–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–93–3661; FR–3566–C–03]

Task Force on Occupancy Standards in Public and Assisted Housing; Correction

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of publication of preliminary report; correction.

SUMMARY: On August 31, 1993 (58 FR 45905), the Department published in the **Federal Register**, a notice that announced the availability of the Preliminary Report for the Task Force on Occupancy Standards in Public and Assisted Housing. The purpose of this document is to correct the Field Office address for Anchorage, Alaska in Region X.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–0288 (voice) or (TDD) (202) 708–0113. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, in FR Doc. 93–20833, a Notice of publication of a Preliminary Report for the Task Force on Occupancy Standards in Public and Assisted Housing, published in the **Federal Register**, on August 31, 1993 (58 FR 45905), on page 45909, in the third column, at the top of the page, the following correction is made to the Field Office address for Anchorage, Alaska:

Region X (Seattle)

* * * * *

Field Offices

Anchorage Office, 949 East 36th Avenue, suite 401, Anchorage, AK 99508–4399, Telephone No. (907) 271–4170.

* * * * *

Dated: September 15, 1993.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 93–23119 Filed 9–21–93; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–942–03–4730–12]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., October 25, 1993.

The plat representing the dependent resurvey of portions of the subdivisional lines, subdivision of section 4, and the survey of Tract 39, T. 39 N., R. 1 W., Boise Meridian, Idaho, Group No. 862, was accepted, September 13, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: September 13, 1993.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–23216 Filed 9–21–93; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Prehearing Conference

In the Matter of certain anisotropically etched one megabit and greater drams, components thereof, and products containing such drams.

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on October 12, 1993, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: September 10, 1993.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 93–23225 Filed 9–21–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–354]

Certain Tape Dispensers; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Juan S. Cockburn, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: September 14, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93–23224 Filed 9–21–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–644 (Final)]

Welded Stainless Steel Pipe From Malaysia; Institution of Final Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–644 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Malaysia of welded stainless steel pipe of circular cross section, provided for in subheadings 7306.40.10 and 7306.40.50 of the Harmonized Tariff Schedule of the United States. Pursuant to a request from respondent, Kanzen Tetsu, the Department of Commerce has extended

the date for its final determination in the antidumping investigation of the subject products. Accordingly, the Commission's schedule for its final investigation reflects Commerce's decision to extend its final determination until January 21, 1994.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of welded stainless steel pipe from Malaysia are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 16, 1993, by Avesta Sheffield Pipe, Schaumburg, IL; Bristol Metals, Bristol, TN; Damascus Tubular Products, Greenville, PA; Trent Tube Division, Crucible Materials Corp., East Troy, WI; and the United Steelworkers of America.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on January 13, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 27, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 20, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 24, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 21, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is February 4, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 4, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: September 16, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–23226 Filed 9–21–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (93–41)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a fourth quarter 1993 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter RCAF (Unadjusted) is 1.025. The fourth quarter RCAF (Adjusted) is 0.847, an increase of 0.1 percent from the third quarter 1993 RCAF (Adjusted) of 0.846. Maximum fourth quarter 1993 RCAF rate levels may not exceed 100.1 percent of maximum third quarter 1993 RCAF rate levels.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: John C. Pertino,(202) 927–6229; Robert C. Hasek, (202) 927–6239, TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: September 15, 1993.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–23242 Filed 9–21–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 476X)]

CSX Transportation, Inc.—Abandonment Exemption—Letcher County, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 2.31 miles of rail line between milepost LVB–275.3, at Hot Spot, and milepost LVB–277.61, at Uz, in Letcher County, KY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 22, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 4, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 12, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by September 27, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–23241 Filed 9–21–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act and the Clean Water Act; United States v. Georgia-Pacific Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Georgia-Pacific Corporation*, Civil Action No. 92–0179–B–B, was lodged on September 9, 1993, with the United States District Court for the District of Maine. The proposed consent decree resolves the United States' claims under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the Clean Water Act, 33 U.S.C. 1251 *et seq.*, against Georgia-Pacific Corporation ("Georgia-Pacific") for violations of the company's federally enforceable air emission license and water discharge permit at its pulp and paper mill ("P&P Mill") in Woodland, Maine. Georgia-Pacific is alleged to have emitted carbon monoxide, sulfur dioxide, and nitrogen oxides in excess of its air license limitations and to have failed to comply with several monitoring provisions of its license. In addition, Georgia-Pacific is alleged to have exceeded the effluent limitations for total suspended solids and biological oxygen demand contained in its water permit.

The proposed consent decree requires Georgia-Pacific to pay a total civil penalty of $390,000 to the United States and the State of Maine, plus interest, accruing from the date of signature by Georgia-Pacific. The proposed decree also requires Georgia-Pacific to submit to EPA, for review and approval, an Operation and Maintenance Plan setting forth steps that Georgia-Pacific shall take to maintain and operate the pollution control equipment and continuous emissions monitoring systems for designated emissions sources at the P&P mill.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Georgia-Pacific Corporation* DOJ Ref. #90–5–2–1–1733.

The proposed consent decree may be examined at the office of the United States Attorney, 100 Middle St. Plaza, East Tower, Sixth Floor, Portland, Maine; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, 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 $4.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Peter R. Steenland,

Acting Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–23221 Filed 9–21–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Metropolitan Dade County et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Metropolitan Dade County, et al.*, Case No. Civ–93–1109–Moreno, was lodged on September 8, 1993 with the United States District Court for the Southern District of Florida. The consent decree settles a claim for injunctive relief brought against Metropolitan Dade County and the Miami-Dade Water and Sewer Authority under section 504(a) of the Clean Water Act, 33 U.S.C. 1364(a), and sets forth remedial measures that address the imminent and substantial endangerment to the health and welfare of persons presented by an aged and deteriorated force main that conveys untreated wastewater from the City of Miami under Biscayne Bay to a wastewater treatment plant located on Virginia Key, Florida.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Metropolitan Dade County, et. al.*, DOJ Ref. #90–5–1–1–4022.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Florida, 99 NE. 4th Street, Miami, Florida 33132; the Region IV Office of the United States Environmental Protection Agency, 345 Courtland Street, NE. Atlanta, Georgia 30365; 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 $15.50 (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. 93–23220 Filed 9–21–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; United States v. Mary Pagano et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Mary Pagano, David Peluchette, d/b/a Pagano Salvage Yard, Sandia Corporation, d/b/a Sandia National Laboratories and Myrtle Smith*, Civil Action No. CIV 93–1074JC, was lodged on September 9, 1993 with the United States District Court for the District of New Mexico. The proposed consent decree resolves claims brought by the United States under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607 and provides for payment by the defendants for all costs incurred and paid by the United States for the removal of hazardous wastes from the Pagano Salvage Yard Site located in Los Lunas, Valencia County, New Mexico.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Mary Pagano, David Peluchette, d/b/a Pagano Salvage Yard, Sandia Corporation, d/b/a Sandia National Laboratories and Myrtle Smith*, DOJ Ref. #90–11–2–559.

The proposed consent decree may be examined at the office of the United States Attorney, District of New Mexico, 625 Silver, SW., P.O. Box 607, Albuquerque, New Mexico 87103; the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 7502–2733; 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 $6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–23222 Filed 9–21–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 11, 1993, U.S. Drug Testing, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II

The firm plans to manufacture small quantities of the above substances to make drug test kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 22, 1993.

Dated: September 16, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–23183 Filed 9–21–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,889; Zebulon Manufacturing, Zebulon, GA

TA-W-28,686; Smarte Carte, Inc., West Bear Lake, MN

TA-W-28,686A; Smarte Carte, Inc., Chicago, IL

TA-W-28,819; Philips Lighting, Richmond, KY

TA-W-28,845; Michigan Capsule, Inc., Detroit, MI

TA-W-28,672; Allied Products, Allied Signal Automotive Friction Material, Troy, NY

TA-W-28,720; General Electric Co., Capacity & Power Protection, Fort Edward & Hudson Falls, NY

TA-W-28,872; Essex Garment Manufacturing Corp., Newark, NJ

TA-W-28,788; Schindler Elevator Corp., Hydraulic & Architectural Products Plant, Gettysburg, PA

TA-W-28,881; Rogge Forest Products, Inc., Banden, OR

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,837; Bear Creek Corp., Basket Weaving Dept., Medford, OR

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,864; Compuadd Computer Corp., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,940; Reichert Shake & Fencing, Inc., Toledo, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,865; Commonwealth Tobacco Co., Inc., Kenbridge, VA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,840 & TA-W-28,841; Mulberry Phosphates, Inc., Mulberry, FL & Piney Point Phosphates, Palmetto, Fl

U.S. imports of diammonium phosphates were negligible.

TA-W-28,867; Frenchtown Ceramics Co., Frenchtown, NJ

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-28,886; Eveleth Mines, Eveleth, MN

A certification was issued covering all workers separated on or after November 1, 1992.

TA-W-28,795; L & J Leather Coast & Jackets, Inc., New York, NY

A certification was issued covering all workers separated on or after March 11, 1992.

TA-W-28,934; Bryan Manufacturing Co., New Salem, PA

A certification was issued covering all workers separated on or after July 26, 1992.

TA-W-28,882; Aluminum Company of America, Wenatchee, WA

A certification was issued covering all workers separated on or after June 22, 1992.

TA-W-28,937: Aluminum Company of America, Badin, NC

A certification was issued covering all workers separated on or after July 26, 1992.

TA-W-28,877; Aluminum Company of America, Rockdale Operations Rockdale, TX

A certification was issued covering all workers separated on or after July 6, 1992.

TA-W-28,974; Ithaca Industries—Edison Plant, Edison, GA

A certification was issued covering all workers separated on or after August 17, 1992.

TA-W-28,958; Claxton Manufacturing, Claxton, GA

A certification was issued covering all workers separated on or after August 6, 1992.

TA-W-28,848; Aluminum Company of America, Warrick Operations, Newburgh, IN

A certification was issued covering all workers separated on or after June 11, 1992.

TA-W-28,797; H.F.S. Apparel Manufacturing, Inc., Weissport, PA

A certification was issued covering all workers separated on or after June 9, 1992.

TA-W-28,973; Springfield Sportswear/ Shamokin Industries, Coal Township, PA

A certification was issued covering all workers separated on or after August 11, 1992.

TA-W-28,947; Allied Products Corp., Richard Brothers Die & Prototype Div., Hillsdale, MI

A certification was issued covering all workers separated on or after July 21, 1992.

TA-W-28,950; Colonial Corporation of America, Division of Taren Holdings, Inc., Tracy City, TN

A certification was issued covering all workers separated on or after August 16, 1992.

TA-W-28,965; Colonial Corporation of America, Division of Taren Holdings, Inc., Woodbury, TN

A certification was issued covering all workers separated on or after July 30, 1992.

I hereby certify that the aforementioned determinations were issued during the month of September 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: September 15, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-23188 Filed 9-21-93; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93-63; Exemption Application No. D-9216, et al.]

Grant of Individual Exemptions; The Chicago Corporation (TCC), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Chicago Corporation (TCC) Located in Chicago, IL

[Prohibited Transaction Exemption 93-63; Exemption Application No. D-9216]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the sale, for cash or other consideration, by the Midwest Bank Fund III Group Trust (the Group Trust) in which employee benefit plans (the Plans) invest, of certain bank company securities (the Bank Company Securities) that are held in the Group Trust portfolio, to a party in interest with respect to a participating Plan where the party in interest proposes to acquire or merge with the bank company (the Bank Company) that issued such securities.

In addition, the restrictions of sections 406(a), 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (D) and (E) of the Code, shall not apply to the purchase by the Group Trust of certain Bank Company Securities from the Midwest Bank Fund L.P. (MBF I) and the Midwest Bank Fund L.P. II (MBF II), two entities organized by and affiliated with TCC, the investment manager of the Group Trust.

Further, the restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of a performance fee (the Performance Fee) to TCC by Plans participating in the Group Trust.

This exemption is subject to the following conditions as set forth below in Section II.

Section II. General Conditions

(1) Prior to the investment by each Plan in the Group Trust, each investment is approved by an Independent Plan Fiduciary.

(2) Each Plan investing in the Group Trust has total assets that are in excess of $50 million.

(3) No Plan shall invest more than 10 percent of its assets in units (the Units) of the Group Trust.

(4) No Plan invests more than 25 percent of its assets in investment vehicles (i.e., collective investment funds and separate accounts) managed or sponsored by TCC and/or its affiliates.

(5) Prior to making an investment in the Group Trust, (a) Each Independent Plan Fiduciary contemplating investing in the Group Trust receives a Private Placement Memorandum and supplement which describe all material facts concerning the purpose, structure and the operation of the Group Trust.

(b) An Independent Plan Fiduciary who expresses further interest in the Group Trust receives:

(1) A copy of the Group Trust Agreement outlining the organizational principles, investment objectives and administration of the Group Trust, the manner in which Trust shares may be redeemed, the duties of the parties retained to administer the Group Trust and the manner in which Group Trust assets will be valued; and

(2) A copy of the Investment Management Agreement describing the duties and responsibilities of TCC, as investment manager of the Group Trust, the rate of compensation that it will be paid and conditions under which TCC may be terminated.

(c) If accepted as an investor in the Group Trust, the Independent Plan Fiduciary is:

(1) Furnished with the names and addresses of all other participating Plans.

(2) Required to acknowledge, in writing, prior to purchasing Units in the Group Trust that such fiduciary has received copies of such documents. In addition, such Independent Plan Fiduciary will be required to acknowledge, in writing, to TCC that such fiduciary is (a) independent of TCC and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative and funding matters related thereto, and able to make an informed decision concerning participation in the Group Trust.

(6) Each Plan, including the trustee of the Group Trust (the Trustee) receives the following written disclosures from TCC with respect to its ongoing participation in the Group Trust:

(a) Within 90 days after the end of each fiscal year of the Group Trust as well as at the time of termination, an

annual financial report containing a balance sheet for the Group Trust as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual report will also disclose the fees that are paid or are accruable to TCC.

(b) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the Group Trust, an unaudited quarterly financial report consisting of at least a balance sheet for the Group Trust as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the fees that are actually paid to or accruable to TCC.

(c) Such other written information as may be needed by the Plans (including copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein) in order to comply with the reporting requirements of the Act and the Code. In addition, TCC will provide the Trustee with certain trading activity and portfolio status reports as required by Prohibited Transaction (PTE) 86–128 (51 FR 41686, November 16, 1986).

(7) At least annually, TCC holds a meeting of the participating Plans at which time the Independent Plan Fiduciaries of such Plans are given an opportunity to decide on whether the Group Trust, the Trustee or TCC should be terminated as well as discuss any aspect of the Group Trust and the agreements promulgated thereunder with TCC.

(8) During each year of the Group Trust, TCC representatives are available to confer by telephone or in person with Independent Plan Fiduciaries on matters concerning the Group Trust.

(9) The terms of all transactions that are entered into on behalf of the Group Trust by TCC remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the Group Trust are based upon independent market quotations or determinations made by an independent appraiser (the Independent Appraiser).

(10) The Group Trust does not acquire Bank Company Securities from MBF I and/or MBF II unless (a) 100 percent of the Plans investing in the Group Trust and in the MBF III Limited Partnership approve of the purchase and (b) the Independent Appraiser confirms that TCC's recommended purchase price conforms to fair market value.

(11) In the case of the sale by the Group Trust of Bank Company Securities to a party in interest with respect to a participating Plan, the party in interest is not TCC, any employer of a participating Plan, or any affiliate thereof, and the Group Trust receives the same terms as is offered to other shareholders of the Bank Company.

(12) The total fees paid to TCC and its affiliates constitute no more than reasonable compensation.

(13) TCC's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses. In this regard,

(a) The Performance Fee is paid after December 31, 1998, which is the completion of the acquisition phase (the Acquisition Phase) of the Group Trust but not until participating Plans have received distributions equal to 100 percent of their capital contributions made to the Group Trust.

(b) Prior to the termination of the Group Trust, no more than 75 percent of the Performance Fee credited to TCC is withdrawn from the Group Trust.

(c) The Performance Fee account established for TCC is charged with realized gains and losses, net unrealized losses and fee payments.

(d) No portion of the Performance Fee is withdrawn if the Performance Fee account is in a deficit position.

(e) TCC repays all deficits in its Performance Fee account and it maintains a 25 percent cushion in such account.

(14) Either TCC or the Trustee, on behalf of the Plans participating in the Group Trust, may terminate the Investment Management Agreement at any time pursuant to the provisions in such agreement.

(15) TCC maintains, for a period of six years, the records necessary to enable the persons described in paragraph (16) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of TCC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than TCC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (16) below.

(16)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (15) of this section are unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(4) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (16) are authorized to examine the trade secrets of TCC or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(1) An "affiliate" of TCC includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TCC. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(b) Any officer, director or partner in such person, and

(c) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(2) An "Independent Plan Fiduciary" is a Plan fiduciary who is independent of TCC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of Units in the Group Trust or an investment manager.

(3) The "bid price" reflects the closing bid price for a Bank Company Security and it does not include any bids that are made by TCC and/or its affiliates.

Temporary Nature of Exemption

The Department has determined that this exemption will be temporary in nature and, unless extended pursuant to timely application, will expire eight years from the date of publication, in the **Federal Register**, of the notice granting the proposed exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on June 2, 1993 at 58 FR 31419.

EFFECTIVE DATE: This exemption is effective as of March 31, 1993.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The written comment, which was submitted by TCC, requested clarifications and modifications to the Notice or raised questions concerning it. Following is a discussion of TCC's comments including the Department's response with respect thereto.

TCC wishes to clarify certain information pertaining to dates appearing in the Notice. For instance, TCC states that the Acquisition Phase for the Group Trust will end on December 31, 1998 rather than on March 31, 1999 as is set forth in several parts of the Notice, particularly in (1) Section II(13)(a), (2) the last sentence of Representation 12, (3) Representation 19(b)(2), (4) Footnote 19 and (5) Representation 25(l)(1). Although TCC acknowledges that the time frames specified in the Notice are longer than the time frames appearing in Group Trust Agreement and Investment Management Agreement, it advises that it must adhere to the December 31, 1998 date stipulated in these agreements which it entered into with Plan investors.

TCC also wishes to establish the intended duration of the Group Trust. For example, TCC represents that the second sentence of the second paragraph of Representation 6 of the Notice states that the Group Trust will have an eight year duration. In addition, TCC explains that Representation 21(c) of the Notice stipulates that the termination date for the Group Trust is March 31, 2001. TCC points out that Section 9.02(a) of the Group Trust Agreement requires that the Group Trust terminate on December 31, 2001 rather than on March 31, 2001. To avoid creating the impression that the scheduled termination date is anything other than December 31, 2001, TCC suggests that the text of the Notice be modified.

The Department has no objection to the foregoing changes that have been suggested by TCC and it hereby incorporates these modifications by reference into the Notice.

TCC represents that Section II(4) of the General Conditions of the Notice states that no Plan will invest more than 25 percent of its assets in investment vehicles (i.e., collective investment funds and separate accounts) that are managed or sponsored by TCC and/or its affiliates. TCC asks whether this condition is an initial condition which is applicable only at the time the investment is made, transactional (i.e., applicable only when the exemption is utilized) or a condition that must always be fulfilled. If the condition must always be fulfilled, TCC wonders what will happen if the percentage is somehow exceeded through no fault of TCC.

The Department agrees that there may be circumstances when, through no fault of its own, such as through the appreciation in the value of Bank Company Securities managed or sponsored by TCC, a Plan investor may exceed the 25 percent threshold for investment in TCC-sponsored funds or separate accounts. Therefore, for purposes of the exemption, the Department wishes to clarify that the 25 percent investment limitation does not apply to appreciation that may be attributed to a Plan's holdings in the Group Trust or in other TCC investment vehicles. However, in the event this situation arises, the Department cautions that a Plan investor may not purchase additional Units in the Group Trust and thereby increase the Plan's investment holdings with TCC beyond the overall limitation prescribed.

TCC requests clarification regarding the first sentence in the second paragraph of Representation 13. This sentence states:

> In general, the Investment Management Agreement permits TCC to allocate securities transactions to itself in the capacity of an agent.

If taken in this context, TCC believes that this sentence is concerned exclusively with brokerage transactions and the consequent commissions. However, TCC explains that use of the term "securities transactions" introduces an element of ambiguity. For example, the sentence may be interpreted to imply that TCC is permitted to allocate acquisition opportunities to itself, which is a power that TCC does not possess. The Department wishes to clarify this sentence and notes that it should be interpreted to apply solely to those situations wherein TCC utilizes itself in connection with brokerage services to the Group Trust.

Representations 20 (c) and (d) of the Notice state that TCC will not receive the Performance Fee if (1) it declares a non-justified termination (the Non-Justified Termination); or (2) the trustee of the Group Trust (the Trustee) declares a justified termination (the Justified Termination). TCC suggests that the Department clarify the language of these representations by adding the words "Investment Management Agreement" to each clause so as to identify the agreement from which these provisions are derived. If modified, as TCC has recommended, Representations 20(c) and 20(d) would then read as follows:

> "20. * * * (c) If TCC declares a Non-Justified Termination at any time, it will receive no Performance Fee under the terms of the Investment Management Agreement.
>
> (d) If the Trustee, on behalf of the Group Trust, declares a Justified Termination at any time, TCC will receive no Performance Fee under the terms of the Investment Management Agreement * * *."

The Department concurs with this comment and accordingly modifies Representations 20(c) and 20(d) of the Notice in the manner suggested by TCC. The Department also wishes to point out that the terms of the Investment Management Agreement would control the payment, by the Group Trust, of the Performance Fee to TCC in the event of a Non-Justified or Justified Termination as well as any disputes that may arise thereunder.

Representation 21 of the Notice states that the Group Trust's scheduled life may be extended upon a two-thirds vote of beneficiaries, "but only if TCC receives another exemption from the Department." TCC states that it does not understand why it needs another exemption to extend the life of the Group Trust. TCC is, however, aware of the fact that if the exemption has expired, any period of extended life would not be covered by an exemption unless the same is reapplied for and renewed. If Plan investors are willing to live without an exemption (i.e., by restricting their activities) TCC wonders why a new exemption must be a condition precedent to extending the life of the Group Trust.

The Department agrees that the extension of the Group Trust need not necessarily be preconditioned upon the granting of a new exemption. However, the Department also would point out that to the extent prohibited transactions occur after the extension of the Group Trust, such transactions would not be covered by this exemption which will expire within eight years following the publication of this grant notice in the **Federal Register**. Therefore, in the absence of a new exemption, a party in interest who engages in prohibited transactions with the Group Trust would not be protected from any potential liability.

TCC notes that the first sentence of Representation 24 describes the transaction where a Bank Company makes a merger or acquisition offer for another Bank Company whose securities are held in the Group Trust's portfolio.

TCC states that a technical prohibited transaction may exist if the Bank Company is a party in interest with

respect to a Plan investing in the Group Trust. However, Representation 24 indicates that the exemption is available only if the acquiring Bank Company is not a fiduciary to the Plan that has invested in the Group Trust.

TCC asserts that it does not understand why it should make a difference whether the acquiring Bank Company is a fiduciary or some other type of party in interest to a Plan investor. TCC explains that the Group Trust will never have more than a minority interest in a Bank Company Portfolio. In addition, TCC deems it unlikely that it or the investing Plan will have any role in the negotiating, timing or pricing of the acquisition or merger. TCC further explains that the Group Trust will receive the same consideration as the majority owners of the Bank Company. Thus, TCC requests that the Department extend this exemption to all such mergers or acquisitions, regardless of whether the acquiring Bank Company is a fiduciary or a party in interest.

In response to TCC's comment, the Department has determined that a Plan fiduciary that is a Bank Company may participate in a merger or acquisition transaction under the exemption. However, the Department advises that such fiduciary may not have any involvement in the transaction on behalf of the Group Trust. Thus, such fiduciary may not exercise investment discretion with respect to the Group Trust's decision to sell Bank Company Securities to it, as purchaser.

Accordingly, after a consideration of the entire exemption record, including the written comment provided by TCC, the Department has decided to grant the proposed exemption as described herein.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

Heritage Pullman Bank Employees' Profit Sharing Plan (the Plan) Located in Chicago, IL

[Prohibited Transaction Exemption 93–64; Application No. D–9276]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of certain notes (collectively, the Notes) to Heritage Pullman Bank (Heritage Pullman), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The Sale is a one-time cash transaction;

(b) The Plan is not required to pay any commissions, fees, or other expenses in connection with the Sale;

(c) The Notes are appraised by a qualified, independent appraiser; and

(d) the sales price for the Notes is based upon an amount representing the greater of each Note's outstanding principal balance or each Note's fair market value as of the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 20, 1993 at 58 FR 38790.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Analex Corporation (Analex), Analex Corporation Retirement Plan (the Plan) Located in Brookpark, OH

[Prohibited Transaction Exemption 93–65; Application No. D–9371]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the series of loans (the Loans) to be made, during a period of five years, from the Plan to Analex (the Employer), the Plan's sponsor and, as such, a party in interest with respect to the Plan; subject to the following conditions:

(1) All terms and conditions of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) The amount of the Plan's assets involved in the Loans does not exceed 15% of the Plan's total assets at any time during the transaction;

(3) The Loans will at all times be secured by collateral which is valued at not less than 200% of the aggregate balance of all outstanding Loans from the Plan to the Employer;

(4) Prior to each disbursement under the Loan agreement, an independent, qualified fiduciary must determine on behalf of the Plan that the Loans are in the best interests of the Plan as an investment for the Plan's portfolio, and protective of the Plan and its participants and beneficiaries;

(5) The independent, qualified fiduciary will conduct a review of the terms and conditions of the exemption and the Loans, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 15% of Plan assets maximum loan amount, prior to approving each disbursement under the Loan agreement;

(6) The fiduciary will monitor the Loans throughout the exemption to ensure compliance with the terms and conditions of the exemption and the Loans; and

(7) The fiduciary is authorized to take whatever action is appropriate to protect the Plan's rights throughout the duration of the exemption and throughout the duration of any Loan granted pursuant to the exemption.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years from the date the exemption is granted with respect to the making of any Loan. Subsequent to the expiration of the exemption, the Plan may continue to hold any Loans originated during the proposed five year exemption period; provided that none of the Loans have a term exceeding five years.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 20, 1993 at 58 FR 38792.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

The Stephen B. Swartz 1992 Profit Sharing Plan (the Plan) Located in Minneapolis, MN

[Prohibited Transaction Exemption 93–66; Exemption Application No. D–9253]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the (1) proposed sale to the Plan, for the total cash consideration of $119,000, of certain improved real property (the Property) by Stephen B. and Harriet K. Swartz, who are disqualified persons with respect to the Plan; and (2) the contemporaneous leasing of the Property by the Plan to the Swartzes under the provisions of a written lease (the Lease).[1]

This exemption is conditioned on the following requirements: (1) the terms of

[1] Because Mr. Swartz is the Plan sponsor and the sole participant in the Plan, there is no jurisdiction under title I of the Act. However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

the transactions are at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated party; (2) the acquisition price that is paid by the Plan for the Property is not more than the independently appraised value of the Property; (3) the Property represents less than 25 percent of the Plan's assets; (4) the Plan is not required to pay any real estate fees or commissions in connection with its purchase of the Property; (5) the rental amount under the Lease is based upon the fair market rental value of the Property as determined by a qualified, independent appraiser; (6) the rental amount is adjusted by the Plan trustee (the Trustee) during every third year of the Lease to the higher of the original rental amount or the fair market rental value of the Property as determined by an independent appraiser who has been selected by the Trustee; and (7) the Swartzes incur all real estate taxes and other costs that are associated with the Property and which are incident to the Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 13, 1993 at 58 FR 43135.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Anesthesia Associates of Kansas City, Inc. Profit Sharing Plan (the Plan) Located in Kansas City, MO

[Prohibited Transaction Exemption 93–67; Application No. D–9401]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale (the Sale) from Arthur P. Vogel, M.D.'s (Dr. Vogel) individually-directed account (the Account) in the Plan of certain stock (the Stock) to Dr. Vogel, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The Sale is a one-time cash transaction;

(b) The Plan is not required to pay any commissions, costs or other expenses in connection with this transaction;

(c) The Stock is appraised by a qualified, independent appraiser; and

(d) The sales price for the Stock reflects its fair market value on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 3, 1993 at 58 FR 41497.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of September, 1993.

Ivan Strasfeld,

Director of Exemption Determinations; Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 93–23219 Filed 9–21–93; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9406, et al.]

Proposed Exemptions; The UIU Health and Welfare Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the

Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The UIU Health and Welfare Plan (the Plan) Located in Philadelphia, Pennsylvania

[Application No. D–9406]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to: (1) The lending of $3 million by the United Steelworkers of America (the USWA) to the Plan; (2) the guarantee by the USWA of the repayment of certain deferred premiums owed by the Plan to Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield (BCBS); (3) the guarantee by the USWA of a $9.5 million loan made to the Plan by the Integra National Bank/Pittsburgh (Integra); and (4) the granting of a security interest by the Plan to the USWA in the Plan's building and property (the Property) or in the proceeds from the sale of the Property, in connection with the above-described extensions of credit, provided the following conditions are satisfied: (a) the loan and the extensions of credit were obtained by the Plan to enable it to satisfy its past, present and future benefit obligations; (b) the terms of the loan and extensions of credit are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) an independent consulting firm, the Segal Company (Segal), has reviewed the subject transactions and has determined that they are appropriate for the Plan; and (4) the Plan's trustees have determined that the transactions are appropriate for the Plan and in the best interest of its participants and beneficiaries.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 1, 1992.

Summary of Facts and Representations

1. The USWA is a labor organization that represents nearly all of the Plan's participants for purposes of collective bargaining. The Plan is a self-funded, multiemployer welfare benefits plan which, as of December 31, 1991, provided coverage to approximately 22,000 participants, had liabilities of approximately $30 million and approximately $19 million in assets. The Plan's Board of Trustees is appointed by the Upholsterers International Union (the UIU). The UIU is a division of the USWA.

2. By the fall of 1991, the Plan had paid out its entire cash reserve and was operating at a cash deficit. Without outside assistance, past, current and anticipated health care benefits to Plan participants and beneficiaries could not have been provided. In order to avoid this problem, the Plan negotiated an agreement with BCBS under which BCBS has provided health insurance coverage for all participants for health care costs incurred beginning November 1, 1991.

3. As part of the agreement, BCBS also deferred payment by the Plan to it of premiums for the months of November and December, 1991. The Plan's trustees believed that these premium deferrals would enable the Plan to cover all or nearly all unpaid health care costs incurred prior to November 1, 1991. However, BCBS was not willing to enter into such an arrangement without significant backing from the USWA. BCBS's participation in the arrangement was contingent on the USWA advancing $3 million to be applied to reduce the amount of the deferred premium. Accordingly, pursuant to an agreement effective November 1, 1991, the USWA agreed to pay BCBS the $3 million requested. In turn, the Plan agreed to repay the USWA the $3 million (advanced to BCBS by the USWA) by December 31, 1998 in monthly installments pursuant to an understanding that the Plan could postpone payments due for any month during the first year of the agreement.

4. To secure the USWA's $3 million advance to BCBS, the Plan has provided the USWA with a security interest in the Property (or the proceeds from the Property if sold). The Property consists of the Plan's building and real property located at 25 North Fourth Street in Philadelphia, Pa. At the time of the $3 million advance, the Property had been appraised as having a fair market value of $3.1 million. However, efforts by the Plan to sell the Property yielded only offers which were significantly less than the appraised value. On June 2, 1993, the Plan sold the Property, after it had been on the market for many months, to an unrelated party, for approximately $1.1 million. The proceeds from the sale have been placed in an interest bearing account. As with the Property before, the USWA has a security interest in the proceeds. This security interest is subordinated to the interest of Integra in connection with a $9.5 million loan (the Integra Loan; see rep. 10, below).

5. Prior to the negotiation of the Integra Loan, the terms of the $3 million loan provided that interest payments would be made at a fixed rate: for 1992, 1993 and 1994, of seven and one-half percent (the prime rate as of December 13, 1991); for 1995 and 1996, of the average prime rate for 1994; and for 1997 and 1998, the average prime rate for 1996. These rates were selected through consultations between the Plan and the USWA. The rates were designed never to exceed the average prime rate for a given year. Thus, the applicant represents that the USWA and the Plan were assured to have established a rate that was better than or equal to the rate any customer would get from a bank in an arm's-length transaction, let alone an uncreditworthy customer such as the Plan. However, pursuant to the terms of a subsequent agreement, the Plan was provided with the option to elect to forego the fixed rate and pay instead interest calculated on the basis of the rates provided for in the Integra Loan. The Plan made this election. The applicant represents that these rates are even more favorable to the Plan, because these rates are more favorable than those commercially available to other creditworthy customers (see rep. 9, below).

6. The applicant represents that no interest has yet been paid by the Plan to the USWA on the $3 million loan,[1] and

[1] The agreement between the USWA and the Plan provided that no interest would be chargeable under any circumstances for the period of the loan prior to January 1, 1992. For the period beginning January 1, 1992, the Plan and the USWA agreed that interest would be paid after a prohibited transaction exemption was obtained from the Department.

accordingly, the loan has been exempt from the prohibited transaction restrictions of section 406 of the Act by reason of Prohibited Transaction Exemption 80–26 (PTE 80–26, 45 FR 28545, April 29, 1980).[2] However, the applicant has requested an exemption to permit the Plan to pay interest to the USWA on this loan at the Integra Loan rate, as the Plan's trustees have elected, effective January 1, 1992.

7. In addition to the $3 million advance, the agreement between the USWA and BCBS requires the USWA to guarantee the repayment of the deferred premiums by the Plan in the event of the termination of the agreement between the Plan and BCBS for non-payment of premiums or because the number of groups covered by the Plan declines below a certain level. The USWA guarantee will be restricted to $6 million during the second half of the 1993 calendar year, $5 million during the first half of the 1994 calendar year, $4.5 million during the second half of the 1994 calendar year, $4 million during the first half of the 1995 calendar year and $3.5 million during the second half of the 1995 calendar year. The guarantee does extend beyond the 1995 calendar year.

8. In consideration for this guarantee, the Plan has conveyed to the USWA a security interest in the Property (or the proceeds from its sale, if sold) to protect the USWA in the event it is required to make payments on the guarantee. This is the same security interest, described in rep. 4, above, that is securing the USWA's $3 million payment to BCBS. The security interest is now in the proceeds from the sale of the Property (see rep. 4, above). However, in no event would the value of the security interest provided to the USWA by the Plan exceed the value of the USWA's guarantee.

9. The number of groups participating in the Plan declined greatly in 1991, and the deferred premium arrangement described in rep. 3, above, did not generate sufficient funds to resolve the Plan's liabilities with respect to benefit claims which were incurred prior to November 1, 1991. On the contrary, the Plan needed an additional $9.5 million to reimburse or settle these claims. The Plan's assets were insufficient either to pay these claims or to provide security for a commercial loan of this magnitude.

10. Two commercial lenders were willing to provide substantial loans to the Plan at favorable interest rates if a third party with sufficient assets would guarantee the loans and pledge assets in support of that guarantee. The USWA agreed to post collateral on behalf of the Plan and to guarantee a $9.5 million loan. Consequently, on May 1, 1992, the Plan obtained the Integra Loan (see rep. 4, above) for $9.5 million at the following rates: (1) For loan amounts up to the aggregate face amount of certificates of deposit pledged by the USWA, the respective rates of the certificates of deposit plus one and three-quarters percent; or (2) for loan amounts in excess of the aggregate face amount of certificates of deposit pledged to Integra by the USWA, the prime rate less one percent. Integra has represented that the rate granted to the Plan for this loan was more favorable than normal for commercial loans made by Integra, due to the guarantee and security posted by the USWA. Integra also obtained a security interest in the Property (or the proceeds from its sale) and an agreement subordinating the USWA's interest in the Property (or the proceeds).

11. In the event that the Plan defaults on its obligation to Integra and the USWA is required to make any payment to Integra on behalf of the Plan, such payment will be considered a loan to the Plan by the USWA. The Plan will execute a note recognizing its obligation to repay the loan principal to the USWA. The Plan has agreed to pay the USWA interest on such loan at the same rate as that charged by Integra on the defaulted loan. Such loan, like the advance and the guarantee described above, will be secured with the proceeds from the sale of the Property. The applicant represents that the proceeds from the sale of the Property is the only current or intended collateral for the loan and guarantees provided by the USWA to the Plan, and the USWA will not seek additional collateral from the Plan in the future, regardless of the future performance of the loan and guarantees.

12. The applicant represents that with respect to the subject transactions, the Plan's trustees have obtained terms that were at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party. The formula arrived at to set interest rates and the methods determined to secure the loan and the guarantee were both negotiated and designed to accomplish the goal of protecting the interests of the Plan. To confirm this, the trustees retained Segal, an independent consulting firm, to evaluate the subject transactions. In its report, Segal concluded that the Plan could not have obtained credit from other sources at more favorable terms if, in fact, any credit of this magnitude could have been obtained at those times because of the financial condition of the Plan. The applicant represents that the subject transactions provide below-market loans with favorable security features to the Plan.

13. In summary, the applicant represents that the subject transactions satisfy the criteria of section 408(a) of the Act because: (a) The subject transactions permit the Plan to maintain current and anticipated health care and welfare benefits and to satisfy past benefit liabilities; (b) the terms of the loan and the extensions of credit are at least as favorable to the plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the Plan's trustees have determined that the subject transactions are appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries; and (d) an independent consulting firm, Segal, has reviewed the subject transactions and has determined that they are in the interest of the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Robert W. McCurdy Medical Corporation Pension Plan and Trust (the Plan) Located in Anderson, Indiana

[Application No. D–9452]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed sale (the Sale) from Robert W. McCurdy, M.D.'s (Dr. McCurdy) individually-directed account (the Account) in the Plan of certain properties (the Property) to Dr. McCurdy, a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plan is not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Property is appraised by a qualified, independent appraiser; and (4) the sales price for the Property is the greater of: (a) the original

[2] In this proposed exemption, the Department expresses no option as to whether the $3 million loan has been exempt by reason of PTE 80–26.

amount paid by the Account for the Property at the time of acquisition plus capital improvement expenses; or (b) its fair market value on the date of the Sale.

Summary of Facts and Representations

1. Robert W. McCurdy Medical Corporation (the Employer) sponsors the Plan, which is a profit sharing plan. As of October 21, 1992, the Plan had three (3) participants, one of whom is Dr. McCurdy. The Plan provides for individually-directed accounts by participants. As of December 31, 1991, the Plan had total assets of $1,731,180 and the Account had total assets of $1,582,593.06. Dr. McCurdy is the sole trustee of the Plan and the sole shareholder of the Employer.

2. Between the years of 1974 through 1989, the Account purchased various parcels of farm land (the Original Purchase) from unrelated parties for $939,345. The Original Purchase consisted of 510 acres of farm land as well as two (2) single-family dwellings (the Dwellings) located thereon. Subsequently, the Account sold thirty-two (32) acres of the Original Purchase along with the Dwellings to unrelated parties for $162,213. The Property is comprised of the remaining 479 acres of the Original Purchase, which consists of thirteen (13) separate parcels of tillable farm land located in Madison and Delaware counties in the state of Indiana. Dr. McCurdy represents that he owns three parcels of land that are adjacent to the Property. To date, the Account has paid for all costs relating to the Property, including maintenance, taxes and other expenses in the amount of $35,833 and capital improvements in the amount of $12,620. The resulting cost basis of the Property is $798,525. Dr. McCurdy represents that the Account purchased the Property as an investment in hopes that the land would appreciate greatly in value. Dr. McCurdy further represents the Account contracts with an individual to grow grain on the Property. The Account pays for the seed, fertilizer, and chemicals and receives all the proceeds from the sale of grain.

A recent Internal Revenue Service (IRS) audit of the Plan determined that the Plan is liable for unrelated business income tax (UBIT) resulting from farming activity on the Property. Dr. McCurdy represents that the Account cannot pay both its present expenses and the UBIT out of its present cash flow.

3. In order that the Account may utilize its funds in an alternative investment, Dr. McCurdy requests an administrative exemption from the Department to purchase the Property for cash from the Account for its fair market value on the date of the Sale. Because the Sale would be between Dr. McCurdy and the Account, the accounts of the other Plan participants would not be affected. The Plan will not be required to pay any commissions, costs or other expenses in connection with this transaction.

4. Messrs. Carl C. Chambers and G. Clark Harrison (the Appraisers) of F.C. Tucker/O.C. Clark, Realtors appraised the Property (the Appraisal). Mr. Chambers and Mr. Harrison's qualifications include thirty-one (31) and nineteen (19) years, respectively, of experience as licensed real estate brokers in the State of Indiana and twenty-nine (29) and twenty-six (26) years, respectively, of appraising experience. The Appraisers represent that both they and F.C. Tucker/O.C. Clark, Realtors are unrelated to and independent of the Employer.

5. In determining the fair market value of the Property, the Appraisers relied on the Sales Comparison approach and concluded that as of March 10, 1993, the fair market value of the Property was $627,974. The Appraisal provided comparisons to seven (7) parcels of farm land located within Madison and Delaware counties. In a letter of July 13, 1993, Mr. Chambers considered the applicability of a premium on the fair market value of the Property and concluded that no premium was justified. Based upon the Appraisal, the fair market value of the Property does not exceed the original amount paid by the Plan for the Property at the time of acquisition plus capital improvements, so the Account will sell the Property to Dr. McCurdy for a sales price of $798,525.

6. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Sale will represent a one-time cash transaction; (b) the Plan will not be required to pay any commissions, costs or other expenses in connection with the transaction; (c) the Property has been appraised by a qualified, independent appraiser and (d) the sales price for the Property is the greater of: (a) the original amount paid by the Account for the Property at the time of acquisition plus capital improvements expenses; or (b) its fair market value on the date of the Sale.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Gary Tax Advantaged Savings Program and Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Application No. D–9385]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of a certain "net profits" interest (the Interest) from the Plan to Bloomfield Refining Company (Bloomfield), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Interest is established by an appraiser independent of any employers contributing to the Plan or affiliates;

2. Bloomfield pays no less than the greater of $173,756 or the fair market value of the Interest at the time of sale;

3. The sale is a one-time transaction for cash; and

4. The Plan pays no commissions or other expenses and capital expenditures. The Plan has paid no expenses in regard to the sale.

Summary of Facts and Representations

1. The Gary-Williams Company (Gary-Williams) and its affiliated companies are engaged in the business of oil and gas exploration, production and refining. In addition to Gary-Williams, the affiliated companies contributing to the Plan are the Gary-Williams Energy Corporation and Bloomfield. Gary-Williams is the administrator for the Plan. The Plan is a profit sharing plan which had approximately 140 participants and beneficiaries and total assets of $11,406,460 as of December 31, 1992.

2. The Interest is a "net profits" interest in the Bluebell Gas Plant (Bluebell). The Interest was acquired in 1968 (prior to passage of the Act) by the Plan, which at that time was maintained by a predecessor to the present Plan sponsors. The current Plan fiduciaries believe that the Interest was contributed to the Plan by a former Plan sponsor. Bluebell is located in Duchesne County, Utah, and processes gas from wells in the Bluebell Field. The Interest is a percentage of net profits which reflect

the cash flow of Bluebell, taking account of all income and sales proceeds as well as all expenses and capital expenditures. The Plan has paid no expenses in regard to the holding of the Interest since the time of its acquisition by the Plan.

Bloomfield owns a 47.8 percent interest in Bluebell. The interest owned by Bloomfield is a working interest as opposed to a net profits interest. No other contributing employer or affiliates or officers thereof own any working or net profits interest in Bluebell.

3. The Plan obtained an appraisal of the Interest on December 11, 1992, supplemented by letters dated June 2 and August 7, 1993, from Jack A. McCartney (McCartney) of McCartney Engineering, Inc., a firm of consulting petroleum engineers located in Denver. The applicant represents that McCartney is independent of the Plan and all the contributing employers. McCartney estimated the remaining reserves and future net revenue attributed to the Interest, and noted that gas production rates from the Bluebell wells are declining. Also, McCartney stated that an advantageous gas sales contract for prices above market prices ended in 1992. Accordingly, the estimated fair market value of the Interest was $173,756 as of December 31, 1992.

4. The Plan now desires to achieve the liquidity necessary to allow investments on an individually directed basis in accordance with section 404(c) of the Act and the regulations issued thereunder (29 CFR 2550.404c–1). Accordingly, the Plan proposes to sell the Interest to Bloomfield. The sale will be a one-time transaction for cash. Bloomfield will pay no less than the greater of $173,756 or the fair market value of the Interest at the time of sale, based on an updated independent appraisal by McCartney. The Plan will incur no expense in connection with the transaction.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The fair market value of the Interest will be established by an appraiser independent of the contributing employers; (2) Bloomfield will pay no less than the greater of $173,756 or the fair market value of the Interest at the time of sale; (3) the sale will be a one-time transaction for cash; and (4) the sale will enable the Plan to enhance its liquidity so as to permit individually directed investments.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of September, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 93–23218 Filed 9–21–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Move of the Cartographic and Architectural Branch of the Nontextual Archives Division to the New National Archives Facility in College Park, MD

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of closure and reopening of reference services for holdings of the Cartographic and Architectural Branch related to the move to the National Archives at College Park (Archives II).

SUMMARY: This notice provides information about the period of time that reference service on certain holdings of the National Archives staff from their current location in the Pickett Street Facility to the new Archives II facility. Additional notices will be published by NARA relating to the move of other holdings to Archives II.

Between November 1993, and February 1994, the Cartographic and Architectural Branch (NNSC) of the Nontextual Archives Division will close its research room and suspend reference services (requests for reproductions and reference inquiries) in its current location; move its records, staff, and equipment to the new building; and then resume reference services and open its new research room in The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

During the periods shown on the following schedule, the branch will be unable to process requests for reproductions (fee orders) or requests for information, and the research room in which its holdings are made available to researchers will be closed. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for resumption of reference service. Changes in the overall move schedule may require changes in these dates.

Activity	Date
Stop accepting fee orders	11/12/93
Resume accepting fee orders	2/1/94
Stop accepting phone, mail, and fax reference inquiries	11/26/93
Resume accepting phone, mail, and fax reference inquiries	2/1/94
Close current research room	11/26/94
Open new research room at Archives II	2/1/94

FOR FURTHER INFORMATION CONTACT: For schedule updates, call the Cartographic and Architectural Branch at (703) 756–6700, or Debra Wall at 202–501–5445.

Dated: September 15, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–23148 Filed 9–21–93; 8:45 am]

BILLING CODE 7515–01–M

Move of the Nixon Presidential Materials Staff of the Office of Presidential Libraries to the New National Archives Facility in College Park, MD

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of closure and reopening of reference services for holding of the Nixon presidential materials staff related to the move to the National Archives at College Park (Archives II).

SUMMARY: This notice provides information about the period of time that reference services on certain holdings of the National Archives will be unavailable due to the move of those holdings and the associated National Archives staff from their current locations in the Pickett Street Facility to the new Archives II facility. Additional notices will be published by NARA relating to the move of other holdings to Archives II.

Between October 1993, and January 1994, the Nixon Presidential Materials Staff (NLNP) of the Office of Presidential Libraries will close its research room and suspend reference services (requests for reproductions and reference inquiries) in its current location; move its records, staff, and equipment to the new building; and then resume reference services and open its new research room in the National Archives at College Part, 8601 Adelphi Road, College Park, MD 20740–6001.

During the periods shown on the following schedule, the staff will be unable to process requests for reproductions (fee orders) or requests for information, and the research room in which its holdings are made available to researchers will be closed. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for resumption of reference service. Changes in the overall move schedule may require changes in these dates.

Activity	Date
Stop accepting fee orders	10/15/93
Resume accepting fee orders	1/3/94
Stop accepting phone, mail, and fax reference inquiries	10/29/93
Resume accepting phone, mail, and fax reference inquiries	1/3/94
Close current research room	10/29/93
Open new research room at Archives II	1/3/94

FOR FURTHER INFORMATION CONTACT: For schedule updates, call the Nixon Presidential Materials Staff at (703) 756–6498.

Dated: September 14, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–23145 Filed 9–21–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge and Advancement 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 Challenge and Advancement Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 27, 1993 from 10 a.m. to 4 p.m., in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics will include an open discussion and a guideline review.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting 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, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: September 15, 1993.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–23151 Filed 9–21–93; 8:45 am]

BILLING CODE 7537–01–M

Challenge and Advancement 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 Challenge and Advancement Advisory Panel (Advancement Phase II Grant Panel Section) to the National Council on the Arts will be held on October 6–7, 1993 from 10 a.m. to 5:30 p.m. on October 6, 1993, and from 9 a.m. to 3 p.m. on October 7, 1993. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10 a.m. to 10:30 a.m. on October 6, 1993 for introductions and a brief Advancement overview discussion.

The remaining portions of this meeting from 10:30 a.m. to 5:30 p.m. on October 6, 1993 and 9 a.m. to 3 p.m. on October 7, 1993 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, TYY 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 Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: September 15, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–23152 Filed 9–21–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322]

Environmental Assessment and Finding of No Significant Impact; Long Island Power Authority Shoreham Nuclear Power Station

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the emergency preparedness requirements of 10 CFR 50.54(q) to the Long Island Power Authority (LIPA or the licensee) for the Shoreham Nuclear Power Station (SNPS), pursuant to the requirements of 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The exemption will delete the requirement to maintain and implement the "Shoreham Nuclear Power Station Defueled Emergency Preparedness Plan." SNPS is permanently shut down and all the fuel assemblies are currently stored in the spent fuel storage pool. At the time of the plant's final shutdown (June 1987), the average fuel burnup was calculated to be approximately two effective full-power days. Because the fuel heat decay rate is low (220 watts), active cooling of the fuel is not required. Currently, LIPA has entered into a contract with Philadelphia Electric Company to sell the fuel, and anticipates initial fuel transfer to begin in September 1993, and be completed by December 1994.

In addition, on July 31, 1990, LIPA was granted partial relief from the requirements of 10 CFR 50.54(q). The July 31, 1990, exemption granted LIPA relief from the requirements to maintain off-site emergency response capability, and the SNPS Defueled Emergency Preparedness Plan (DEPP) was implemented to address on-site emergency response. LIPA is currently requesting an exemption from the DEPP. Granting an exemption to SNPS is a warranted case because: (1) SNPS is now permanently shut down; (2) the decommissioning of SNPS is now approximately 75 percent complete, and nearly all the radioactive material except for the fuel has been removed from the site; (3) SNPS is permanently defueled, and the fuel source term inventory and decay heat are even lower than the levels that existed in 1990 when relief from off-site emergency response was granted; and (4) LIPA estimates that the facility license will be terminated and the facility will be released for unrestricted use in 1995.

The Need for the Proposed Action

The exemption is needed to eliminate emergency plan requirements of 10 CFR 50.54(q) that are appropriate for an operating plant but are not needed at the shutdown SNPS. Granting the proposed exemption would reduce unnecessary costs for LIPA.

Environmental Impact of the Proposed Action

The proposed action to eliminate the requirements to have in effect, and maintain, emergency plans will have no environmental impact because SNPS is permanently shut down and defueled and the worst-case accidents at SNPS would result in radiation exposures that are less than the U.S. Environmental Protection Agency's "Protective Action Guides." Therefore, the present "Defueled Emergency Response Plan" requires no offsite protective actions in the event of an accident. In addition, SNPS has existing plant procedures to address any on-site events that may require an emergency response.

The requested exemption would not authorize construction nor operation, and would not authorize a change in licensed activities nor effect changes in the permitted types or amounts of radiological effluent. With regard to potential non-radiological impacts, the NRC concludes that there are no measurable radiological or non-radiological impacts associated with the exemption.

Alternatives to the Proposed Action

Since the NRC concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement" for SNPS.

Agencies and Persons Consulted

The licensee initiated this exemption. The NRC staff has reviewed the request. The State of New York was notified of the proposed exemption. The State Official had no comments.

Finding of No Significant Impact

Therefore, the NRC has determined that an environmental impact statement for the proposed exemption is not required.

Based on this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment.

A copy of the licensee's request for exemption and supporting documentation, dated January 26, 1993, and the NRC staff's Safety Evaluation Report are available for public inspection at the NRC's Public Document Room, 2120 L Street, NW., Washington, DC 20037, and at the local public document room at the Shoreham Wading River Public Library, Shoreham Wading River High School, Route 25A, Shoreham, NY 11792.

Dated at Rockville, Maryland, this 18th day of August, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–23177 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 6, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of certain portions that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 6, 1993—2 p.m. until 4:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting the Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. 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 Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefore can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 15, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–23173 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–M

Availability of Proposed Revision to Staff Technical Position Regarding Concentration Averaging and Encapsulation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of a proposed revision, in part, of the 1983 Staff Technical Position on Radioactive Waste Classification. The revision is entitled, (Proposed) "Technical Position on Concentration Averaging and Encapsulation," and represents a modification of an earlier proposal which was noticed in the **Federal Register** on June 30, 1992 (57 FR 29105). The modification has been developed after considering the comments received on the initial proposal. The position provides guidance on the interpretation of § 61.55(a)(8) of 10 CFR part 61 as it applies to the classification (e.g., Class A, B, or C waste) of a variety of different types and forms of low-level radioactive waste.

The Technical Position on Radioactive Waste Classification was initially developed in 1983 to provide guidance to low-level radioactive waste generators on four specific topics regarding waste classification: (1) Acceptable Materials Accountability Programs; (2) Determination and Verification of Radionuclide Concentrations and Correlations; (3) Concentration Volumes and Masses; and (4) Reporting on Manifests. Because of the desirability of attempting to achieve consistent waste classification positions among the Commission and Agreement State regulatory authorities, and because of the impact of waste classification positions on other programs (e.g., the Department of Energy's program to accept greater-than Class C waste), a need was identified to expand upon, further define, and replace guidance on the third of the four topics, "Concentration Volumes and Masses." This need resulted in the development of the (Proposed) "Technical Position on Concentration Averaging and Encapsulation" which was noticed in the **Federal Register** on June 30, 1992 (57 FR 29105). Copies of this initial proposed "Technical Position on Concentration Averaging and Encapsulation" were distributed to licensees, Agreement States, Non-Agreement States, State Liaison Officers, and others who are on the NRC's Compact Distribution List. In response to a request for comments on this Position, nineteen comment letters were received. Consideration of these comments has led to the modified Technical Position which is the subject of this notice. Copies of this modified Technical Position, together with an NRC summary of major comments and NRC staff responses, are again being distributed (under separate cover) to the aforementioned addresses as well as those who specifically submitted comments on the initial proposal.

ADDRESSES: Copies of the modified proposed Technical Position and the "NRC Staff's Analysis of and Response to Comments" may be obtained by writing to W.R. Lahs at Mail Stop 5E–4 OWFN, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments on this modified proposed Technical Position are again solicited and should be sent to the Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A final position will be issued following NRC staff review of the comments received.

FOR FURTHER INFORMATION CONTACT: W.R. Lahs, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2569.

Dated at Rockville, Maryland, this 16th day of September 1993.

For the Nuclear Regulatory Commission.

Michael J. Bell,

Chief, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–23176 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

The proposed amendment would revise the trip setpoints associated with the reactor trip system interlock P–10. The P–10 reactor trip system interlock performs certain functions upon an increase in reactor power level (such as activating low reactor coolant flow reactor protection system (RPS) trips) and other functions upon a decrease in reactor power level (such as activating the intermediate range flux monitors). The present setpoint values specified in the Technical Specifications are conservative, but impractical for plant operation. The licensee has proposed new setpoint values that retain the conservatism and are practical for plant operation.

Because the present Technical Specifications are impractical for plant operation, the Technical Specifications must be changed before plant operation resumes. The plant is presently shutdown for refueling and resumption of operations is expected by October 5, 1993. In order to process the proposed license amendment in time to permit scheduled resumption of operation exigent approval is required. The licensee has stated that the exigent situation could not have been avoided because the understanding that the Technical Specification needed to be modified was reached on September 8, 1993.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes modify the trip setpoints associated with the P–10 interlock (Table 2.2–1, Functional Units 18.b.1 and 18.e). The P–10 interlock is associated with the following reactor trips that are credited in the safety analyses:

- Pressurizer Pressure—Low
- Pressurizer Water Level—High
- Reactor Coolant Flow—Low (more than one loop)
- Reactor Coolant Pump Shaft Speed—Low

Based on this list of reactor trips, the accidents potentially impacted include:

- Loss of Forced Reactor Coolant Flow
- Rod Withdrawal from Subcritical
- Loss of Load
- Reactor Coolant Pump Shaft Seizure (locked rotor)

The proposed changes are intended to explicitly account for the dead band inherent in the bistable which precludes having both settings at 10% of the RTP (reactor thermal power). The "allowable value" listed in Table 2.2–1 for Functional Unit 18.b.1 is (less than or equal to) 12.1% of the RTP and the "allowable value" listed in Table 2.2–1 for Functional Unit 18.e is (greater than or equal to) 7.9% of the RTP. The "allowable values" of the limiting safety system settings are the values that assure that the associated design basis assumptions are valid. There are no changes proposed to these "allowable values" associated with the P–10 interlock. Since, the allowable values are not changing, the changes do not have any impact on the design basis analyses. Therefore, the changes cannot increase the probability nor consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not affect the plant operation or introduce any new failure mechanisms. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The allowable values in the technical specifications are the values that assure the validity of the design basis assumptions. The trip setpoint provides a value that limits the potential for exceeding the allowable value and thereby limits the potential for exceeding any design basis assumption. Based on this, the design basis assumptions are not impacted. Since the allowable values are not changing, the changes do not have any impact on the design basis analyses. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 7, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–248–5100 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–4: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 14, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 15th day of September 1993.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–23174 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company, et al. (the licensee) to withdraw its April 27, 1993 application for proposed amendment to Facility Operating License NPF–49 for the Millstone Nuclear Power Station, Unit No. 3, located at the licensee's site in New London County, Connecticut.

The proposed amendment would have revised the Technical Specifications to allow a one-time extension of the containment integrated leak rate test for Millstone Unit No. 3.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 26, 1993 (58 FR 30198). However, by letter dated September 2, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 27, 1993, and the licensee's letter dated September 2, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 15th day of September 1993.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–23175 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Application and claim for Unemployment Benefits and Employment Service.

(2) *Form(s) submitted*: UI–1 (ES–1), UI–3.

(3) *OMB Number*: 3220–0022.

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.

(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response*: On occasion.

(7) *Respondents*: Individuals or households.

(8) *Estimated annual number of respondents*: 29,000.

(9) *Total annual responses*: 294,000.

(10) *Average time per response*: .0882653 hours.

(11) *Total annual reporting hours*: 25,950.

(12) *Collection description*: Under Section 2 of the Railroad Unemployment Insurance Act, unemployment benefits are provided for qualified railroad workers. The collection obtains from railroad employees who apply for and claim unemployment benefits, information needed for determining eligibility for and amount of such benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–23217 Filed 9–21–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 272–3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extensions:

Regulation D; File No. 270–72
Regulation F; File No. 270–117
Requirements as to Form and Content of Application Under the Trust Indenture Act of 1939; File No. 270–115
Form T–3; File No. 270–123
Form T–4; File No. 270–122
Form SR; File No. 270–120
Rule 12d1–3; File No. 270–116
Rule 14f–1; File No. 270–127
Rule 17e–1; File No. 270–224
Form N–17D–1; File No. 270–231

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for extension of OMB approval the following rules and forms:

Regulation D sets forth rules governing the limited offer and sale of securities exempt from registration requirements. Regulation D affects 9,105 filers for a total of 145,680 burden hours.

Regulation F provides exemption from registration requirements in connection with assessable stock if specified conditions are met. Regulation F affects seven filers for a total of 21 burden hours.

The requirements as to form and content the Trust Indenture Act of 1939 (Rules 7a–15 through 7a–37) have been assigned one burden hour for administrative purposes.

Forms T–3 and T–4 are applications for qualification of indentures under the Trust Indenture Act of 1939. Form T–3 affects 55 filers for a total of 2,365 burden hours, while Form T–4 affects three filers for a total of 15 burden hours.

Form SR is used to reflect sales of securities and uses of proceeds therefrom. Form SR affects 2,566 filers for a total of 14,113 burden hours.

Rule 12d1–3 sets forth requirements as to certification under section 12(d) of the Exchange Act. Rule 12d1–3 affects 688 filers for a total of 344 burden hours.

Rule 14f–1 requires disclosure in the event of a change in the majority of a company's directors. Rule 14f–1 affects 44 filers for a total of 792 burden hours.

Rule 17e–1 is designed to ensure that brokers affiliated with investment companies receive no greater compensation than would be received from the investment companies in arm's length transactions. Rule 17e–1 requires approximately ten hours of recordkeeping per investment company annually.

Form N–17D–1 is used by small business investment companies and banks affiliated therewith to report any loan, advance of credit to, or acquisition of securities or property of a small business concern or any agreement to do any of the foregoing. The annual burden of filling out Form N–17D–1 is approximately five hours per response.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Project 3235–0076, 3235–0094, 3235–0132, 3235–0105, 3235–0107, 3235–0124, 3235–0109, 3235–0108, 3235–0217, and 3235–0229), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 13, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23144 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32882; File No. SR–Amex–93–21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Expansion of the Amex Options Switching System

September 14, 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 20, 1993, the American Stock Exchange ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to expand its Amex Options Switching ("AMOS") system to permit the routing of up to 50 contracts for eligible market and limit orders.

The text of the proposal is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The AMOS system provides member firms with the means to electronically transmit option orders up to the volume limit specified by the Amex. Orders can be directly routed either to the post where an option is traded for execution and reporting by a specialist, or to AUTO-EX, an AMOS subsystem that automatically executes orders against prevailing bids or offers for designated option series. Initially, AMOS accepted orders for up to 5 contracts. Over the years, AMOS order parameters have been gradually increased in response to both operational needs of member firms and the Amex's own need to remain competitively positioned with other exchanges' automated systems. The last full-scale increase approved by the Commission expanded AMOS eligible orders from 20 to 30 contracts.[1]

The Exchange is now proposing to increase AMOS eligibility for market and limit orders from 30 to 50 contracts. Since each options contract represents 100 shares of an underlying security, this change to 50 contracts (the equivalent of 5,000 shares of underlying stock) effectively relates the AMOS system to the Exchange's Post Execution Reporting ("PER") system for equity orders which reroutes up to 5,000 shares. The Exchange believes that this change along with various enhancements to the Exchange's overall systems will have a favorable impact on the ability of both member firms and options specialists to handle increases in volume and order flow. Currently, approximately 2.5% of all orders routed through the AMOS system have contract sizes of 20–30 contracts. Since the capacity of the AMOS system is far in excess of what is currently needed, the Exchange expects the increase in AMOS order flow resulting from this expansion to present no capacity problems.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5) in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not create a burden on competition given that the use of the PER system is optional, and those firms which use PER can achieve more efficient handling of their respective orders. The Amex believes that the proposed rule change will also enhance the Exchange's competitive status in providing efficient, fast and accurate order-delivery systems.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23137 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 28891 (February 15, 1991) 56 FR 7438 (order approving File No. SR–Amex–90–37).

[2] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32907; File No. SR–BSE–92–10]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change Revising its Floor Member Examination

September 15, 1993.

I. Introduction

On December 18, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise its Floor Member Examination. On August 13, 1993, the BSE submitted to the Commission Amendment No. 1, and on September 13, 1993, the Exchange submitted Amendment No. 2 to the proposed rule change. These amendments made certain technical

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

corrections and changes to the examination.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 32052 (March 26, 1993), 58 FR 17462 (April 2, 1993). No comments were received on the proposal.

II. Description of the Proposal

The BSE created the Floor Member Examination as an Exchange regulatory initiative designed to codify, clarify and give specificity to compliance obligations of Exchange members and member organizations. The BSE's Floor Member Examination is a qualifications examination intended to ensure that the individual floor members have the knowledge, skills and abilities necessary to carry out their job responsibilities. The Examination Specifications detail the areas covered by the exam and break down the proportion of examination questions culled from each area.

Independent floor brokers and specialists who are employed by member firms on the trading floor must take and pass the examination before the commencement of employment on the trading floor in order to be in compliance with the requirements of the BSE Constitution and Rules of the Board of Governors.[4] Floor clerks, with the consent of the Exchange, however, have three months from commencement of employment to pass the exam.[5]

The Commission previously approved the use of the BSE's Floor Member Examination on a pilot basis.[6] During the temporary approval period, the Commission reviewed the BSE's Examination to determine whether the instant proposed rule change warrants permanent approval. For the reasons set forth below, this order approves the use of the Floor Member Examination on a permanent basis.

The BSE states that the statutory basis for the Floor Member Examination lies in section 6(c)(3)(B) of the Act in that it is the responsibility of the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange members.

III. Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and 15 of the Act.[7] In particular, the Commission believes that the proposal is consistent with the section 6(b)(5)[8] requirement that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The Commission believes that the revised Floor Member Examination should help to ensure that only those individuals with a comprehensive knowledge of the specific rules of the Exchange, as well as an understanding of the relevant provisions of the Act, will be eligible to act in a variety of capacities on the BSE floor, such as floor broker, floor clerk or specialist.

The Commission also believes that the proposal is consistent with sections 6(c)(3) (A) and (B)[9] of the Act, which set forth the basis upon which a national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer, or may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member of an exchange. Under these sections, an exchange may by rule prescribe appropriate standards of training, experience and competence and examine and verify qualifications of members and persons associated with members. The Commission believes that the BSE has tailored its exam toward evaluating a floor member's knowledge of specific Exchange rules and policies in addition to certain requirements under the Act. The revised exam should ensure that the Exchange grants members access to its floor based on a demonstration of training, experience and competence as prescribed by the rules of the Exchange.

In addition, the Commission believes that the proposed rule change is consistent with section 15(d)(7)[10] which requires that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer (and all natural persons associated with such broker or dealer) must meet certain standards of training, experience, competence and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission believes that the BSE exam should satisfy the requirements of section 15(b)(7) by requiring that floor members demonstrate requisite knowledge, training and competence to satisfactorily discharge their individual duties on the BSE floor.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. Both Amendment Nos. 1 and 2 refine certain details of the BSE's Floor Member Examination in a manner which is both thorough and fair. In general, the amendments correct errors or clarify the language of specific questions. The overall structure of the examination would, in essence, go unchanged. In addition, the BSE's proposed rule change relating to the Floor Member Examination was published in the **Federal Register** for the full statutory period and no comments were received.[11]

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

[3] See letter from Karen A. Aluise, Assistant Vice President, BSE to Jonathan Katz, Secretary, Commission, dated August 10, 1993 ("Amendment No. 1") and letter from Karen A. Aluise, Assistant Vice President, BSE to Jonathan Katz, Secretary, Commission, dated September 8, 1993 ("Amendment No. 2").

[4] The BSE requires that independent floor brokers, specialists and floor clerks pass the Exchange's Floor Member Examination. Independent floor brokers and specialists must first pass the Floor Broker Examination before acting in their respective capacity. See BSE Constitution Art. IX, Sec. 3(d) and Rules of Board of Governors, Chapter XIV, § 2152(b)(2), Independent Floor Brokers; Chapter XV, § 2155.01 Dealer-Specialists.

[5] The BSE's rules permit a floor clerk to perform limited clerical duties, with the consent of the Exchange, for three months without having passed the Floor Member Examination. See Chapter XIV, § 2153 (iii).02, Floor Clerks.

[6] See Securities Exchange Act Release Nos. 31736 (January 15, 1993), 58 FR 6026 (January 25, 1993) (File No. SR-BSE-93-01) and 32332 (May 19, 1993), 58 FR 30076 (May 25, 1993) (File No. SR-BSE-93-11).

[7] 15 U.S.C. 78f and 78o (1989).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(c)(3) (A), (B) (1989).

[10] 15 U.S.C. 78o(b)(7) (1989).

[11] See Securities Exchange Act Release No. 32052 (March 26, 1993), 58 FR 17462 (April 2, 1993) (File No. SR-BSE-92-10).

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 BSE. All submissions should refer to SR–BSE–92–10 and should be submitted by October 13, 1993.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission believes that the proposal is consistent with section 6(b)(5), 6(c)(3) (A), (B), and 15(b)(7) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BSE–92–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23143 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32904; File No. SR–CBOE–91–43]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to an Extension of the Pilot Program for Position Limit Exemptions for Hedged Equity Option Positions

September 14, 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 November 12, 1991, the Chicago Board Options Exchange, Inc. ("CBOE 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] 15 U.S.C. 78 (1988).

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend until November 17, 1993, its pilot program for position limit exemptions for hedged equity option positions ("Equity Hedge Exemption").[1] The Exchange also proposes to add securities convertible into the underlying stocks to be a basis for the Equity Hedge Exemption.[2]

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The Commission approved the CBOE's current hedged position limit exemption pilot program for equity options on a two-year pilot basis on May 24, 1988. See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988) ("Pilot Approval Order"). In addition, the Commission extended the pilot for a six-month period through November 17, 1990. See Securities Exchange Act release No. 28066 (May 29, 1990), 55 FR 23326 ("Pilot Extension Order").

[2] See Securities Exchange Act Release Nos. 32174 (April 20, 1993), 58 FR 25687 (order approving File No. SR–PHLX–92–22, relating to an extension of the pilot program for position limit exemptions for hedged equity options and an expansion of the pilot program to allow convertible securities to serve as the basis for the underlying equity hedge position); 29436 (July 12, 1991), 56 FR 33317 (order approving File No. SR–NYSE–91–19, relating to an extension of pilot programs for position limit exemptions for hedged equity option and index option positions and expansion of the pilot program to allow the underlying hedged portfolio to include securities that are readily convertible into common stock); 27326 (October 2, 1989), 54 FR 42121 (order approving File No. SR–Amex–89–20, extending and expanding the exchange's index hedge exemption pilot program to include convertible instruments in the "equivalent" positions that may be eligible to serve as the basis for the underlying exemption); and 27322 (September 29, 1989), 54 FR 41889 (order approving File No. CBOE–89–06, extending and expanding the Exchange's index hedge exemption program to include in qualified stock portfolios securities convertible into stock and, for convertible bonds, those that are economically convertible into common stock).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 24, 1988, the Commission approved on a pilot basis the CBOE's proposal to amend the Exchange's position limit rules.[3] Position limits for equity positions are determined in accordance with a three-tiered system based on the number of shares of the underlying security outstanding and the underlying security's trading volume.[4]

The CBOE's pilot program provides for exemptions from applicable equity option position limits for accounts which have established one of the four commonly used hedged positions on a limited one-for-one basis, i.e., long stock and short call, long stock and long put, short stock and long call, and short stock and short put. However, the maximum position that may be established pursuant to the exemption may not exceed twice the present position limit. The exemption also provides that exercise limits still correspond to position limits, such that investors are allowed to exercise, during any five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the position limit exemption.[5]

In addition, the Exchange proposes to add "securities convertible into such stock" to the securities eligible to serve as the underlying basis for the Equity Hedge Exemption. The CBOE believes that such convertible securities are an appropriate hedge against equity options because they have the same economic interest, i.e., the price of the convertible security moves with the stock and such security represents the right to receive the same security as that underlying the corresponding options at some future date.[6]

The Exchange believes that the Equity Hedge Exemption provides greater depth and liquidity to the equity option markets and affords investors the opportunity to effectively hedge their stock portfolios without increasing the possibility of manipulation in the options or underlying stock market. The Exchange states that it has not experienced any significant problems with the operation of the pilot and will continue to monitor the effects of the

[3] See Pilot Approval Order, *supra* note 1.

[4] See CBOE Rule 4.11.

[5] See CBOE Rule 4.12.

[6] In 1989, the Commission authorized the use of convertible securities for purposes of the Exchange's index hedge exemption pilot program. See Securities Exchange Act Release No. 27322 (September 29, 1989), 54 FR 41889.

Equity Hedge Exemption pilot program on the market to ensure that problems do not arise due to increased position and exercise limits authorized by the exemption. Accordingly, the Exchange believes the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) thereunder.[7] Specifically, the Commission concludes, as it did when approving the commencement and first extension of the pilot, as well as similar programs by the other options exchanges,[8] that the CBOE proposal to provide for increased position and exercise limits for equity options in circumstances where those excess positions are fully hedged with offsettting stock positions will provide greater depth and liquidity to the market and allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market.

In addition, with respect to the Exchange's proposal to expand the types of securities eligible to serve as the basis for the underlying hedged position to include convertible securities, the Commission believes such expansion is consistent with the Act because it will allow investors to use instruments that are economically equivalent to stocks more efficiently and effectively for purposes of hedging their equity options positions.[9] Specifically, because the value of a convertible security likely will fluctuate in tandem with the value of the security that it is convertible into, the Commission believes investors with positions in convertible securities should be able to hedge their positions in equity options with convertibles to the same extent that investors with long or short positions in the underlying securities can. Moreover, as with the original pilot program, the Commission believes the expansion of the pilot program to include convertible securities likely will enhance the depth and liquidity in the Exchange's options markets. In addition, because the pilot program still requires the positions in the convertible securities and the corresponding options to be fully hedged, the Commission believes the expansion will not significantly increase concerns regarding intermarket manipulation or disruption of either the options markets or the underlying stock market. Lastly, the Commission notes that the Exchange's pilot program for position limit exemptions for hedged positions involving broad-based stock index options already has been expanded to include convertible securities.[10]

The Commission also notes that before the pilot program can be approved on a permanent basis the CBOE must provide the Commission with a report on the operation of the pilot.[11] Specifically, the CBOE must provide the Commission with details on: (1) The frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the pilot program; (4) what types of convertible securities are being used to hedge positions and how frequently convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the pilot program; (6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members of any violation of any term or condition of the pilot program; (7) the market impact, if any, of the pilot program; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the pilot program.

The Commission finds good cause for approving the proposed extension and expansion of the pilot program prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** so that the pilot program may continue. As noted above, the hedge exemption pilot programs of the other options exchanges have been expanded to include convertible securities.[12] In addition, because there have been no adverse comments concerning the pilot program since its implementation and because of the importance of maintaining the quality and efficiency of the CBOE's markets, the Commission believes good cause exists to approve the extension and expansion of the pilot program on an accelerated basis.[13]

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

[7] 15 U.S.C. 78f(6)(5) (1982).

[8] The Commission has approved similar Equity Hedge Exemption pilot programs by the American Stock Exchange, Inc. ("AMEX"), New York Stock Exchange, Inc. ("NYSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX"). See Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201; 29436 (July 12, 1991), 56 FR 33317; and 25811 (June 20, 1988), 53 FR 23821.

[9] The Commission expects the Exchange to determine on a case-by-case basis whether an instrument that is being used as the basis for the underlying hedged position is readily and immediately convertible into the security underlying the corresponding option position. In this regard, the Commission specifically finds that an instrument which will become convertible into a security at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the Equity Hedge Exemption pilot program until the date it becomes convertible. Of course, if the convertible security used to hedge an options position was called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding options position reduced accordingly.

[10] See supra note 5.

[11] The Commission also expects the CBOE to monitor the pilot as outlined below and to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of the hedge exemption rule.

[12] See supra note 2.

[13] The CBOE filed an Amendment No. 1 on April 19, 1993 requesting that the Commission withdraw from the proposal that part of the filing which proposed to include convertible securities among the securities eligible to serve as the basis for the equity hedge exemption. See letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated April 19, 1993. After conversations with Commission staff, however, the CBOE withdrew Amendment No. 1 from consideration. See letter from Michael L. Meyer, Schiff, Hardin & Waite, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated May 25, 1993.

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–91–43 and should be submitted by October 13, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–91–43) is approved, thereby extending the Equity Hedge Exemption pilot program until November 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23139 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32888; File No. SR–CHX–93–17]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Amendments to Its Rules Relating to Termination of Registration of Specialists, Odd-Lot Dealers, and Market Makers

September 14, 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 July 28, 1993, as subsequently amended on August 19, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the termination of registration provisions for specialists, odd-lot dealers and market-makers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the termination of registration provisions for specialists, odd-lot dealers, and market makers. Currently, the registration of specialists and odd-lot dealers can be suspended by a single member of the Floor Procedure Committee, as well as the president, when it appears that such member is violating Exchange Rules, the federal securities laws, or is conducting business in an unethical manner. In this regard, the proposed rule amends these provisions so that only the president of the Exchange, and not a single member of the Floor Procedure Committee, has the authority to suspend such registration. The Exchange believes that this type of authority is appropriately exercised by the President.

In addition to the changes relating to specialists and odd-lot dealers, the proposed rules amend the termination provisions relating to market makers. These amendments conform the market maker suspension and termination provisions to those of the specialist and odd-lot dealers. Currently, there is no authority to summarily suspend a market maker's registration.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and it is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference 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 CHX. All submissions should refer to File No. SR–CHX–93–17 and should be submitted by October 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23142 Filed 9–21–93; 8:45 am]

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[14] 15 U.S.C. 78s(b)(2) (1982).

[15] 17 CFR 200.30–3(a)(12) (1992).

[1] See letter David T. Russof, Attorney, Foley & Lardner, to Cheryl Dunfee, Attorney, Division of Market Regulation, Commission, dated August 18, 1993. Amendment No. 1 made certain clarifying changes to the proposal.

[Release No. 34-32879; File No. SR-CBOE-93-22]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to System Modifications to the Retail Automated Execution System

September 14, 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 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on May 11, 1993, filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The proposed rule change, as amended[1] on June 14, 1993,[1] is described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to add Interpretation .02 to CBOE Rule 6.8 relating to the operation of its Retail Automated Execution System ("RAES") in equity options.[2]

The text of the proposed rule change is as follows (italicizing indicates additions):

Orders to buy or sell equity options that are multiply traded in one or more markets in addition to the Exchange will not be automatically executed on RAES at prices inferior to the current best bid or offer in any other market, as such best bids or offers are identified in RAES. Any such orders will be rerouted to the DPM or OBO for that class of options for non-automated handling. The DPM or OBO will report the execution or non-execution of such orders to the firm that originally forwarded the order to RAES. The procedures described in this Interpretation .02 shall not apply in circumstances where a "fast market" in the equity options that are the subject of the orders in question has been declared on the Exchange or where comparable conditions exist in the other market such that firm quote requirements do not apply. This Interpretation .02 will become effective upon a determination by the Equity Floor Procedure Committee that similar procedures are or will be concurrently in effect in other markets that multiply trade equity options traded on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise the description of the operation of RAES to reflect proposed system changes which, when implemented, will reroute RAES orders in multiply-traded equity options and prevent their automatic execution at prices inferior to prices quoted in other markets ("trade-throughs").[3] The proposed rule change provides that when a potential trade-through in RAES is identified, the order in question, instead of being automatically executed, will be rerouted to the Designated Primary Market-Maker or Order Book Official for that class of options for non-automated processing.

The CBOE states, however, that this procedure will not apply when "fast market" conditions in the equity options that are the subject of the RAES orders exist either on the CBOE or in the other market. The CBOE believes that when the CBOE is in a fast market condition, the rerouting of a large number of additional orders, otherwise executable in RAES, to the trading crowd could well disrupt an already abnormal trading situation. Further, the CBOE believes that when the other market is in a fast market condition, its bids and offers are by definition not firm, and therefore would not provide a reliable basis for redirecting orders otherwise executable in RAES.

This rule change is being proposed in conjunction with the implementation of systems modifications to RAES that will enable it to monitor quotations for multiply-traded equity options in other markets, and reroute orders as described in the event of a potential trade-through. Although the systems modifications necessary to implement the proposed rule change are largely completed, the CBOE does not intend to put Interpretation .02 to Rule 6.8 into effect unless and until comparable anti-trade-through systems and procedures with respect to the automatic execution facilities on other options exchanges are put into effect.[4] The CBOE states that Chairman Breeden's request was directed to all options exchanges with the expectation that all exchanges would act in a coordinated way to prevent trade-throughs in connection with the automatic execution of orders in multiply-traded options. The CBOE states that it is ready and willing to implement the proposed rule change, but it believes that it would be competitively disadvantaged if it were the only exchange to implement the anti-trade-through provisions.

The Exchange believes that the proposed rule change, when implemented in conjunction with the implementation of comparable rule changes in other options markets, will, in accordance with section 11A(a)(1)(C) of the Act, assure economically efficient execution of securities transactions, the practicality of brokers executing investors' orders in the best market, and fair competition among exchange markets.

(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.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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[1] See letter from Michael L. Meyer, Schiff, Hardin & Waite, to Sharon M. Lawson, Assistant Director, Division of Market Regulation, Commission, dated June 10, 1993 ("Amendment No. 1"). Amendment No. 1 to the proposed rule change provides that the rule change will not become effective until the CBOE's Equity Floor Procedure Committee determines that similar procedures are or will be concurrently in effect in other markets that multiply-trade equity options that are listed on the CBOE.

[2] This proposed rule change was originally filed pursuant to Rule 19b-4 under the Act in File No. SR-CBOE-92-40. See Securities Exchange Act Release No. 31827 (February 5, 1993), 58 FR 9002 (February 18, 1993) (notice of proposed rule change). The portion of the proposed rule change contained in the current filing was withdrawn from SR-CBOE-92-40 by amendment. See Amendment No. 1 to SR-CBOE-92-40. SR-CBOE-92-40, as amended, is still pending before the Commission.

[3] The CBOE states that proposed Interpretation .02 is in response to a letter from Chairman Breeden to Alger B. Chapman, Chairman and Chief Executive Officer, CBOE, dated June 30, 1992.

[4] See Amendment No. 1, supra note 1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6 and 11A.[5] Specifically, the Commission believes that rerouting RAES orders in multiply-traded equity options and preventing their automatic execution at prices inferior to prices quoted in other markets ("trade-throughs") is consistent with section 11A(a)(1)(C) of the Act in that it provides for a more economically efficient handling and reporting of options orders in a multiple trading environment, through the use of new data processing and communications techniques. The Commission further believes that these RAES system upgrades are consistent with sections 6(b)(5) and 11A(a)(1)(C) of the Act in that they facilitate transactions in securities, protect investors and the public interest, and promote fair competition among options markets by enhancing the benefits available to investors from a multiple trading environment and preventing customer orders from being executed at inferior prices.

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the CBOE to implement the proposed RAES system upgrades as soon as possible. The Commission notes that the proposed rule change was noticed for comment, in a separate rule filing, on February 18, 1993, as File No. SR-CBOE-92-40.[6] No comments were received on the proposed rule change. Amendment No. 1 merely sets forth the time frame within which the CBOE will implement the system upgrades and does not make any substantive changes to the proposed rule change. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with sections 6 and 11A of the Act.[7]

[5] 15 U.S.C. 78f and 78k-1 (1988).

[6] See supra note 2.

[7] 15 U.S.C. 78f and 78k-1 (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 13, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR-CBOE-93-22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-23144 Filed 9-21-93; 8:45 am]

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[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-32880; File No. SR-PSE-93-10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Defining a Public Customer for Purpose of Exchange Ten-Up Rule

September 14, 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 June 11, 1993, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rule 6.86 ("Ten-Up Rule")[1] and Exchange rules relating to the PSE's Automatic Execution system ("Auto-Ex") to define and specify the circumstances in which an order is to be deemed a "public customer order" for purpose of these rules.

The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to amend its rules in order to provide, among other things, a "public customer order" definition applicable to Rules 6.86 and 6.87. Currently, Rule 6.86 requires each trading crowd on the options trading floor to provide a depth of at least ten option contracts for all "non-broker-dealer customer" orders at the bid or offering price disseminated at the time the order is represented in the trading crowd.[2] The Ten-Up Rule is intended to

[1] Exchange Rule 6.86 is entitled "Trading Crowd Firm Disseminated Market Quotes." Each of the five options exchanges currently employ a Ten-Up Rule or Firm Quotation Rule providing that appropriate accounts may receive a guaranteed minimum of ten option contracts.

[2] In a related filing, the Exchange has proposed a rule change that would apply to orders other than those that are eligible for an execution under the Ten-Up Rule. Specifically, the proposal would require Market Makers and Lead Market Makers to respond to such orders, represented in the trading crowd at the disseminated bid or offer, either by satisfying the order or updating the existing market in the subject option series. See Securities Exchange Act Release No. 31962 (March 8, 1992), 58 FR 13661 (March 12, 1993) (Notice of Filing of SR-PSE-92-48).

provide more protection and greater depth guarantees for public customers than are provided for competing broker-dealers and competing professionals.[3] The Exchange believes that the proposed definition will eliminate significant disruptions in the market caused by competing professionals and will result in narrower bid-ask spreads and greater liquidity for public customers.

The Exchange is proposing to amend Rule 6.86 to define a "professional trading account" as: (1) An account of a registered broker-dealer; (2) an account of a person engaged in business or employed as a professional trader in securities; (3) an account of a person whose orders are computer generated and automatically transmitted to the Exchange; (4) an account of a person who has been determined by the Exchange's Options Floor Trading Committee ("OFTC") to have engaged in a pattern of abusing the Exchange's Auto-Ex system; or (5) an account with respect to which any of the foregoing persons exercise investment discretion. An account in which any person referred to in clauses (1) through (4) is a participant or has an interest would be deemed to be an account of such person. Finally, the accounts of registered representatives and other employees of broker-dealers would not be deemed to be "professional trading accounts" (unless such accounts are classified as such pursuant to clauses (1)–(4), above). A "public customer order" would be defined as an order that is not for a "professional trading account." The Exchange believes that the proposed definitions will identify with more precision those persons who were originally intended to receive the benefits of Exchange Rule 6.86.

The OFTC, in evaluating whether a person has engaged in a pattern of trading that has the effect of abusing the Exchange's Auto-Ex system, would have the authority to deem concentrated or aggressive use of such system by persons seeking to profit from the inability of market markers to alter their posted quotes instantaneously to be such an abuse. Similarly, since the Auto-Ex system was designed for small orders (currently orders for ten contracts or less), persons who enter a number of small orders within a relatively short period of time in order to circumvent the ten-contract limitation could be deemed to be abusing the system. However, the foregoing enumeration would not be exclusive, and the OFTC would be authorized (subject to review pursuant to Rule 11.7) to determine other patterns of trading that constitute an abuse of the system, based on such factors as: frequency of transactions in an account; whether the account has direct access to electronic order entry, delivery and execution systems of the Exchange; and whether participants in the account have access to non-public market information.

The proposal is intended to address the need of market makers to have sufficient time to adjust their quotes to reflect changes in the markets in underlying securities and in other options markets. The Exchange believes that the proposal will provide market makers who participate in the Auto-Ex system (and who are otherwise bound by firm quotations) with legitimate relief in situations where other professionals from off the floor place orders for execution before the market makers can update their option quotes.

The Exchange believes that the proposed rule is consistent with the policies that the Commission has articulated in evaluating similar issues relating to the Small Order Execution System ("SOES") of the National Association of Securities Dealers, Inc. ("NASD").[4] The Exchange notes that the Commission has previously found the NASD's approach to defining "professional trading accounts"[5] and "non public customer"[6] to be consistent with the Exchange Act and rules and regulations thereunder. The Exchange believes that the proposed rule establishes a logical and workable distinction between public customer and non-public customer orders that would apply to both electronic and floor trading of options.

The Exchange is also proposing to add Rule 6.87 to provide expressly that only public customer orders (as defined in proposed Rule 6.86) would be eligible to be executed on the Auto-Ex system. The Exchange further proposes to amend its rules to provide that only those public customer orders that are present in the trading crowd and clearly marked with the proper account origin code will be entitled to a guarantee of at least ten option contracts at the disseminated price. In addition, members seeking such benefits for an order would be required, at the request of any member of the trading crowd, to confirm that the order has been entered by a public customer. Finally, the Exchange is proposing increased flexibility on obtaining account information from its member, such that if a member or associated person fails to furnish the Exchange, upon request, with adequate verification of the account origin of an order for a customer-omnibus account of a non-member broker-dealer, all orders entered or executed on behalf of such account could be classified as non-public customer orders and would not be entitled to the benefits of the Ten-Up Rule until the Exchange receives verification of the order's account origin.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act, in particular, in that it facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and promotes just and equitable principles of trade.

(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. Only "professional trading accounts" would be affected by these rule amendments, and the Exchange believes that any incidental burden on such accounts is justified by the countervailing benefits to public customers and others that

[3] Similarly, Exchange option rules currently allow public customer orders, but not firm orders, to be placed in the Exchange's Order Book for execution on a priority basis. See PSE Rule 6.52(a).

[4] *See* Securities Exchange Act Release No. 32092 (April 1, 1993), 58 FR 18279 (April 8, 1993). "The Commission believes that the NASD can reasonably exclude professional traders from access to SOES." *Id.* at 18238. "Unlike the trades by small, retail investors, trades by professional traders may represent information concerning recent market developments. Market makers are thus placed in the position of being 'picked off' by professional traders who take advantage of the SOES technology to execute multiple trades during the time period in which market makers would normally, under the Firm Quote Rule, be permitted to update their quotations to reflect new information prior to executing further trades." *Id.* at 18281. "Professional trading on SOES subjects market makers to substantial risks and costs and disrupts the normal course of price discovery in the market." *Id.*

[5] The NASD defines a "professional trading account" to mean: (1) An account in which five or more day trades have been executed through SOES during any trading day; or (2) an account in which there has been a professional trading pattern in SOES as executing a high volume of day trades in relation to the total transactions in the account, or executing a high volume of day trades in relation to the amount in value of securities held in the account. NASD SOES Rule a(10).

[6] The NASD defines "non-public customer" orders as: (1) Orders for the firm's own accounts; (2) orders for other broker/dealers; and (3) orders for the account of an associated person (or his/her immediate family) who has physical access to a terminal capable of entering orders into SOES. *See* NASD Sanction Guidelines, at 39 (1993).

would result from the adoption of the amendments.[7]

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-23138 Filed 9-21-93; 8:45 am]

BILLING CODE 8010-01-M

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[7] *Cf.* Exchange Act Release No. 32092, *supra* note 4, 58 FR at 18283.

[8] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-32906; File No. SR-Phlx-92-38]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Increasing the Size of Orders Eligible for Automatic Execution Through the Automatic Execution Feature of the Exchange's Automated Options Market System

September 15, 1993.

I. Introduction

On December 21, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to permit public customer orders of up to 25 contracts in all equity options traded on the Exchange to be eligible for automatic execution through the automatic execution ("Auto-X") feature of the Exchange's Automated Options Market ("AUTOM") system.[3]

The proposed rule change was published for comment in the Federal Register on March 19, 1993.[4] No comments were received on the proposed rule change. This order approves the proposal.

II. Background and Description

The AUTOM system is an online system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Phlx options trading floor, with electronic confirmation of order executions. Orders routed through AUTOM are entered into the system and executed manually by the specialist who, upon execution of the order, enters the relevant trade information into the system. An execution report is then automatically sent to the firm that placed the order.

The Commission approved AUTOM on a pilot basis on March 31, 1988, for market orders of up to five contracts for all exercise prices in the near month covering twelve Phlx equity options until June 31, 1988.[5] Since approving AUTOM as a pilot program in 1988, the Commission has approved various amendments and extensions of the system.[6] Automatic execution through Auto-X is currently limited to public customer orders and marketable limit orders of up to 20 contracts.

The purpose of the proposed rule change is to increase, from 20 to 25 contracts, the order size for Phlx equity options eligible for execution through the Auto-X feature of the AUTOM system. The proposed expansion of the Auto-X order eligibility size from 20 to 25 contracts is in response to the existing competitive environment among the options exchanges. The Exchange believes that the effectiveness of the AUTOM system should be improved by offering retail broker-dealers and their customers an expanded automatic execution parameter. Further, the Phlx believes that this limited expansion of the Auto-X feature of AUTOM should not impose any significant additional burdens to the operation and capacity of the AUTOM system[7] and may increase its effectiveness by increasing the number of orders eligible for automatic execution and by reducing manual processing.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and section 11A.[8] The Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in Phlx equity options through the use of new data processing and communications

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1991).

[3] The AUTOM system, approved by the Commission as a pilot program, is the Phlx's electronic order routing, delivery and automatic execution system for small option orders entered onto the Phlx trading floor on behalf of public customers. Currently, the Auto-X feature is available for public customer orders of up to 20 contracts in size in Phlx equity options.

[4] See Securities Exchange Act Release No. 32000 (March 15, 1993), 58 FR 15168.

[5] See Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988).

[6] See Securities Exchange Act Release Nos. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990); 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991); 29682 (September 9, 1991), 56 FR 46816 (September 16, 1991); and 29837 (October 18, 1991), 56 FR 55146 (October 24, 1991).

[7] See letter from Jack McCarthy, Assistant Vice President of Financial Automation, Phlx, to Monica C. Michelizzi, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, dated February 18, 1993 ("Phlx Capacity Letter").

[8] 15 U.S.C. 78f and 78k-1 (1982).

techniques, thereby improving order processing and turnaround time.

The Commission also believes that expanding the eligibility of Auto-X to public customer orders of up to 25 contracts for all Phlx-traded equity options is consistent with section 6(b)(5) of the Act in that it will extend the benefits of automatic execution in equity options to a larger number of public customer orders.

Lastly, the Commission believes, based on representations by the Exchange, that expanding the order eligibility size of Auto-X to 25 contracts for all equity options will not expose the Phlx's options markets or equity markets to risk of failure or operational break-down. In particular, the Exchange represents that the AUTOM system will be able to handle the increased volume that should accompany the increased Auto-X order eligibility size.[9] In addition, since the AUTOM system is completely independent from the Phlx's Automated Communication and Execution ("PACE") system for routing and executing stock orders, neither AUTOM nor PACE should impact on the other during periods of high volume. Moreover, the Exchange represents that it does not envision any problems with the adequacy of specialist unit personnel in the event of unusually heavy order traffic to a specialist post by means of the AUTOM system.[10]

Therefore, the Commission believes that expanding Auto-X's order eligibility to 25 contracts is consistent with the requirements of sections 6 and 11A of the Act, in that the purpose of the development and implementation of AUTOM and Auto-X is to improve the efficiency of the execution of transactions in Phlx equity options through the use of new data processing and communication techniques.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PHLX–92–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23140 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

[9] See Phlx Capacity Letter, *supra* note 7. Specifically, the Phlx represents that AUTOM's capacity is designed to handle up to 48,000 orders for a six-hour, forty minute trading day, although the system has been initially configured to handle 10,000 orders per day. The Phlx also represents that the system currently is processing 1,200 orders per day. In addition, the Exchange is planning an upgrade of the system which will result in a 32,500 order capacity for the system (a six and one-half times increase). Accordingly, the Phlx remains confident that AUTOM's capacity and processing capabilities are adequate to manage the foreseeable needs and potential increased order flow resulting from the extension of Auto-X.

[10] See letter from Edith Hallahan, Special Counsel, Regulatory Services, Phlx, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated August 4, 1993.

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–32881; File No. SR–Phlx–93–21]

September 14, 1993.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Trading Rotations

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 June 8, 1993, the Philadelphia Stock Exchange ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to move the text of Phlx Rule 101, Commentary .01 (a) through (d) to Phlx Rule 1047, Commentary .03, which deals with options rotation procedures. In addition, the Phlx proposes to amend Phlx Rule 1047 to clarify the procedures for conducting an after-the-close rotation. Specifically, in addition to other changes, the Phlx proposes to add to Commentary .01(d) to Exchange Rule 1047 the following langauge:

In any instance where the Options Committee determines to conduct a closing rotation on the trading day prior to expiration in an equity options for which the underlying did not trade, or for which trading was halted as of the normal close of trading, in its primary market on that day, the rotation shall commence as immediately as practicable following the time at which the option normally ceases free trading.

The text of the proposal is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposes to amend Rule 101, Commentary .01 to delete the discussion of option rotations and move that discussion to a new Commentary .03 to Rule 1047. This change will allow the Phlx to logically group rotation procedures in one rule for ease of reference. Proposed Commentary .03 permits trading after 4:10 p.m. in the context of a trading rotation approved by the Options Committee due to unusual circumstances or the opening or reopening of a stock.

Further, the Phlx is proposing the following changes to update Rule 1047: (1) Specifying in Rule 1047(a) that closing rotations are only required for expiring equity options contracts; (2) updating the deadline for opening foreign currency options to promptly follow the current time those options open for trading; and (3) adding to Commentary .01(b) the subparagraph title "Modified Rotations."

In addition, because this rule was designed to apply to the foreign currency options floor as well as the equity options floor, the Phlx is proposing to add to Rule 1047(c) that the "appropriate floor standing committee," not just the Options Committee, has the authority to delay an options opening, halt trading, or reopen after a halt. This authority would be expanded to expressly include the ability to: (1) Open an option where the underlying stock did not open or current quotations are unavailable for any foreign currency (currently provided for in Commentary .02); and (2) conduct a closing rotation on the trading day prior to expiration where the underlying stock did not open during that day or was halted as of its normal close of trading.

The Phlx is also proposing to amend Commentary .02 of Rule 1047. Commentary .02 currently provides that options trading would be delayed if the underlying security did not open for trading or foreign currency quotations were unavailable, unless the chairman of the appropriate committee determines that opening options trading would be in the best interests of maintaining a fair and orderly market. The proposal would amend Commentary .02 to provide that this determination be made by the appropriate floor standing committee, as opposed to solely the chairman of that committee. The Exchange states that such decisions have historically been handled by an emergency meeting of the full standing committee.

In addition, the proposed rule change would amend Commentary .01(d), which governs closing rotations. The proposed language states that a closing rotation in expiring equity options may be conducted with Options Committee approval immediately after the underlying stock normally ceases trading (*i.e.*, 4 p.m.), if practicable. Absent this language, member organizations could be unaware of the conditions under which such a rotation could occur. The Exchange believes that by establishing a more objective standard, the proposed deadline would provide notice to floor traders and customers alike. The Exchange further believes that a more detailed procedure is necessary because there have been numerous delays in the trading of a stock underlying a Phlx option, two of which occurred on an expiration Friday. Under the proposal, however, the standing committee may still determine not to open the option at all, or, in the event the stock opens immediately after the normal close, to further delay option trading.

The Exchange believes that enumerating the authority of the standing committee with respect to opening and closing rotations and establishing a time frame by which an option rotation should be conducted in an issue where the underlying stock never opened for trading, or was halted as of the close, should promote just and equitable principles of trade as well as protect investors and the public interest by providing for an orderly manner of trading. For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act, and, in particular, with Section 6(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

[1] 17 CFR 200.30-3(a)(12) (1993).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-23136 Filed 9-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 19717; 811-5915]

The Greece Fund, Inc.; Application for Deregistration

September 16, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Greece Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on August 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3018, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the State of Maryland. On September 28, 1989, Applicant registered under the

Act by filing a notification of registration pursuant to section 8(a). On December 27, 1989, Applicant filed a registration statement pursuant to section 8(b) of the Act.

2. Applicant has never issued or sold any securities.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant has not commenced, and does not intend to commence, operations. Applicant will not engage in any business activities other than those necessary to wind-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-23190 Filed 9-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 19718; 811-7262]

The Turkish Growth Fund, Inc.; Application for Deregistration

September 16, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Turkish Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on August 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americans, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3018, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the State of Maryland. On October 1, 1992, Applicant registered under the Act by filing a notification of registration pursuant to section 8(a). Applicant did not file a registration statement pursuant to section 8(b) of the Act.

2. Applicant has never issued or sold any securities.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant has not commenced, and does not intend to commence, operations. Applicant will not engage in any business activities other than those necessary to wind-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-23191 Filed 9-21-93; 8:45 am]

BILLING CODE 8010-01-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Education and Cultural Exchange Act of 1961, as amended by Public Law 87-256 and Immigration and Nationality Act. USIA is requesting reinstatement of this collection for a three-year period. The information collection is entitled "Certificate of Eligibility for Exchange Visitor Status (J-1 Visa)", under OMB Control Number 3116-0008. Estimated burden hours per response is fifteen (15) minutes. Respondents will be required to respond only one time.

DATES: Comments are due on or before October 22, 1993.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Mr. Jeffery Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116-0008) is estimated to average 15 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Certificate of Eligibility for Exchange Visitor Status (J-1 Visa).

Form Number: IAP-66.

Abstract: This information collection is used by Exchange Visitor sponsors to appropriately identify an individual seeking to enter the U.S. as an exchange visitor. The completed form is sent to the prospective exchange visitor abroad, who takes it to the U.S. Consulate

(Embassy) to secure an exchange visitor (J-1) visa.

Proposed Frequency of Responses: No. of Respondents—140,000, Recordkeeping Hours—.15, Total Annual Burden—35,195.

Dated: September 15, 1993.

Rose Royal,

Federal Register Liaison.

[FR Doc. 93-23111 Filed 9-21-93; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel; Roster of Employees

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102-40), dated May 7, 1991, revised the disciplinary, grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board Panel from which Board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided (without charge) a list of the names of employees on the panel upon request and may submit comments concerning the suitability for service on the panel of any employee whose name is on the list.

DATES: Names that appear on the panel may be selected to serve on a Board or as a grievance examiner October 22, 1993.

ADDRESSES: Send requests for the list of the names of employees on the panel and written comments to: Secretary of Veterans Affairs (058A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert J. Clayton, Chief, Employee Relations Division (058A), Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535-8884.

SUPPLEMENTARY INFORMATION: Public Law 102-40 required that the availability of the roster be posted in the **Federal Register** periodically, and not less than annually.

Approved: September 13, 1993.

Jesse Brown,

Secretary, Veterans Affairs.

[FR Doc. 93-23155 Filed 9-21-93; 8:45 am]

BILLING CODE 8320-01-M

Intent To Prepare Environmental Impact Statement; Proposed National Cemetery, Miami, FL

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: The Department of Veterans Affairs (VA) intends to prepare an Environmental Impact Statement (EIS) on the proposed establishment of a national cemetery to serve the Miami, FL, area.

The cemetery site is projected to require a minimum of 140 net burial acres, providing for approximately 94,890 gravesites and 16,750 remains. In addition, land will be required for interment service shelters, administrative and maintenance buildings, roads, wetland mitigation, and buffer areas. Physical characteristics and location of the land will determine the actual acreage necessary to develop the desired cemetery.

ADDRESSES: Individuals are invited to submit comments on this notice to the Director of Environmental Affairs (088B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Jon E. Baer, Director, Site Development and Environmental Service (088B4), at (202) 233-8453.

SUPPLEMENTARY INFORMATION: In accordance with section 102(2)(C) of the National Environmental Policy Act, VA publishes this Notice of Intent pursuant to 40 CFR 1501.7.

The proposed national cemetery, if ultimately approved as a project by VA, would involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic, and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

VA has identified five possible site alternatives for the proposed national cemetery within a 40 mile radius of the RT 41 and I-95 intersection. VA will evaluate each site alternative in an Environmental Impact Statement (EIS) that will assess the environmental impact of construction and operation of a national cemetery.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Individuals, private organizations, and local, state, and Federal Agencies are invited to participate in the scoping process. VA will use any comments it receives to further identify and clarify significant environmental issues. Local area newspapers will announce the scoping meetings for the project.

Dated: July 16, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93-23153 Filed 9-21-93; 8:45 am]

BILLING CODE 8320-01-M

Intent To Prepare Environmental Impact Statement; Proposed National Cemetery, Pittsburgh, PA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: The Department of Veterans Affairs (VA) intends to prepare an Environmental Impact Statement (EIS) on the proposed establishment of a national cemetery to serve the Pittsburgh, PA, area.

The cemetery site is projected to require approximately 150 acres, providing space for approximately 124,000 gravesites, interment service shelters, administrative and maintenance buildings, roads, and buffer areas. Physical characteristics and location of the land will determine the actual acreage necessary to develop the desired cemetery.

ADDRESSES: Individuals are invited to submit comments on this notice to the Director of Environmental Affairs (088B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Jon E. Baer, Director, Site Development and Environmental Service (088B4), at (202) 233-8453.

SUPPLEMENTARY INFORMATION: An EIS is required because the scope of the proposed project exceeds VA threshold for an EIS established in 38 CFR part 26, Environmental Effects of VA Actions. In accordance with section 102(2)(C) of the National Environmental Policy Act, VA publishes this Notice of Intent pursuant to 40 CFR 1501.7.

The proposed national cemetery, if ultimately approved as a project by VA, would involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic, and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

VA has identified five possible site alternatives for the proposed national

cemetery within a 50-mile radius of the intersection of I–279 and I–376. VA will evaluate each site alternative in an Environmental Impact Statement (EIS) that will assess the environmental impact of construction and operation of a national cemetery.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Individuals, private organizations, and local, state, and Federal agencies are invited to participate in the scoping process. VA will use any comments it receives to further identify and clarify significant environmental issues. Local area newspapers will announce the scoping meetings for the project EIS.

Dated: July 16, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–23154 Filed 9–21–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, September 23, 1993, 3:00 p.m.

LOCATION: Room 440, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

FOIA Matter OS# 5562

The Commission and staff will discuss issues related to Freedom of Information Act matter OS# 5562.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: September 16, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–23302 Filed 9–20–93; 10:46 am]

BILLING CODE 6355–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, September 28, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5779A—Pipeline Accident Report: Highly Volatile Liquids Release from Underground Storage Cavern and Explosive, MAPCO Natural Gas Liquids, Inc., Brenham, Texas, April 7, 1992.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: September 17, 1993.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 93–23285 Filed 9–17–93; 4:54 pm]

BILLING CODE 7533–01–M

Corrections

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 930782-3182; I.D. 052493B]

Threatened Fish, Wildlife and Plants; Johnson's Seagrass

Correction

FR Doc. 93-22508 was published on page 48327 in the issue of Wednesday, September 15, 1993. This document proposes to add Johnson's seagrass (*Halophila johnsonii*) to the U.S. List of Endangered and Threatened Plants. It was published in the Rules section of the **Federal Register**. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8483]
RIN 1545-AR06

Earnings and Profits of Regulated Investment Companies and Real Estate Trusts

Correction

In rule document 93-19753 beginning on page 43797 in the issue of Wednesday, August 18, 1993, make the following correction:

§ 1.852-12 [Corrected]

On page 43798, in the first column, in § 1.852-12(b)(1), in the second line, "*In general.T1 An*"should read "*In general.* An".

BILLING CODE 1505-01-D

federal register

Wednesday
September 22, 1993

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63
National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–4732–9]

RIN 2060–AC27

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: National emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities were proposed in the **Federal Register** on December 9, 1991 (56 FR 64382). A notice of availability of new information on control of PCE emissions during clothing transfer at dry cleaning facilities that use transfer dry cleaning machines was published on October 1, 1992 (57 FR 45363). This action promulgates national emission standards for PCE dry cleaning facilities. These standards implement section 112 of the Clean Air Act (Act) and are based on the Administrator's determination that PCE is a hazardous air pollutant (HAP) and that emissions, ambient concentrations, bioaccumulation, or deposition of PCE are known to cause or may reasonably be anticipated to cause adverse effects to human health or the environment.

The intended effect of this NESHAP is to require all new and existing major source dry cleaning facilities (emitting or with the potential to emit greater than 9.1 megagrams (Mg) [10 tons] per year of PCE) to control emissions to the level of the maximum achievable control technology (MACT), as specified in section 112 of the Act.

The intended effect of this NESHAP is also to require all new and existing area source dry cleaning facilities (emitting or with the potential to emit 9.1 Mg [10 tons] per year or less of PCE) to control PCE emissions to the level achieved by generally available control technologies (GACT) or management practices.

EFFECTIVE DATE: September 22, 1993.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of the actions taken by this notice is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Dry Cleaning Facilities—Background Information for Promulgated Standards," EPA–450/3–91–020b. The BID contains: (1) A summary of the public comments made on the proposed NESHAP and the notice of availability of new information and the Administrator's response to the comments; (2) a summary of the changes made to the NESHAP since proposal; and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. Docket No. A–88–11, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays, at the EPA's Air Docket (LE–131), Waterside Mall, room M1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Public Meeting. As discussed in more detail at the end of this preamble, in order to gain additional understanding of indoor air pollution, ground water contamination and solid waste generation resulting from dry cleaning facilities, the EPA will convene a public meeting at a place and time to be announced. Information also will be sought on the environmental impacts associated with the operation of wastewater evaporators. The objective of this public meeting will be to gather information on the magnitude of these problems, as well as potential solutions to these problems.

Individuals wishing to find out the date and location of the meeting or to speak at this public meeting should contact Ms. Julia Stevens at (919) 541–5578 by October 22, 1993. Individuals wishing to submit written comments in lieu of attending this public meeting should forward their comments by November 22, 1993 to: Mr. Bruce Jordan, Director; Emission Standards Division (MD–13); Environmental Protection Agency; Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards, contact Mr. George Smith at (919) 541–1549 or Mr. Fred Porter at (919) 541–5251, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the final rule.

I. Background

A. List of Categories and Subcategories
B. Source of Authority for National Emission Standards for Hazardous Air Pollutants
C. Criteria for Development of National Emission Standards for Hazardous Air Pollutants
D. Categorization/Subcategorization: Determining Maximum Achievable Control Technology "Floors" for NESHAP
E. Historical Development of the Standards

II. Summary

A. Summary of Promulgated Standards
B. Selection of Basis of Standards for New and Existing Sources—Selection of MACT or GACT
C. Selection of Format for the Final Rule
D. Summary of Changes Since Proposal
E. Potential to Emit

III. Summary of Environmental, Energy, and Economic Impacts

A. Affected Facilities
B. Air Impacts
C. Water, Solid Waste, Noise, and Radiation Impacts
D. Energy Impacts
E. Cost Impacts
F. Economic Impacts

IV. Public Participation

V. Significant Comments and Changes to the Proposed Standards

A. Regulatory Approach
B. Emission Control
C. Monitoring and Equivalency
D. Other Issues and Follow-up to Today's Action

VI. Administrative Requirements

A. Docket
B. Paperwork Reduction Act
C. Executive Order 12291
D. Regulatory Flexibility Act
E. Miscellaneous

I. Background

A. List of Categories and Subcategories

The Act requires, under section 112, that the EPA evaluate and control emissions of HAP's. The control of HAP's is achieved through promulgation of emission standards under sections 112(d) and 112(f) for categories of sources that emit HAP's. Section 112(c)(3) directs the Administrator to list each category or subcategory of area sources which the Administrator finds "presents a threat of adverse effects to human health or the environment." Section 112(c)(3) also directs the Administrator to list within 5 years "sufficient categories or

subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 HAP's that present the greatest threat to public health in the largest number of urban areas are subject to regulation." Section 112(c)(1) directed the EPA to publish an initial list of major sources which emitted one or more of the listed 189 HAP's. As described in the proposal, (56 FR 64382, 64383 (December 9, 1991)), the EPA identified 5 categories of major or area sources of dry cleaners for regulation. These source categories were included in the initial section 112(c)(1) list published on July 16, 1992, (57 FR 31576) as follows:

Source Category and Subcategory
Industrial (major)—Dry-to-dry machines; Transfer machines.
Commercial (major)—Transfer machines.
Commercial (area)—Dry-to-dry machines; Transfer machines.

All sources in the industrial category are major sources. The industrial category has two basic types of machines: Dry-to-dry and transfer. A major source includes any source that emits or has the potential to emit, considering controls, in the aggregate, 9.1 Mg/yr (10 tpy) of any HAP (section 112(a)(1) of the Act). The EPA proposed that the industrial source category and those major sources under the commercial source category be regulated under MACT. The EPA also proposed that the commercial source category, which includes area sources, be listed under section 112(c)(3) for regulation under GACT.

B. Source of Authority for National Emission Standards for Hazardous Air Pollutants Development

Title III of the Act was enacted to help reduce the increasing amount of nationwide air toxics emissions. Under title III, section 112 was amended to give the EPA the authority to establish national standards to reduce air toxics from sources that emit one or more HAP. Section 112(b) contains a list of HAP's, which are the specific air toxics to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which a NESHAP will be developed. The EPA must list all known categories and subcategories of "major sources" (defined above) which emit one or more of the listed HAP's. Area source categories selected by the EPA for NESHAP development will be based on the Administrator's judgment that the sources in a category, individually or in aggregate, pose a "threat of adverse effects to health and the environment." As noted above, the initial section 112(c)(1) list of source categories was published on July 16, 1992 (57 FR 31576) and listed 5 source categories of dry cleaners (three major and two area).

C. Criteria for Development of National Emission Standards for Hazardous Air Pollutants

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP's that is achievable for new or existing sources. The NESHAP must reflect consideration of the cost of achieving the emission reduction, and any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors (described below). The emission reduction may be accomplished through application of measures, processes, methods, systems or techniques including, but not limited to, measures which:

1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,
2. Enclose systems or processes to eliminate emissions,
3. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,
4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or
5. Are a combination of the above (section 112(d)(2)).

To develop a NESHAP, the EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable due to technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

Section 112(h)(2) provides that, "the phrase 'not feasible to prescribe or enforce an emission standard' means any situation in which the Administrator determines that "the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations." As described below, the Administrator has determined that it is impracticable to prescribe an emission standard for the sources subject to this rule. Accordingly, this final rule is being issued as a section 112(h) standard.

D. Categorization/Subcategorization: Determining Maximum Achievable Control Technology "Floors" for NESHAP

The Act directs the Administrator to list categories and subcategories of major sources and area sources which emit one or more of the HAP's listed in section 112(b) (section 112(c) of the Act). The Administrator shall list all major sources which emit HAP's. The Administrator shall list those area source categories and subcategories which she finds present a threat of adverse effects to human health or the environment warranting regulation. Once the EPA has identified the specific source categories or subcategories of major sources and area sources that it intends to regulate under section 112, it must set MACT standards for each and must set such standards at a level at least as stringent as the "floor," unless it regulates area sources under section 112(d)(5) as described below. Congress provided certain very specific directives to guide the EPA in the process of determining the regulatory floor.

Congress specified that the EPA shall establish standards which require "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable * * *" (section 112(d)(2) of the Act) In addition, Congress limited the EPA's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3) of the Act). Congress provided that existing source standards could be less

stringent than new source standards but could be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources (excluding certain sources) for categories and subcategories with 30 or more sources or the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3) of the Act).

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. However, in establishing the standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (section 112(d)(1) of the Act). Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent as the MACT floor.

In addition, the Act provides the Administrator further flexibility to regulate area sources. Section 112(d)(5) provides that in lieu of establishing MACT standards under section 112(d), the Administrator may promulgate standards which provide for the use of "generally available control technologies or management practices." Area source standards promulgated under this authority (GACT standards) would not be subject to the MACT "floors" described above. Moreover, for source categories subject to standards promulgated under section 112(d)(5), the EPA is not required to conduct a residual risk analysis under section 112(f).

At the end of the data gathering and analysis, the EPA must decide whether it is more appropriate to follow the MACT or the GACT approach for regulating an area source category. As stated previously, MACT is required for major sources. If all or some portion of the sources emits less than 9.1 Mg/yr (10 tpy) of any one HAP (or less than 22.7 Mg/yr (25 tpy) of total HAP's), then it may be appropriate to define subcategories within the source category and apply a combination MACT/GACT approach, MACT for major sources and GACT for area sources. In other cases, it may be appropriate to regulate both major and area sources in a source category under MACT.

The next step in establishing a MACT or GACT standard is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be considered. Information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to determine the most plausible regulatory alternative to reflect the appropriate MACT or GACT level.

The regulatory alternatives for new versus existing sources may be different, and separate regulatory decisions must be made for new and existing sources. For both source types, the selected alternative may be more stringent than the MACT floor. However, the control level selected must be technically achievable. In selecting a regulatory alternative to represent MACT or GACT, the EPA considers the achievable reduction in emissions of HAP's (and possibly other pollutants that are co-controlled), the cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emission reduction without unreasonable economic or other impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT or GACT decision typically includes sections of applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Based on an evaluation of these comments, the EPA reaches a final decision and promulgates the NESHAP.

E. Historical Development of the Standards

On November 25, 1980 (45 FR 78174), the EPA proposed new source performance standards (NSPS) to limit emissions of volatile organic compounds (VOC's) from new, modified, and reconstructed PCE dry cleaners under the authority of section 111 of the Act. On December 26, 1985 (50 FR 52880), the EPA published a Notice of Intent to List PCE as a potentially toxic air pollutant to be regulated under section 112 of the Act and solicited information on the potential carcinogenicity of PCE. Perchloroethylene is the predominant solvent used in dry cleaning. It has chemical and physical properties which make it the most desirable solvent available for the dry cleaning of fabrics. Information was also requested on applicable emission control equipment and the associated level of control achievable.

Subsequent to the EPA's issuance of the 1980 proposed rule and to the EPA's Notice of Intent to List and possible regulation of PCE emissions from dry cleaners under section 112, a private citizens group from Oregon, Francis P. Cook, et al., brought suit against the Administrator of the EPA to compel him to issue a final rule regulating emissions from PCE dry cleaners under the authority of section 111 of the Act. The EPA and plaintiffs negotiated a settlement of the lawsuit whereby the EPA agreed to enter into a Consent Decree. The U. S. District Court for the District of Oregon entered the Consent Decree on March 16, 1990, (*Cook* v. *Reilly*, No. 89–630 7E (D. Ore)). In the Consent Decree, the EPA Administrator agreed to sign proposed NESHAP for PCE dry cleaning facilities within 1 year and promulgate the standards within 2 years following enactment of the new amendments to the Act. In accordance with the Consent Decree, on November 15, 1991, the Administrator, William K. Reilly, signed the proposed rulemaking. That notice appeared in the **Federal Register** on December 9, 1991, (56 FR 64382).

In that notice, the EPA proposed to regulate PCE emissions from dry cleaners under authority of section 112 of the Act because PCE is included on the list of HAP's found in section 112(b).

A notice announcing the withdrawal of the proposed NSPS for regulating VOC emissions from PCE dry cleaners under section 111 was also published at that time (56 FR 64382). The Consent Decree was amended twice to provide the EPA additional time to complete this action, with the current decree requiring the Administrator to sign a final rulemaking notice not later than September 13, 1991. This action completes the EPA's obligations to take regulatory action in compliance with the Consent Decree.

II. Summary

A. Summary of Promulgated Standards

The standards being promulgated today will reduce emissions of PCE from new and existing dry cleaning facilities in the industrial and commercial sectors of the dry cleaning industry. Coin-operated dry cleaning machines are exempt from the standards. The requirements of the standards are

discussed below. The process vent control requirements of the standards are presented in table 1.

TABLE 1.—REQUIREMENTS OF THE PCE DRY CLEANING NESHAP

Requirement	Small area source	Large area source	Major source
Applicability:	Consuming less than:	Consuming between:	Consuming more than:
Dry Cleaning Facilities with:			
(1) Only Dry-to-Dry Machines	140 gallons PCE/year	140–2,100 gallons PCE/year	2,100 gallons PCE/year
(2) Only Transfer Machines	200 gallons PCE/year	200–1,800 gallons PCE/year	1,800 gallons PCE/year
(3) Both Dry-to-Dry and Transfer Machines.	140 gallons PCE/year	140–1,800 gallons PCE/year	1,800 gallons PCE/year
Process Vent Controls:			
Existing Facilities	None	(1)	(1)
New Facilities	(2)	(2)	Refrigerated condenser followed by small carbon adsorber (or equivalent)
Fugitive Controls:			
Existing Facilities	(3)	(3)	Room enclosure
	(4)	(4)	
New	(5)	(5)	
	(6)	(6)	
	(7)	(7)	

1 Refrigerated condenser (or equivalent) Existing carbon adsorbers can remain.
2 Refrigerated condenser (or equivalent).
3 Leak detection/repair.
4 Store all PCE solvent & waste in sealed containers.
5 Leak detection/repair.
6 Store all PCE solvent & waste in sealed containers.
7 No new transfer machine systems allowed.

Owners and operators of all new dry cleaning machines and existing uncontrolled dry cleaning machines located at major sources, as well as those of many area sources, are required to install and operate refrigerated condensers to control PCE emissions from process vents. Owners and operators of existing dry cleaning machines controlled with carbon adsorbers that were installed prior to today's date are not required to replace the carbon adsorber with a refrigerated condenser. These owners and operators may continue to operate their carbon adsorbers to control PCE emissions from process vents. Owners and operators of all dry cleaning machines are required to operate their PCE emission control equipment and dry cleaning machines according to the manufacturer's recommendations. New transfer machine systems are effectively banned through a requirement prohibiting any PCE emissions from clothing transfer between the washer and dryer of transfer machine systems.

Additional controls are required for new dry-to-dry machines and existing transfer machine systems located at major sources. Owners or operators of new dry-to-dry machines located at major sources are required to install a carbon adsorber in addition to a refrigerated condenser. The PCE saturated air remaining in the dry cleaning drum after completion of the refrigerated condenser cycle must be passed through this carbon adsorber immediately before the door of the dry cleaning machine is opened or as the door is opened. Owners or operators of existing transfer machine systems located at major sources are required to contain their transfer machine systems inside a room enclosure. This room enclosure must be vented to a carbon adsorber to control PCE emissions captured by the room enclosure.

To determine if a dry cleaning facility is a major source emitting over 9.1 Mg (10 tons) per year, total annual PCE consumption of all of the dry cleaning machines at a facility is used to determine PCE emissions. For the purpose of these standards, PCE consumption during any period is defined as the PCE purchased during that period. A facility with only dry-to-dry machines consuming 8,000 liters (2,100 gallons) per year would emit 9.1 Mg (10 tons) per year of PCE and is considered a major source. Similarly, a facility with only transfer machine systems consuming 6,800 liters (1,800 gallons) per year would emit 9.1 Mg (10 tons) per year of PCE and is considered a major source. Finally, a facility with both dry-to-dry machines and transfer machine systems consuming 6,800 liters (1,800 gallons) per year would emit 9.1 Mg (10 tons) per year and is also considered a major source.

The standards include yearly low solvent consumption exemption levels for existing area sources (these low solvent consumption levels do not apply to new sources). The low consumption exemption level is 530 liters (140 gallons) per year for an existing area source that contains only dry-to-dry machines. The low consumption exemption level is 760 liters (200 gallons) per year for an existing area source that contains only transfer machine systems. Finally, the low consumption exemption level is 530 liters (140 gallons) per year for an existing area source that contains both dry-to-dry machines and transfer machine systems. Existing area sources with a yearly PCE consumption below these low solvent consumption exemption levels are not required to install process vent controls. To determine appropriate compliance requirements based on PCE consumption, owners or operators of all dry cleaning facilities must calculate a yearly rolling total of PCE consumption (based on purchase receipts) on the first day of each month.

The owner or operator of each dry-to-dry machine, transfer machine dryer, or reclaimer using a refrigerated condenser is required to monitor and record the temperature on the outlet side of the refrigerated condenser once per week. The owner or operator of each transfer machine washer using a refrigerated

condenser is required to monitor and record the temperature on both the inlet side and the outlet side of the refrigerated condenser once per week. The owner or operator of each existing dry cleaning machine using an existing carbon adsorber for process vent control, which was installed prior to today, or each new major source dry-to-dry machine using a supplemental carbon adsorber to control PCE remaining in the machine drum, is required to monitor the concentration of PCE in the carbon adsorber exhaust outlet once per week.

All owners or operators of dry cleaning facilities are subject to pollution reduction requirements for all dry cleaning machines as well as auxiliary equipment (such as emission control devices, pumps, filters, muck cookers, stills, solvent tanks, solvent containers, water separators, diverter valves, and interconnecting piping, hoses, and ducts). To prevent liquid and vapor leaks from these sources, a weekly leak detection and repair program is required at all facilities except existing facilities with annual receipts less than $75,000, where biweekly leak detection and repair is required. All leaks detected must be recorded in a log, must have their necessary repair parts ordered, and must be repaired within 5 working days of receiving the necessary part. Storage of waste containing PCE in tightly sealed containers is also required to reduce PCE emissions before disposal. Owners or operators of all dry cleaning facilities must maintain monthly records of PCE consumption, based on purchase receipts. Each month, the annual PCE consumption for the preceding 12 months must also be calculated and recorded.

Initial reports certified by a responsible official are required, which include a brief description of and the design capacity of all dry cleaning machines at the facility, annual facility PCE consumption and, where appropriate, the type of emission control device to be used to achieve compliance for each machine at the facility. An existing dry cleaning machine that commenced construction prior to December 9, 1991 (the date of proposal of the PCE dry cleaning NESHAP), must comply with pollution prevention and recordkeeping-and-reporting requirements starting 90 days from today. An existing machine must comply with other requirements within 36 months of today's date. In general, a new dry cleaning machine for which construction commenced on or after December 9, 1991, must achieve compliance with this rule upon startup. However, a new dry cleaning machine that was constructed after December 9, 1991, but prior to today's date may comply immediately with the final rule or comply with section 112(i)(2) of the Act. (Section 112(i)(2) allows qualifying new sources 3 years from promulgation to comply with the final rule, if they comply with the proposed rule in the interim.) A statement signed by a responsible official certifying that compliance is being achieved is required 30 days following the date of compliance.

If a dry cleaning facility that initially met the requirements for an area source exceeds the PCE consumption level for an area source and becomes a major source, that dry cleaning facility is required to achieve compliance with the requirements for a major source by 180 days from the date that the PCE consumption level is exceeded, or within 36 months following today's date, whichever date is later.

If an existing dry cleaning facility initially below the low solvent consumption exemption level for an existing area source exceeds this low solvent consumption exemption level, that dry cleaning facility is required to achieve compliance with the process vent requirements for an area source above the low solvent consumption exemption level by 180 days from the date that the PCE consumption level is exceeded, or within 36 months following today's date, whichever date is later.

The recordkeeping requirements include documentation of the volume of PCE purchased each month, results and calculations of the yearly PCE consumption as determined each month, results of weekly or biweekly PCE liquid and vapor leak inspections and, where appropriate, results of weekly control device monitoring (refrigerated condenser outlet temperature, or refrigerated condenser inlet and outlet temperatures, or carbon adsorber exhaust concentration). All records must be retained for 5 years and made available for inspection upon request. Owners and operators of all dry cleaning facilities must retain onsite a copy of the design specifications and operating manuals for all dry cleaning machines and control devices.

Equivalent pollution prevention or emission control technology may be used to achieve compliance with the standards in lieu of the control devices required by the standard if certain information is submitted to and approved by the Administrator. The EPA notes that a dry cleaner could, by replacing perchloroethylene with other cleaning agents if available, be exempt from process vent controls or the entire NESHAP. An alternative standard may be approved through the section 112(l) approval process if the State meets certain requirements as discussed in more detail in section V. This information includes diagrams; documentation of emission quantification; solvent mileage information; identification of maintenance and monitoring requirements to ensure proper operation; an explanation of why the data regarding emission control is accurate and representative of both short and long term performance; an explanation of why the information supplied can be extrapolated to dry cleaning systems other than the specific systems examined; and documentation of cross-media (water, solid waste) impacts. Upon approval, the Administrator will publish a notice in the **Federal Register**.

Dry cleaners subject to today's rule should be aware of a separate rule known as the "general provisions." The general provisions, which were proposed in the **Federal Register** on August 11, 1993 (58 FR 42760), are generic requirements that sources subject to section 112 standards must meet. Among other things, the proposed general provisions rule contains a procedure for existing sources to apply for a one-year compliance extension, preconstruction review requirements for major sources, and definitions of terms that will be used in many or all section 112 standards. The EPA currently plans to promulgate the final general provisions in March 1994.

B. Selection of Basis of Standards for New and Existing Sources—Selection of MACT or GACT

As prescribed by section 112(c)(1), the promulgation of these standards was preceded by the development and publication of a list with all the categories and subcategories of major and area sources emitting any of the HAP's listed in section 112(b) of the Act. An initial list of such categories (required under section 112(c)(1)) was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Three perchloroethylene dry cleaning major source categories were included on this list: (1) Commercial dry cleaning (perchloroethylene)—transfer machines; (2) industrial dry cleaning (perchloroethylene)—transfer machines; and (3) industrial dry cleaning (perchloroethylene)—dry-to-dry machines. Two dry cleaning area source categories were included on this list: (1) Commercial dry cleaning (perchloroethylene)—transfer machines; and (2) commercial dry cleaning

(perchloroethylene)—dry-to-dry machines. The Administrator found that these categories present "a threat of adverse effects to human health or the environment."

As described above, the dry cleaning industry subject to the NESHAP is subcategorized into major and area source dry cleaners. The dry cleaning industry is also subcategorized into industrial and commercial sectors. All industrial dry cleaners are major sources. Commercial dry cleaners can be either major or area sources. The dry cleaning industry is further subcategorized into dry-to-dry and transfer machines. Although two subcategories of coin-operation dry-to-dry machines (plant and self-service) were included in the preliminary source category list published June 21, 1991 (56 FR 28548), these two subcategories were deleted from the final source category list published July 16, 1992 (57 FR 31576). These two subcategories are exempt from this final NESHAP.

There were no differences in the types of control technologies identified for the subcategories of industrial and commercial dry cleaners; however, differences in control technologies were identified between major and area sources, and dry-to-dry and transfer machines. These differences were used in determining the requirements of the NESHAP.

The rule requires new and existing dry-to-dry machines, and transfer machine dryers, that are controlled with refrigerated condensers to be closed-loop—in other words, the gas-vapor mixture within the machine cannot be vented to the atmosphere while the dry cleaning machine drum is rotating. Although the refrigerated condenser can be external or internal, the gas-vapor stream must be routed back to (or contained within) the machine in a closed-loop configuration, without venting to the atmosphere. This ensures that the gas-vapor stream passes multiple times through the refrigerated condenser and that high control efficiency can be achieved. The EPA wishes to emphasize that the rule does not prohibit fan-and-vent systems which operate when the machine door is open to reduce worker exposure to PCE vapors left inside the drum at the end of the drying cycle.

The selection of the standards for this NESHAP based upon the subcategorization of the dry cleaning industry discussed above is summarized as follows.

1. Major Sources

Section 112 of the Act defines a major source as any stationary source that emits 9.1 Mg/yr (10 tpy) or more of any one HAP or 22.7 Mg/yr (25 tpy) or more of total HAP's. The Act states that new major sources must achieve the MACT, which is the level of emission control already achieved in practice by the best controlled similar source. The Act further states that emission standards promulgated for existing major sources may be less stringent than standards for new sources; however, standards for existing major sources must not be less stringent than the average level of emission reduction achieved by the average of the best performing 12 percent of the existing major sources.

For new major dry cleaning facilities, the only significant factor for determining similarity in sources is the type of machine used. Two basic types of machines are used in the dry cleaning industry: Dry-to-dry machines and transfer machines. For dry-to-dry machines, it has been demonstrated that the maximum degree of PCE emission reduction from machine vents and exhausts can be achieved by installing a refrigerated condenser.

At proposal, the EPA believed the performance of carbon adsorbers to be equal to that of refrigerated condensers when used to control emissions from dry-to-dry machines, and proposed to allow major source dry-to-dry machines to install either control device. Following proposal, however, new information was provided to the EPA from a survey of dry cleaners in California, which disputes these conclusions. A more detailed discussion of this finding is presented in section V.B.

The use of a refrigerated condenser and small carbon adsorber together is considered MACT for new source dry-to-dry machines. At present, both of these control devices are used widely in the dry cleaning industry. They are readily available and economically feasible as methods of control.

The emissions remaining in a conventional dry-to-dry machine, controlled with a refrigerated condenser, at the end of the dry cleaning cycle can be further controlled by drawing the air remaining in the machine through a small carbon adsorber either before the door to the machine is opened or venting the air through a carbon adsorber to the atmosphere as the door is opened. Information was made available to the EPA after proposal indicating that several conventional vented dry-to-dry machines equipped with refrigerated condensers currently operate in this manner (i.e., the air remaining in the machine at the end of the dry cleaning cycle is vented to a carbon adsorber as the door to the machine is opened).

Use of a carbon adsorber for process vent control represents the MACT floor for existing dry-to-dry machines because this is the average level of emission reduction achieved by the best-performing 12 percent of existing major sources. In considering whether to require controls above this floor, EPA distinguished between classes of machines. As noted earlier, the maximum achievable control technology for existing uncontrolled dry-to-dry machines is refrigerated condensers. However, MACT for existing dry-to-dry machines equipped prior to promulgation with carbon adsorbers is either a refrigerated condenser or a carbon adsorber. The final rule does not require the replacement of these carbon adsorbers with refrigerated condensers. The Administrator could not conclude, based on currently available information, that requiring replacement of a well-operated carbon adsorber with a refrigerated condenser was justified.

For transfer machine systems located at a major source, the NESHAP must be based on MACT. The Act states that MACT for new sources must be no less stringent than the best controlled similar source. The MACT may be more stringent, however, if the Administrator believes the balance between the additional economic, energy, and environmental impacts of a more stringent requirement is reasonable. A transfer machine system with a refrigerated condenser and a room enclosure represents the best controlled similar source. The only option more stringent than a transfer machine system with a room enclosure is a new dry-to-dry machine.

Dry-to-dry machines provide complete control of clothing transfer emissions (i.e., emissions released by transfer of clothing from the washer to the dryer of a transfer machine system). Dry-to-dry machines eliminate these emissions by eliminating the need to transfer clothing from a washer to a dryer (achieving 100 percent reduction of clothing transfer emissions).

The MACT for new transfer machine systems located at a major source is based upon the use of dry-to-dry machines, thereby requiring new major source transfer machine systems to eliminate all emissions from clothing transfer between the washer and the dryer. Such a requirement effectively bans or prohibits new transfer machine systems because no technology has been identified to date (including the use of hamper enclosures or room enclosures) that could be added to a new transfer

machine system to totally eliminate all PCE emissions from clothing transfer. A more detailed discussion of this finding is presented in section V.B.

For existing major source transfer machine systems, it has been demonstrated that the maximum degree of PCE emission reduction from machine vents and exhausts can be achieved by installing a refrigerated condenser. At proposal, the EPA believed carbon adsorbers outperformed refrigerated condensers on transfer machine systems and proposed to require carbon adsorbers on uncontrolled transfer machine systems. Following proposal, however, new information was provided to the EPA from a survey of dry cleaners in California, which disputes these conclusions. A more detailed discussion of this finding is presented in section V.B.

Use of a carbon adsorber for process vent control represents the MACT floor for existing transfer machines because this is the average level of emission reduction achieved by the best-performing 12 percent of existing major sources. In considering whether to require controls above this floor, the EPA distinguished between classes of machines. As noted earlier, the maximum achievable control technology for existing uncontrolled transfer machines is refrigerated condensers. However, MACT for existing transfer machines equipped prior to promulgation with carbon adsorbers is either a refrigerated condenser or a carbon adsorber. The final rule does not require the replacement of these carbon adsorbers with refrigerated condensers. The Administrator could not conclude, based on currently available information, that requiring replacement of a well-operated carbon adsorber with a refrigerated condenser was justified. Room enclosures capture and vent the fugitive PCE emissions from clothing transfer between the washer and the dryer at transfer machine systems to a carbon adsorber. Since clothing transfer emissions are a significant portion of overall transfer machine system emissions, control of these through a room enclosure would achieve additional emission reductions. Section V provides a more detailed discussion of these control devices.

Based on the results of further analysis, it was considered reasonable to go beyond the floor to require room enclosures for fugitive emission control in addition to refrigerated condensers for process vent control for transfer machine systems located at a major source.

2. Area Sources

Section 112 of the Act defines an area source as any stationary source of HAP's that is not a major source. Based on this definition, a dry cleaning facility that emits less than 9.1 Mg/yr (10 tpy) of any one HAP would be considered an area source. In section 112(d)(5), the Act further states that the Administrator may elect to promulgate a standard based on GACT or management practices to control HAP emissions from area sources instead of applying the MACT.

Section 112(c)(3) requires a "finding" of a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate warranting regulation) in order to regulate area sources under NESHAP. The large number of area source dry cleaning facilities nationwide emit, in aggregate, a significant amount of PCE emissions and, therefore, have the potential to have an adverse effect on health and the environment.

Unlike MACT, no stringency "floor" is required for GACT; and costs, economic impacts, and the technical capabilities of dry cleaning facility owners and operators to operate emission control equipment may be considered in determining GACT. For the most part, the technology used to achieve the level of emission control determined to achieve MACT is also used widely by area source dry cleaning facilities and could be considered GACT.

The GACT approach can be less stringent than MACT and can consider costs and economic impacts. At proposal, GACT for all area sources, except for existing refrigerated condenser controlled transfer machines was determined to be the use of either a refrigerated condenser or a carbon adsorber. Subsequent to proposal, the EPA learned that carbon adsorbers may not be operated as well as refrigerated condensers. Based on this finding, all new and existing uncontrolled area sources are required to install refrigerated condensers for process vent control. However, the Administrator determined that, based on existing information, a requirement to replace existing carbon adsorbers with refrigerated condensers is not justified at this time. No new transfer machines are allowed. These requirements were determined to be reasonable for area sources and are identical to MACT requirements. The EPA determined that the economic impacts of requiring the owner or operator of a new area source dry-to-dry machine to install a supplemental carbon adsorber to control PCE emissions in the dry cleaning machine drum is not reasonable. Further, the Administrator determined that the economic impacts of requiring the owner or operator of an existing area source transfer machine system to install a room enclosure to capture transfer emissions are unreasonable. Additional discussion of these findings is presented in section V.

Therefore, GACT for area sources would be identical to MACT for major sources except that the owner or operator of a new dry-to dry machine would not be required to install a supplemental carbon adsorber and the owner or operator of an existing transfer machine system would not be required to install a room enclosure.

C. Selection of Format for the Final Rule

1. Equipment Exhausts and Vents.

Emission standards for controlling PCE allow for some flexibility in complying with the standards because any control technique may be used if it achieves the level of emission reduction represented by the standards. An emission limitation format could be a concentration limit, a percent reduction level, or a mass emission rate limit.

Both the concentration limit and the percent reduction level would require periodic performance testing by the owner or operator to demonstrate that the dry cleaning facility is achieving compliance. Because the cost of requiring an owner to conduct even a single periodic performance test is expensive ($3,000 to $5,000) compared to the cost of control equipment ($6,000 to $8,000), it would be economically unreasonable to require either of these two emission limit formats for these standards.

A mass emission limit format would place a limit on the total consumption of HAP per unit of articles cleaned, also known as "solvent mileage." Some members of the dry cleaning industry use the "solvent mileage," method to compute the pounds of articles that can be cleaned per drum of solvent. To determine "solvent mileage," a record of gallons of solvent bought and amount of clothes cleaned would have to be kept. However, the amount of recordkeeping necessary to compute solvent mileage to comply with this type of format (such as weighing each load of clothes prior to cleaning and tracking the amount of solvent consumed) would be burdensome for a small facility owner or operator.

In addition to being impractical and an economic burden on dry cleaner owners or operators to measure emissions or to compute solvent mileage

for these sources, it would be difficult to enforce emission standards at several thousand dry cleaning facilities across the country, ensuring that each dry cleaner is achieving the emission standards. For these reasons, as authorized under section 112(h), an equipment standard requiring the use of a refrigerated condenser, or an equivalent control device was selected to limit emissions from these sources.

2. Equipment Leaks.

Based on dry cleaning machine test data, as much as 25 percent of the PCE emissions from an uncontrolled dry cleaning facility can be attributed to leaks from the dry cleaning equipment. Two possible formats for a standard to control these leaks are an emission limit standard or a work practice standard under section 112(h).

To require an emission limit for a leak standard, the leak sources would need to be enclosed so that the actual emission rate could be measured. Because this procedure would be impractical on the many potential leak sources on dry cleaning equipment, an emission limit format is not the preferred format for leaks.

Because control of fugitive equipment leaks requires maintenance of the dry cleaning equipment, the EPA is proposing a work practice with a program to detect and repair leaks as the logical format. The work practice would specify the inspection time intervals and an inspection method to locate the leaks, and would limit the time period allowed to perform the required maintenance and repairs. The proposed inspection method requires only a quantitative determination of the presence of a leak (i.e., visual or use of a portable halogenated-hydrocarbon detector). Although the effectiveness of this work practice cannot be quantified precisely, the EPA believes it would result in a substantial reduction of fugitive emissions. The work practice format has been selected for the proposed equipment leak standard because less time is required for demonstrating compliance, and the recordkeeping and economic impacts associated with this format are not burdensome.

D. Summary of Changes Since Proposal

Since proposal, several changes have been made to the regulation. The changes affect new and existing dry cleaning machines located at major and area sources. At proposal, owners or operators of new dry-to-dry machines located at major or area sources were given a choice of installing carbon adsorbers or refrigerated condensers as process vent control. At promulgation, all new dry cleaning machines located at major or area sources are required to install refrigerated condensers.

The owner or operator of a new dry-to-dry machine located at a major source is also required to install a carbon adsorber to control the PCE emissions remaining in the dry cleaning machine drum at the end of the dry cleaning cycle.

At proposal, new transfer machine systems were allowed and control requirements for these systems were specified. At promulgation, new transfer machine systems are prohibited through a regulatory requirement prohibiting PCE emissions from clothing transfer between the washer and the dryer. This requirement cannot be met by new transfer machine systems even if these systems are enclosed in room enclosures.

At proposal, existing uncontrolled dry-to-dry machines located at major or area sources were given a choice of installing carbon adsorbers or refrigerated condensers as process vent control. Existing uncontrolled transfer machine systems located at area sources were required to install carbon adsorbers. At promulgation, existing uncontrolled dry-to-dry machines and transfer machine systems are required to install refrigerated condensers. Existing controlled machines that already have a carbon adsorber, however, are not required to install a refrigerated condenser for process vent control.

At proposal, existing uncontrolled transfer machine systems located at major sources were required to install carbon adsorbers. At promulgation, existing uncontrolled transfer machine systems located at major sources are required to install refrigerated condensers as process vent control. Existing controlled transfer machine systems at major sources that already have a carbon adsorber, however, are not required to install a refrigerated condenser for process vent control. For control of fugitive emissions, all existing transfer machine systems located at major sources must be enclosed within a room enclosure that exhausts to a carbon adsorber.

At proposal, the low solvent consumption exemption for process vent control at area sources was 220 gallons of PCE per year for a dry-to-dry machine and 300 gallons of PCE per year for a transfer machine system. At promulgation, the low solvent consumption exemption for process vent control has been lowered and now applies to the total PCE solvent consumption of all machines at the dry cleaning facility rather than on a per machine basis. At promulgation, the low solvent consumption exemption for process vent control is 140 gallons of PCE per year for a dry cleaning facility with only dry-to-dry machines or both dry-to-dry machines and transfer machine systems, and 200 gallons of PCE per year for a dry cleaning facility with only transfer machines systems.

The levels of PCE consumption distinguishing major from area sources have been lowered from the proposed levels and now apply to the total PCE consumption of all machines at the facility rather than on a per machine basis. The levels of PCE consumption distinguishing a major source from an area source are 2,100 gallons of PCE per year for a source with only dry-to-dry machines, and 1,800 gallons of PCE per year for a source with only transfer machine systems or both dry-to-dry machines and transfer machine systems. To track PCE consumption, the owner or operator of any dry cleaning facility subject to this rule is required on the first day of each month to compute an annual PCE consumption by summing PCE purchases over the previous 12 months.

At proposal, pollution prevention practices (such as leak detection and repair) were required only for those dry cleaning machines above the low solvent consumption exemption for process vent control. At promulgation, all PCE dry cleaning facilities must implement pollution prevention practices and operate their dry cleaning equipment according to the manufacturer's specifications.

There were no monitoring requirements included at proposal. The promulgated standards now require periodic monitoring of process vent control equipment. When operating a refrigerated condenser on a dry-to-dry machine, a transfer machine system dryer, or a reclaimer, the temperature on the outlet side of the refrigerated condenser must be measured and recorded once per week. When operating a refrigerated condenser on a transfer machine system washer, the difference between the inlet and outlet temperatures of the exhaust from the washer as it passes through the refrigerated condenser must be measured and recorded once per week.

When operating an existing carbon adsorber to control process vent emissions, a colorimetric detector tube must be used to measure and record the PCE level in the carbon adsorber exhaust once per week. Periodic desorption for carbon adsorbers is no longer specifically required. Instead, the owner or operator must follow the

manufacturer's specifications for the proper operation of a carbon adsorber.

The proposed rule would have required compliance within 18 months of publication of the final rule for existing dry cleaning machines with a design capacity larger than 22.7 kilograms (50 lbs). The compliance deadline for smaller machines would have been 36 months from promulgation. The final rule requires each existing dry cleaning system to be in compliance within 36 months of publication of the final rule, except that compliance with pollution prevention requirements and recordkeeping and reporting requirements is required starting 90 days after the rule's publication.

Section 112(i) of the Clean Air Act requires the EPA to set compliance dates for existing sources that provide for compliance as expeditiously as practicable, and no later than 3 years after promulgation of the final rule (with certain exceptions). As explained in the background information document cited at the beginning of this notice, the EPA is allowing 36 months for control technology to be installed on all dry cleaning machines because of questions about the market availability of an adequate supply of refrigerated condensers. On the other hand, the EPA has concluded that the pollution prevention requirements of the rule do not require significant capital expenditures and are feasible for dry cleaners to implement within 90 days. These requirements consist of "good housekeeping" practices such as inspecting for leaks and keeping the machine door closed during operation. The earlier compliance date in the final rule will result in earlier emissions reductions.

The 90-day applicability date for recordkeeping and reporting requirements will enhance the enforceability and effectiveness of the rule. One reason is that the applicability of control technology requirements in the rule depends on a facility's solvent consumption over a 12-month period. If documentation of a facility's solvent consumption was not required until 3 years after promulgation, it would be impossible to determine reliably which control technology requirements apply to a dry cleaning facility. Second, requiring an initial report from existing sources within 90 days will encourage these sources to begin planning for compliance with the rule's control technology requirements at an early date. This requirement also will provide regulatory agencies with information about regulated facilities in time to promote and monitor compliance effectively.

E. Potential to Emit

The annual major-source consumption levels (8,000 liters (2,100 gallons) per year for dry-to-dry machines and 6,800 liters (1,800 gallons) per year for transfer machine systems) represent the EPA's determination of the volumes of PCE that are used and consumed by the two different types of machine in order to emit 10 tons of PCE per year. Because it is not economically and technically feasible to precisely monitor and measure yearly PCE emissions at each of the dry cleaning facilities affected by this rule, PCE consumption is an appropriate surrogate measure. The EPA has found that PCE emissions to ambient air are closely and predictably related to the volume of PCE used and consumed in the dry cleaning process. Accordingly, this rule does not require each dry cleaning facility to test and calculate the maximum annual rate of PCE stack and fugitive emissions for each particular dry cleaning machine regulated under this rule. Instead, the consumption level assigned to each type of dry cleaning machine determines whether a facility is a major source (that is, whether it emits or has the potential to emit 10 tons or more of PCE).

The consumption levels differ between dry-to-dry (8,000 liters) and transfer machine systems (6,800 liters) because the use of a dry-to-dry machine results in lower fugitive emissions than the use of a transfer machine system. Stated another way, a dry-to-dry machine is more efficient in its use of PCE from an air emission perspective. This higher efficiency means that for each liter of PCE used for dry cleaning, a dry-to-dry machine emits less PCE to the ambient air than a transfer machine system. Accordingly, a dry-to-dry machine can use or consume a greater volume of PCE than a transfer machine system before emitting 10 tons or more of PCE to the ambient air. Amounts of PCE used and consumed in dry cleaning processes but not emitted to the ambient air at a dry cleaning facility include amounts of PCE transferred offsite as solid waste in used filters and spent carbon, amounts transferred to wastewater streams, and amounts that remain in cleaned clothing at the time of customer pickup.

The major source consumption levels established in the final rule differ from the major source consumption levels in the proposed dry cleaning rule of December 9, 1991. The proposed major source PCE consumption levels were 11,700 liters (3,100 gallons) for dry-to-dry machines, and 7,600 liters (2,000 gallons) for transfer machine systems. The difference is due to the EPA's determination that the major source consumption levels for PCE established in the final rule (8,000 liters or 2,100 gallons for dry-to-dry machines and 6,800 liters or 1,800 gallons for transfer machine systems) more accurately reflect the volume of PCE that each type of machine uses or consumes in emitting 10 tons of PCE.

Under the rule, a dry cleaning facility will be classified as a major or area source in the following manner. As previously mentioned, a facility has the potential to emit more than 10 tons of PCE only if its solvent consumption exceeds the rule's solvent use cut-off levels that divide major sources from area sources. The owner or operator must certify to the regulating agency whether or not the facility's solvent consumption will exceed the cut-off level. If solvent consumption is greater than or equal to this cut-off level, the facility is to be considered a major source and must comply with all major sources requirements. If solvent consumption is less than the cut-off level, the facility is considered an area source.

If a facility is found to be an area source, the next determination is whether or not the facility must install area-source technology controls. To be exempt from technology controls, the facility's certification must guarantee that solvent use is less than the low-solvent-use exemption level. Otherwise, area-source control technology requirements apply to the facility.

The rule's requirements are intended to ensure that all dry cleaning facilities that have the potential to emit 10 tons of PCE considering controls are regulated as major sources. If regulated as an area source, a facility will be required to observe the limit on solvent consumption to which it certified, as well as meet other requirements for area sources. These are Federally enforceable requirements that will prevent area sources from emitting more than 10 tons of PCE in a year. After its compliance date, if an area source wishes to increase operations or add a dry cleaning machine, and the result would be to increase solvent consumption above the major-source cutoff level, the facility must first comply with the rule's requirements for major sources. Failure to do so would result in a violation of the rule.

In this rule, the EPA is not establishing any precedents or policies concerning the determination of a facility's "potential to emit" or its classification as a major or area source

under section 112. The EPA believes it would be unwise and inappropriate to resolve these complex issues solely in the context of the PCE dry cleaning NESHAP because the result could create numerous unforeseen problems and inequities in regulation of other categories of sources. The EPA is considering these issues in a comprehensive fashion in light of the broad range of sources for which NESHAP will be developed. The EPA is presently continuing to consider these issues and will take whatever appropriate actions that are necessary to resolve them.

III. Summary of Environmental, Energy, and Economic Impacts

A. Affected Facilities

The number of new and existing machines in 1996 (5 years from the date of proposal) were projected in order to calculate the 5-year impacts of the standards. Industry estimates indicate a zero growth rate for commercial dry cleaning facilities. For this reason, the only new facilities projected to be constructed during the 5 years following the date of proposal (between 1991 and 1996) are an estimated 7,700 new commercial facilities which replace those that retire. Industrial dry cleaning facilities are declining because many of these facilities are switching from the use of PCE to the use of water to wash linens and uniforms. For this reason, no new industrial facilities are projected between 1991 and 1996. Approximately 28 industrial facilities would retire during this period.

In 1996, based on the estimates of machine retirement, approximately 17,400 existing commercial and industrial facilities will be subject to the standards. Taking into account the low solvent consumption exemption levels for existing area sources, approximately 9,700 of these existing facilities would be required to install process vent control devices. Of these facilities, however, approximately 6,500 are expected to decide to install process vent control devices to comply with State or local regulations. Thus, in 1996 approximately 3,200 existing facilities are estimated to have to install process vent control devices solely to comply with the standards promulgated today.

As mentioned above, between 1991 and 1996, 7,700 new facilities are projected. All of these facilities are required to install process vent controls. Of these new facilities, approximately 7,300 are expected to decide to install process vent control devices to comply with State or local regulations. Thus, in 1996 approximately 400 new facilities are estimated to install process vent control devices solely to comply with the standards promulgated today.

The following discussion presents the projected environmental, energy, and economic impacts for 1996 based on the estimated 3,200 existing and 400 new facilities that would be required to install process vent control devices solely to comply with the standards promulgated today.

B. Air Impacts

In 1996, the standards are expected to reduce nationwide emissions of PCE from existing dry cleaning facilities by a maximum of some 5,500 Mg (6,000 tons) from process vent control and some 18,000 Mg (19,800 tons) from leak detection and repair. This emission reduction is based on projected nationwide PCE emissions from existing facilities in 1996 of 42,000 Mg (46,500 tons) in the absence of the standards. This emission reduction corresponds to approximately 44 percent of the total PCE emissions from all existing dry cleaning facilities. This reduction is in addition to reductions achieved by controls already in place in many of these facilities, and reductions anticipated in the absence of the NESHAP.

In 1996, the standards are expected to reduce nationwide emissions from new dry cleaning facilities by a maximum of some 1,100 Mg (1,200 tons) from process vent control and some 7,800 Mg (8,600 tons) from leak detection and repair. This emission reduction is based on projected nationwide PCE emissions in 1996 of 15,800 Mg (17,400 tons) from new dry cleaning facilities in the absence of the standards. This emission reduction corresponds to about 43 percent of the total PCE emissions from all new dry cleaning facilities.

In 1996, annual emissions of PCE from a typical new or existing dry cleaning facility located at an area source with annual receipts of $200,000 operating a typical size dry-to-dry machine with capacity of 15.9 kilograms (kg) (35 pounds (lb)) controlled with a refrigerated condenser are projected to be 0.77 Mg (0.85 tons) from process vent control and 0.8 Mg (0.88 tons) from leak detection and repair. This represents greater than 50-percent reduction in emissions from an uncontrolled dry-to-dry machine of this same size and receipt level.

C. Water, Solid Waste, Noise, and Radiation Impacts

The requirement for use of refrigerated condensers minimizes the impact on water quality resulting from the standards. The projected impact on water quality results from the PCE contained in aqueous wastes generated by the control devices. When using a refrigerated condenser, a small amount of PCE is generated and collected in the separator water. A typical refrigerated condenser controlled dry-to-dry machine is estimated to generate about 0.03 kg (0.07 lb) of PCE in wastewater per year. Owners or operators of all new dry cleaning machines and those existing uncontrolled dry cleaning machines that are above the low solvent consumption exemption levels would be required to install refrigerated condensers.

When using a carbon adsorber, PCE is collected in the steam condensate generated during desorption of the carbon. A typical existing dry-to-dry machine with an existing carbon adsorber is estimated to generate 0.85 kg (1.9 lb) of PCE in wastewater per year. However, only owners or operators of existing dry cleaning machines with existing carbon adsorbers installed prior to the date of promulgation would be allowed to continue to use a carbon adsorber as primary process vent control.

In addition to process vent control, owners or operators of existing transfer machine systems located at major sources would be required to install a room enclosure with a carbon adsorber. A carbon adsorber on the room enclosure is estimated to be approximately one-third the size of a typical carbon adsorber used to control process vent emissions. A typical transfer machine system located at a major source with a carbon adsorber on the room enclosure is estimated to generate 0.28 kg (0.60 lb) of PCE in wastewater per year. This amount is in addition to the 0.85 kg (1.9 lb) of PCE in wastewater generated if the transfer machine system has a carbon adsorber controlled process vent.

Owners or operators of new dry-to-dry machines at major sources would be required to install a carbon adsorber to control the PCE remaining in the dry cleaning machine drum at the end of the dry cleaning cycle. This carbon adsorber is also estimated to be approximately one-third the size of a typical carbon adsorber used to control process vent emissions. A typical dry-to-dry machine with a refrigerated condenser controlled process vent and a carbon adsorber to control the PCE emissions remaining in the machine drum is expected to generate about 0.31 kg (0.68 lb) of PCE in wastewater per year.

It is projected that the total amount of PCE in wastewater generated on a national basis by dry cleaning facilities in the absence of the standards in 1996

would be 5.9 Mg (6.5 tons). With the standards, the amount of PCE in wastewater generated on a national basis by dry cleaning facilities is projected to be about 6.1 Mg (6.7 tons) in 1996, an increase of about 0.2 Mg (0.2 ton) per year (corresponding to an increase of about 3 percent).

The solid waste impact of the standards is considered minimal. The main types of solid waste generated from controlled dry cleaning machines are spent carbon from carbon adsorbers, spent carbon from cartridge filters, solvent sludge (muck), and still bottoms. Neither a carbon adsorber nor a refrigerated condenser would affect muck, still bottom, or cartridge filter carbon generation, so no impact due to the control alternatives was calculated for these waste types.

Periodic replacement of the carbon bed associated with a carbon adsorber is necessary to maintain the performance of a carbon adsorber in controlling PCE emissions. According to carbon vendors, the carbon is likely to need replacement approximately every 5 years.

For a typical 15.9 kg (35 lb) existing area source dry-to-dry machine controlled with an existing carbon adsorber installed prior to today's date, the amount of solid waste generated from spent carbon is estimated to be approximately 25 kg (55 lb) per year. For a typical 113 kg (250 lb) existing major source dry-to-dry machine controlled with an existing carbon adsorber, the amount is estimated to be approximately 90 kg (198 lb) per year. These are the same amounts that would be generated in the absence of the standards.

New major source dry-to-dry machines with refrigerated condenser and carbon adsorber control would also require periodic replacement of the carbon bed. For a typical major source dry-to-dry machine with both refrigerated condenser and carbon adsorber control, the amount of solid waste generated from spent carbon is estimated to be approximately 8.4 kg (19 lb) per year.

Existing major source transfer machine systems with carbon adsorbers on their room enclosures would also require periodic replacement of the carbon bed. For a typical major source transfer machine system with refrigerated condenser process vent control and carbon adsorber control on the room enclosure, the amount of solid waste generated from spent carbon is estimated to be about 8.4 kg (19 lb) per year. For a typical major source existing transfer machine system with carbon adsorber process vent control and carbon adsorber control on the room enclosure, the amount of solid waste generated from spent carbon is estimated to be about 98 kg (217 lb) per year.

It is projected that the amount of carbon discarded every 5 years in the absence of the standards would be 880 Mg (970 tons) or an average of 175 Mg (193 tons) per year. With the standards, the amount of carbon discarded on a national basis every 5 years would be 890 Mg (980 tons) or an average of 177 Mg (195 tons) per year. This corresponds to an increase in national solid waste impacts from both new and existing dry cleaning facilities of about 10 Mg (10 tons) of carbon discarded approximately every 5 years, or an average of about 2 Mg (2 tons) of carbon every year (corresponding to an increase of about 1 percent).

There are no noise or radiation impacts associated with these standards.

D. Energy Impacts

The energy impacts resulting from the standards on a nationwide basis are considered minimal. Electricity is required for cooling the coils of the refrigerated condenser and for operating fans and generating steam for desorbing existing carbon adsorbers. The total increase in annual electricity use for existing dry cleaning facilities in 1996 resulting from the standards would be about 2,454,500 kilowatt-hours per year (KW-hr/yr) (390,000 British thermal units per year (Btu/yr)). The total increase in annual electricity use for new dry cleaning facilities in 1996 resulting from the standards would be about 276,600 KW-hr/yr (44,000 Btu/yr). The total increase in annual electricity use for all facilities nationwide would be about 2,731,100 KW-hr/yr (430,000 Btu/yr).

This increase in electricity requirement is equivalent to about 700,000 liters (3,400 barrels (bbl)) of fuel oil per year for electricity generation for existing facilities and about 79,000 liters (380 bbl) of fuel oil per year for new facilities. The total increase for all facilities would be about 780,000 liters (3,800 bbl) of fuel oil per year, corresponding to an increase of 0.7 percent.

By installing a refrigerated condenser as required by the standards, the electricity requirement for a typical uncontrolled dry cleaning facility with one 15.9 kg (35 lb) dry-to-dry machine is expected to increase by about 600 KW-hr/yr (95 Btu/yr) in 1996.

E. Cost Impacts

The nationwide cumulative 5-year capital costs in 1996 of complying with the standards would be about $35 million. The cumulative 5-year capital costs for existing facilities would be about $32 million and about $3 million for new facilities.

The total nationwide annualized costs in 1996 of complying with the standards for process vents would be about $9 million. This estimate does not include credit for solvent savings. If a credit for solvent savings is included, the total nationwide annualized cost is about $4 million. The annualized costs in 1996 including a credit for solvent savings for existing facilities complying with the standards would be about $3.4 million, and about $0.5 million for new facilities.

The total nationwide annualized costs in 1996 for both new and existing facilities complying with the standards for pollution prevention, leak detection and repair, monitoring, reporting and recordkeeping would be about $10 million. This estimate does not include credit for solvent savings. If a credit for solvent savings is included in this estimate, these facilities would have a total annual cost savings of $7.6 million.

For a typical new area source facility with annual receipts of $200,000 with a 15.9 kg (35 lb) dry-to-dry machine, the capital cost of a refrigerated condenser is $6,300, and the resulting annualized cost of this process vent control is $1,000. The resulting annualized cost for the above typical new area source to perform pollution prevention, leak detection and repair, monitoring, reporting, and recordkeeping is about $460. This estimate does not reflect credit received from solvent savings. If a credit for solvent savings is included, this typical facility would have a total cost of about $350.

F. Economic Impacts

The economic impact assessment includes a market component and a financial component. The market component focuses on the adjustment of market prices and quantity of dry cleaning as a result of complying with the standards. The financial component focuses on the ability of firms to obtain the money to buy the control equipment.

The upward price adjustments are projected to range between 0.15 and 2.3 percent in various markets, with the largest increases being found in small rural markets. The downward adjustment in total dry cleaning is projected to be about 0.5 percent. If the whole quantity adjustment were translated into closures rather than reduction in output at many cleaners, the net closures would be projected to be just under 260.

The financial analysis indicates that firms in below-average financial condition may face difficulty in obtaining the required funds to purchase control equipment from traditional loan sources such as banks. The analysis projects between 0 and 830 firms will be in this category. These firms will either obtain other financing (vendor-aided, relatives, personal assets, etc.), close, or sell their firm.

The environmental, energy, and economic impacts are discussed in greater detail in the BID's and the economic impact analyses for the proposed and promulgated standards: "Dry Cleaning Facilities—Background Information for Promulgated Standards," EPA–450/3–91–020b; "Dry Cleaning Facilities—Background Information for Proposed Standards," EPA–450/3–91–020a; "Economic Impact of Regulatory Controls in the Dry Cleaning Industry," EPA–450/3–91–021; and "Economic Impact of Regulatory Controls in the Dry Cleaning Industry," EPA–450/3–91–021b. Additional information on impacts is found in supporting information for the notice of availability of new information, "Information Package on Transfer Enclosures," (Docket No. A–88–11, Item No. IV–M–1).

In addition to the economic impact analysis, the cost effectiveness of alternative standards was also evaluated to determine the least costly way to reduce emissions and to ensure that the controls required by this rule are reasonable relative to other regulations. In this case, the promulgated standards would reduce the PCE dry cleaner's operating costs and produce an average 5-year total cost effectiveness of $550 per Mg ($500 per ton) of PCE emissions reduced. Additional details on costs can be found in the BID's.

IV. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (56 FR 1186), January 11, 1991, of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the NESHAP being developed for the PCE dry cleaning industry. This meeting was held on January 30, 1991. The meeting was open to the public and each attendee was given an opportunity to comment on the NESHAP recommended for proposal.

The standards were proposed and published in the **Federal Register** on December 9, 1991 (56 FR 64382). The preamble to the proposed standards discussed the availability of the BID and the economic impact analysis: "Dry Cleaning Facilities Background Information for Proposed Standards, EPA–450/3–91–020a" and "Economic Impact of Regulatory Controls in the Dry Cleaning Industry EPA–450/3–91–021," which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

As a result of public comments received on the proposed standards, additional information became available about transfer enclosures used to control PCE emissions during the transfer step for transfer machine systems. A notice of availability of new information was published in the **Federal Register** on October 1, 1992, describing this information and requesting public comments.

Because no persons requested the opportunity for oral presentation of data, views, or arguments concerning either the proposed NESHAP or the notice of availability of new information, a public hearing was not held.

The public comment period for the proposal NESHAP was from December 9, 1991, to February 9, 1992. A total of 32 comment letters were received in response to the proposed NESHAP. The public comment period was reopened for the notice of availability of new information from October 1, 1992, to November 2, 1992. A total of seven comment letters were received in response to the notice. All comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

V. Significant Comments and Changes to the Proposed Standards

Comments on the proposed NESHAP and the notice of availability of new information were received mainly from industry; State and local air pollution control agencies; trade associations; and environmental groups. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble and, for ease of discussion, have been divided into the following areas:

A. Regulatory Approach

1. MACT vs. GACT
2. Collocation

B. Emission Control

1. Performance of Refrigerated Condensers and Carbon Adsorbers
2. Low Solvent Consumption Exemption Levels
3. MACT for New Dry-to-Dry Machines at Major Sources
4. Banning Transfer Machine Systems and Reclaimers
5. Room Enclosures on Transfer Machine Systems
6. Vapor Barriers
7. Dry Cleaning Ventilation Requirements

C. Monitoring and Equivalency

1. Monitoring Control Devices
2. Determining Equivalency
3. Delegation of Authority to Determine Equivalency

D. Other Issues and Follow-up to Today's Action

1. New York Study
2. California Well Investigation Program
3. Follow-up to Today's Action

A. Regulatory Approach

1. MACT vs. GACT

Several commenters remarked on the use of maximum achievable control technology (MACT) versus generally available control technology (GACT) for regulating dry cleaners. Most of these commenters believed that MACT should be used to regulate all dry cleaners. One commenter, however, believed that GACT was the appropriate basis of regulation.

The commenters who felt MACT should be applied to all dry cleaners argued that there is sufficient and compelling health effects information regarding PCE to warrant application of MACT to all dry cleaning machines regardless of type or size, and that section 112(c)(3), (i.e., a threat to human health and the environment by sources individually, or in the aggregate) warrants the application of MACT controls for all area source dry cleaners.

As stated in the proposal, the EPA has concluded that area source dry cleaners present a threat of adverse effects to health or the environment. For this reason, commercial dry cleaning facilities that are area sources were added to the list of source categories under section 112(c)(3) to be regulated under the Act. Listing an area source category under section 112(c)(3), however, does not require that regulations developed for this source category must be based on MACT. These regulations may be based on MACT or they may be based on GACT.

The EPA does not agree that the health effects information regarding PCE is so compelling that it warrants application of MACT to all small area source dry cleaners. There are a range of opinions in the scientific community as

to the potential for PCE to cause cancer in humans. Further, to the extent that PCE may be a human carcinogen, existing evidence indicates that its potency is relatively low.

During development of the regulation, the EPA concluded that many small area source dry cleaning facilities may experience adverse economic impacts as a result of imposing a regulation based on MACT. For this reason, the GACT approach was selected as the basis for regulating small area source dry cleaning facilities.

In commenting on the choice of GACT to regulate area source dry cleaners, several commenters acknowledged that section 112(k) of the Act outlines a comprehensive strategy to reduce HAP's from area sources. These commenters did not, however, believe that such a strategy would reduce PCE emissions sufficiently from area source dry cleaning facilities. Consequently, these commenters asserted that residual risk review should be required for all dry cleaners to ensure that public health is adequately protected. They argued that it is bad public policy to apply GACT to the vast majority of dry cleaning facilities, thus precluding a residual risk assessment at a later date. Based on knowledge gained on public exposure to PCE from dry cleaning facilities, they maintained that it is absolutely necessary that such a risk assessment be conducted for this source category.

Section 112(k) of the Act directs the EPA to develop a strategy to control HAP emissions from area sources in urban areas. The strategy, among other things, must achieve area source emissions reductions from the 30 HAP's that pose the greatest threat to public health and achieve at least a 75-percent reduction in cancer incidence from all stationary sources. Consequently, the need for emission controls beyond GACT at dry cleaners will be reconsidered in the context of the overall urban air strategy and the relative contribution of PCE emissions from dry cleaning facilities to urban exposures.

Although a residual risk analysis is required for sources regulated under MACT, those sources regulated under GACT may also receive a residual risk analysis. Section 112(f)(5) of the Act states that residual risk analysis is not required for area sources regulated under GACT. This section, however, does not preclude area sources from a residual risk analysis and, if warranted, the EPA will undertake a residual risk analysis for the area source dry cleaning source category.

The one commenter who agreed with the EPA's decision to use GACT to regulate small area source dry cleaners stated that much evidence exists in the Senate Committee report and the legislative history of the 1990 Clean Air Act Amendments to indicate that dry cleaning was considered an example of an area source category for which regulations based on GACT were appropriate.

2. Collocation

Commenters recommended that the criteria for determining a major source be based on the PCE solvent consumption of the entire dry cleaning facility instead of each dry cleaning machine. They mentioned that the definition of source used in the proposed NESHAP referred only to the consumption of PCE for an individual dry cleaning machine and that under this proposed definition only certain machines would be considered major sources. The commenters believe that the EPA should consider the total consumption of PCE from all machines located within a contiguous area under common control.

The final rule has been revised to base the applicability of the NESHAP on the total annual PCE consumption of all machines located at a dry cleaning facility. For the purpose of these standards, PCE consumption during any period is defined as the PCE purchased during that period. The definition of a major source in the Act includes sources "located within a common area and under common control." Because multiple units located at a single dry cleaning facility would be under common control, the applicability of this NESHAP for major sources has been revised to be consistent with the language of the Act.

B. Emission Control

1. Performance of Refrigerated Condensers and Carbon Adsorbers

At proposal, the EPA believed the performance of carbon adsorbers to be equal to that of refrigerated condensers when used to control emissions from dry-to-dry machines, and proposed to allow dry-to-dry machines to install either control device. In addition, the EPA believed carbon adsorbers outperformed refrigerated condensers on transfer machine systems and proposed to require carbon adsorbers on uncontrolled transfer machine systems. Following proposal, however, new information was provided to the EPA from a survey of dry cleaners in California, which disputes these conclusions.

In 1989, the California Air Resources Board (CARB) conducted a voluntary survey of all dry cleaners in California. The results of this survey indicate that dry cleaning machines controlled by refrigerated condensers achieve solvent mileages approximately twice as high as machines controlled by carbon adsorbers.

Solvent mileage is the ratio of clothes cleaned to the amount of solvent consumed. Although air emissions are only one of several factors that determine solvent mileage, significantly better solvent mileage is likely to be indicative of lower air emissions. Although the data do not provide detailed information on how well the carbon adsorbers were operated and maintained (for example, frequency of desorbing the carbon bed), the EPA believes this information indicates that refrigerated condensers will achieve lower air emissions in actual practice than carbon adsorbers.

Therefore, the final rule requires refrigerated condensers for new major and area source dry-to-dry machines. The EPA has also concluded that all existing uncontrolled dry-to-dry machines and transfer machine systems must install and operate refrigerated condensers.

The final rule does not require the replacement of existing carbon adsorbers with refrigerated condensers. The Administrator concluded, based on currently available information, that the replacement of well-operated carbon adsorbers with refrigerated condensers was not justified at this time.

These sources are largely small businesses and could face severe financial costs to replace these units. In addition, the final rule includes additional monitoring to ensure proper carbon adsorber operation. While replacement of well-operated carbon adsorbers with refrigerated condensers provides limited air benefits, EPA has recently obtained additional information that suggests that there may be other environmental impacts (for example, potential groundwater contamination and solid waste generation) associated with the use of carbon adsorbers over refrigerated condensers (see section V.D). At this time, those data are uncertain. EPA believes that these data and their implications deserve further consideration. A public meeting has been scheduled to discuss these issues. (See **ADDRESSES** section at the beginning of this preamble.) If appropriate, the EPA may revisit the requirements of this rule in the future.

2. Low Solvent Consumption Exemption Levels

Several commenters believed that although the economic impact of regulating small existing area source dry cleaners can be significant, the proposed low solvent consumption exemption levels would exempt existing small area source facilities they believed pose the largest health threat to individuals. These commenters stated that, as a result of their location in proximity to human populations, more people are exposed to air toxics from small existing area source dry cleaners than from large industrial complexes, such as chemical plants, which are not usually located in the midst of population centers. Some believed that virtually all small existing area source dry cleaners contributing to this problem would be exempted under the proposed NESHAP. They requested that the EPA reevaluate the low solvent consumption exemption levels to ensure that a larger number of small existing area source dry cleaning facilities is subject to the NESHAP.

Neither the proposed nor the final NESHAP includes low solvent consumption exemption levels for new area source dry cleaning facilities. The proposed, as well as the final NESHAP, however, includes low solvent consumption exemption levels for existing area sources.

At proposal, the impacts of requiring the use of refrigerated condensers or carbon adsorbers to control process vent emissions from dry cleaning machines were judged to be unreasonable for area sources consuming less than 760 and 1,000 liters (200 and 300 gallons) of PCE per year for dry-to-dry machines and transfer machine systems, respectively (corresponding to annual receipts of $100,000). In response to comments, the EPA reconsidered these low solvent consumption exemption levels. The EPA concluded that lowering the exemption levels to 530 and 760 liters (140 and 200 gallons) per year for dry-to-dry and transfer machines, respectively (corresponding to annual receipts of $75,000) was warranted and reasonable.

In 1996, this change would require approximately 500 more dry cleaners to install refrigerated condensers to control process vent emissions from dry cleaning machines and would reduce PCE emissions by an additional 450 Mg (500 tons) per year. The cost of controlling those facilities with annual receipts between $75,000 and $100,000 is $0.9 million. As many as 165 additional financial failures are estimated to result from lowering the low solvent consumption exemption levels. Also, there could be as many as 65 additional business closures. The EPA judged this change in the requirement to be generally achievable. The EPA considered it unreasonable, however, to further lower the low solvent consumption exemption levels due to the high costs and excessive financial failures and closures (up to 3,800 financial failures and 1,400 closures) that would result. The decision to exempt certain low solvent consumption facilities was based on the evaluation of the potential economic impact of regulation. Many of the smaller businesses are individually operated, single family-owned establishments.

In addition to lowering the low solvent consumption exemption levels for existing area source dry cleaning facilities, the EPA reevaluated the impacts of extending additional pollution prevention practices, such as leak detection and repair, to all dry cleaning facilities and concluded that these impacts are reasonable. Thus, in the final NESHAP, *all* dry cleaning facilities are required to implement additional pollution prevention practices, such as leak detection and repair.

3. MACT for New Dry-to-Dry Machines at Major Sources.

Commenters stated that additional controls should have been considered as MACT for dry-to-dry machines. A new German machine, the Permac Consorba®, was mentioned by one commenter. This machine uses a carbon adsorber in conjunction with a refrigerated condenser for process vent control. The commenter indicated that it made sense that a dual control system would achieve better control than a machine with one control device.

In the simplest sense, a Permac Consorba® may be described as a dry-to-dry machine equipped with two control devices in series—a refrigerated condenser followed by a carbon adsorber. The reported advantage of this system over a conventional dry-to-dry machine equipped with only a refrigerated condenser is that it reduces the PCE concentration in the air remaining in the machine once the dry cleaning cycle is complete.

Conventional dry-to-dry machines vent or release the vapors remaining in the machine at the end of the dry cleaning cycle. The Permac Consorba® controls these vapors with a carbon adsorber before the machine door is opened.

The emissions remaining in a conventional machine at the end of the dry cleaning cycle can be controlled by drawing the air remaining in the machine through a small carbon adsorber either before the door to the machine is opened (similar to the Permac Consorba®) or venting the air through a carbon adsorber to the atmosphere as the door is opened. Indeed, information was made available to the EPA after proposal indicating that several conventional vented dry-to-dry machines equipped with refrigerated condensers currently operate in this manner (i.e., the air remaining in the machine at the end of the dry cleaning cycle is vented to a carbon adsorber as the door to the machine is opened).

There is no difference in PCE emissions between a Permac Consorba® and a conventional vented dry-to-dry machine equipped with a refrigerated condenser and a small carbon adsorber on the vent. Similarly, there would be no difference in emissions between a Permac Consorba® and a conventional no-vent dry-to-dry machine equipped with a refrigerated condenser that passed the air remaining in the machine at the end of the dry cleaning cycle through a carbon adsorber, before the door to the machine is opened.

Under the Act, MACT for new major sources must be no less stringent than the best-controlled similar source. As a result, the final NESHAP requires that new major source dry-to-dry machines be equipped with a refrigerated condenser and that the air remaining in the machine at the end of the dry cleaning cycle be passed through a carbon adsorber prior to opening the machine door or that the air remaining in the machine be passed through a carbon adsorber as soon as the door to the machine is opened. Thus, the level of control required for major new source dry cleaning facilities is equivalent to that achieved by the Permac Consorba® technology.

The MACT is also required for existing dry-to-dry machines located at major sources. Under the Act, MACT for existing sources must be no less stringent than the average emission limitation achieved by the best 12 percent of existing sources. Less than 12 percent of existing major source dry-to-dry machines are using a refrigerated condenser in combination with a carbon adsorber to control PCE process vent emissions. However, MACT can be more stringent if the Administrator determines that the balance of costs, energy, and environmental impacts of choosing a more stringent level of control are reasonable.

Assuming a 95-percent emission reduction for a carbon adsorber, the incremental cost effectiveness of the additional emission reduction achieved

by requiring conventional dry-to-dry machines with a refrigerated condenser to also install a carbon adsorber would be in the range of approximately $7,700 per Mg ($7,000 per ton) of PCE for a typical existing dry-to-dry machine located at a major source. If the efficiency of the carbon adsorber is less than 95 percent (as the California survey data mentioned earlier suggests), the cost effectiveness would be even higher. Because this additional cost of control is quite high for the additional amount of emission reduction achieved, the EPA does not consider this level of control reasonable for an existing dry-to-dry machine located at a major source.

4. Room Enclosures on Transfer Machine Systems

Commenters suggested that the EPA consider vapor containment and control systems, commonly referred to as "room enclosures," as MACT for transfer machine systems.

Room enclosures capture and vent the fugitive PCE emissions from clothing transfer between the washer and the dryer at transfer machine systems to a carbon adsorber. Since clothing transfer emissions are a significant portion of overall transfer machine system emissions, control of these through a room enclosure would achieve additional emission reductions.

The only type of control device that could effectively control PCE emissions on a room enclosure is a carbon adsorber. As stated previously, however, new information (i.e., the California survey) indicates that carbon adsorbers achieve a lower level of emission reduction in actual practice within the dry cleaning industry than originally thought.

Assuming a carbon adsorber achieves a 95-percent reduction in PCE emissions, the incremental cost effectiveness of requiring room enclosures with carbon adsorbers on existing major source transfer machine systems would be as low as $330 per Mg ($300 per ton) of PCE. In fact, even if the control efficiency of the carbon adsorber was as low as 20 percent, the incremental cost effectiveness of requiring room enclosures on major source transfer machine systems would be about $1,900 per Mg ($1,700 per ton) of PCE.

Although the EPA does not believe the control efficiency of carbon adsorbers within the dry cleaning industry is as low as 10 percent, making such an assumption for the purpose of calculations effectively indicates that, even at low control efficiencies, the use of room enclosures at major source transfer machine systems is reasonable. Consequently, the final NESHAP requires the use of room enclosures with carbon adsorbers at existing major source transfer machine systems.

Requiring existing major source transfer machine system dry cleaners to use room enclosures is not estimated to result in any additional financial failures or closures. Initially, due to the limited number of vendors of room enclosures, the EPA was concerned with the creation of a market for these devices. With few vendors and a large demand, the price of room enclosures could rise significantly. However, if required only for those few existing major source transfer machine systems, the demand for room enclosures is not judged sufficient to cause a significant rise in the price of a room enclosure.

For existing area sources, the impacts of requiring a room enclosure are considered unreasonable. The incremental cost effectiveness of requiring a room enclosure for a typical area source could be as high as $9,800 per Mg ($8,900 per ton) of PCE, even if the carbon adsorber is achieving a high percent emission reduction efficiency (e.g., 95 percent). If the carbon adsorber is operating at a lower control efficiency, the resulting incremental cost effectiveness would be even higher. The number of additional financial failures could be as high as 1,100 with as many as 260 additional closures if room enclosures were required on all existing area source transfer machine systems. Up to 500 additional financial failures and as many as 5 additional closures would result from such a requirement on only the largest area sources (e.g., those with annual receipts over $100,000). In addition, with only a few vendors of room enclosures, the EPA remains concerned with the impact that extending a requirement for room enclosures to all existing transfer machine system area sources would have on the price of room enclosures. For these reasons, the Administrator considers room enclosures unreasonable for existing transfer machine system area sources.

5. Banning Transfer Machine Systems and Reclaimers

Commenters recommended that the EPA impose a ban on the sale of new or used transfer machine systems. One commenter believed that transfer machine systems are still being offered and sold to dry cleaners, and that only a ban on the sale of transfer machine systems would prevent dry cleaners from purchasing these systems.

Prior to proposal, the EPA believed that no new transfer machine systems were being sold or had been sold in recent years due primarily to the adoption of the OSHA permissible exposure limit (PEL) of 25 parts per million (ppm) (January 19, 1989). The OSHA PEL was intended to reduce worker exposure to PCE. Based on the level of PCE emitted during the clothing transfer step at transfer machine systems, transfer machine systems were viewed as incapable of meeting the OSHA PEL. Consequently, the EPA believed it was not necessary to develop regulations that effectively banned or prohibited the use of new transfer machine systems.

Following proposal of the NESHAP for dry cleaners, however, the Eleventh Circuit Appeals Court remanded the PEL to OSHA. In addition, information provided to the EPA following proposal indicates that many owners or operators of transfer machine systems were meeting the OSHA PEL by increasing ventilation or rotating the placement of their workers. Moreover, it was learned that transfer machine systems, manufactured for use with petroleum solvents could be used as PCE transfer machine systems.

Finally, information provided to the EPA following proposal made it clear that, in some cases, reclaimers were being sold for use with dry-to-dry machines to increase the clothing throughput of the machines. A reclaimer is essentially a dryer, and its use with a dry-to-dry machine effectively converts the dry-to-dry machine to a washer, thus creating a new transfer machine system.

Consequently, the EPA has reconsidered its position at proposal, that a ban or prohibition of new transfer machine systems is unnecessary.

For transfer machine systems located at a major source, the NESHAP must be based on MACT. The Act states that MACT for new sources must be no less stringent than the best controlled similar source. A transfer machine system with a room enclosure represents the best controlled similar source. The MACT may be more stringent, however, if the Administrator believes the balance between the additional economic, energy, and environmental impacts of a more stringent requirement is reasonable. The only option more stringent than a transfer machine system with a room enclosure is a new dry-to-dry machine.

Dry-to-dry machines provide complete control of clothing transfer emissions (i.e., emissions released by transfer of clothing from the washer to the dryer of a transfer machine system). Dry-to-dry machines eliminate these emissions by eliminating the need to transfer clothing from a washer to a

dryer (achieving 100 percent reduction of clothing transfer emissions).

The MACT for new transfer machine systems could be based on the use of new dry-to-dry machines, thereby requiring new major source transfer machine systems to eliminate all emissions from clothing transfer between the washer and the dryer. Such a requirement would effectively ban or prohibit new transfer machine systems because no technology has been identified to date (including the use of hamper enclosures or room enclosures) that could be added to a new transfer machine system to totally eliminate all PCE emissions from clothing transfer. Dry-to-dry machines offer an effective pollution prevention alternative to transfer machines. Promoting use of this equipment is consistent with the Agency's commitment to pollution prevention.

The benefits associated with a requirement based on new dry-to-dry machines would be 100 percent control of clothing transfer emissions. Clothing transfer is estimated to contribute up to as much as 25 percent of the PCE emissions from an uncontrolled transfer machine system. For a typical major source, the annualized costs for requiring a dry-to-dry machine would be a net savings ($300) because overall PCE consumption is lower with a dry-to-dry machine. This lower cost is due to the increased amount of PCE that is recovered and recycled within the machine.

The EPA believes it is reasonable to require new transfer machine systems located at major sources to meet the same level of control of clothing transfer emissions as achieved by new dry-to-dry machines. Thus, the final NESHAP prohibits any emissions between the washing and drying step of the dry cleaning cycle for new transfer machine systems located at major sources. This requirement effectively bans or prohibits the use of new transfer machine systems at major sources.

For new area source transfer machine systems, the NESHAP is based on GACT. The GACT is a balance between environmental, economic, and energy impacts the Administrator considers reasonable. The incremental cost of requiring a new dry-to-dry machine over a new transfer machine system with a room enclosure at a typical new area source is approximately $600 per year. The EPA does not believe that the additional costs of purchasing a new dry-to-dry machine over purchasing a new transfer machine system with a room enclosure would deter entry (or expansion) into the dry cleaning market. If a business venture is viable and attractive with the purchase of a new transfer machine system and room enclosure, the EPA believes that the business venture would also be viable and attractive with the purchase of a new dry-to-dry machine. Consequently, requiring new area source transfer machine systems to eliminate all clothing transfer emissions (i.e., purchase a new dry-to-dry machine) is considered generally achievable. Thus, the final NESHAP also prohibits any emissions between the washing and drying step of the dry cleaning cycle for new transfer machine systems located at area sources. As mentioned above for major sources, this requirement effectively bans or prohibits the use of new transfer machine systems at area sources. Thus, all new transfer machines are effectively banned. Under the rule, the addition of a reclaimer to an existing dry-to-dry machine would constitute reconstruction of the dry cleaning system. As a result, the addition of a reclaimer to a dry-to-dry machine would be banned effective on today's date. Reclaimers added to a dry-to-dry machine after December 9, 1991 (the date of the proposed dry cleaning NESHAP) and prior to today's date are allowed to operate for up to three years from today's date, if the dry cleaning system complies in the interim with the proposed rule.

In addition to requiring that all new dry cleaning machines be dry-to-dry machines, phasing out or replacing existing transfer machine systems with dry-to-dry machines was also considered. Commenters questioned why there was no discussion of immediate or gradual replacement of existing transfer machine systems in the proposal. They stressed that the EPA cannot rely upon OSHA rules for a prompt phase out of transfer machine systems.

There is little difference between the impacts of immediate replacement of existing transfer machine systems and replacement within three years, the maximum compliance period for existing sources under the statute. In both cases, the capital cost of the transfer machine system is a "sunk" cost that has been incurred and is not a factor in the analysis.

This "sunk" cost makes the analysis of replacing existing transfer machine systems quite different from that of banning or prohibiting new transfer machine systems. For existing transfer machines systems, the cost of replacing the existing system is the full cost of a new dry-to-dry machine. For a new system, the cost of banning or prohibiting the system is the difference in cost between a new transfer machine system and a new dry-to-dry machine. Consequently, the costs are much higher in the analysis of replacing existing transfer machine systems than they are in the analysis of banning or prohibiting new transfer machine systems. The emission reduction achieved is the same for either option.

The EPA analyzed the costs of requiring replacement of existing transfer machine systems with dry-to-dry machines in comparison with the additional fugitive emissions of PCE that result from transfer machine systems. The incremental cost effectiveness for replacing a typical existing major source transfer machine systems with a dry-to-dry machine is approximately $12,200 per ton of PCE reduced. For area sources, the incremental cost effectiveness for replacing the transfer machine system with a dry-to-dry machine is approximately $41,000 per ton of PCE reduced. The EPA has determined that based on this comparison, which relies on currently available information, requiring replacement of these transfer machine systems with dry-to-dry machines is not justified at this time. However, the EPA is aware that additional environmental impacts may be associated with the continued use of transfer machine systems in certain situations. For example, the impact on indoor air quality may be of concern. At this time, however, the data are insufficient to determine whether considering these other impacts it may be appropriate to further limit the use of transfer machine systems. The EPA will address this issue further in the public meeting (see ADDRESSES section at the beginning of this preamble) and will continue to examine this issue. If appropriate, the EPA may revisit the determinations made in this rule.

Commenters agreed with the EPA that use of a reclaimer with a dry-to-dry machine effectively creates a new transfer machine system. Therefore, they recommended a ban on the sale of new or used reclaimers.

Accordingly, the NESHAP has been revised to define a dry-to-dry machine used with a reclaimer as a transfer machine system. In addition, the NESHAP does not allow clothing transfer emissions to occur between the washing and the drying step of the dry cleaning cycle for a new transfer machine system. This requirement effectively bans or prohibits new transfer machine systems. It also effectively bans or prohibits the use of new reclaimers with new or existing dry-to-dry machines, because adding a reclaimer to a new or an existing dry-

to-dry machine creates a new transfer machine system.

6. Vapor Barriers

In addition to room enclosures, some commenters requested that vapor barriers be required to prevent seepage of PCE to adjacent apartments. It was also suggested that dry cleaning facilities located in close proximity to residential buildings or food service establishments be required to have vapor barriers on all floors, walls, and ceilings to separate the dry cleaning facility from other areas in the building and to deter migration of PCE emissions.

Installing vapor barriers to prevent seepage of PCE emissions into adjacent living or working areas merely contains the emissions in the dry cleaning facility. Installing vapor barriers could lead to elevated PCE concentrations in the work areas and public areas of the dry cleaning facility, resulting in increased worker and public exposure at the dry cleaner. Vapor barriers could also be very expensive for a dry cleaning owner or operator to install. Estimates indicate that installation of a vapor barrier in a 30 by 50 by 20 foot dry cleaning facility would cost approximately $6,500. Based on available information, vapor barriers are considered unreasonable for a national standard due to their high cost and their failure to control or reduce PCE emissions.

The Administrator agrees with the concerns expressed by many commenters about the potential impact of fugitive emissions. As mentioned earlier, to address these concerns, the final NESHAP requires control of fugitive emissions by leak detection and repair. As a result, the NESHAP will significantly reduce fugitive PCE emissions from all dry cleaning facilities.

In a few cases, local agencies may find situations where they believe the use of vapor barriers may be warranted, such as the situation of a very large dry cleaning establishment without adequate ventilation located in an apartment complex. Cases such as this are best handled on a site-specific basis at the local level.

7. Dry Cleaning Ventilation Requirements

Commenters recommended including dry cleaning ventilation requirements in the final NESHAP. Specific dry cleaner exhaust or ventilation requirements were recommended, such as adopting the National Fire Protection Association (NFPA) Standard 32 for dry cleaning plants (1990 edition). This would require an air change within the dry cleaning plant every 5 minutes. In addition, commenters recommended that all dry cleaning machines install a ventilation system capable of maintaining a minimum air velocity of 0.6 meters per second (100 feet per minute) through the loading door of the dry cleaning machine, whenever the door is open.

Ventilation requirements in and of themselves would not reduce fugitive emissions. From the perspective of the NESHAP, the EPA believes it is more appropriate to focus on the use of equipment or techniques that prevents or controls emissions rather than to focus on ventilation requirements that merely divert, rather than reduce, emissions.

If dry cleaning plant ventilation systems were installed and the resulting exhaust routed through a control device, such as a carbon adsorber, this would reduce fugitive emissions; however, it could be prohibitively expensive. The NESHAP, therefore, does not include dry cleaning plant ventilation requirements. On the other hand, the NESHAP does not preclude a dry cleaning plant from installing ventilation systems. Moreover, where local authorities consider a ventilation system necessary, the NESHAP does not prevent or hinder local authorities in any way from requiring additional measures such as ventilation systems.

The NESHAP requires the implementation of a leak detection and repair program, to control fugitive PCE emissions. These measures will achieve a substantial reduction in fugitive emissions at dry cleaning facilities.

C. Monitoring and Equivalency

1. Monitoring Control Devices

Many commenters stated that the NESHAP should contain some type of emission limit and performance testing. They asserted that requiring the dry cleaning owner or operator to install certain equipment and follow work practices without a performance test will not necessarily reduce emissions. The commenters felt the only way to ensure emission reductions was to establish and enforce an emission limit through performance testing.

As discussed in the proposal preamble, the cost of requiring an owner or operator to undertake a full-fledged performance test to demonstrate compliance with emission limits based on the use of a refrigerated condenser or a carbon adsorber would be expensive ($3,000 to $5,000), especially compared to the cost of this emission control equipment ($6,000 to $8,000). The additional cost of such a performance test, therefore, would create a significant impact by almost doubling the cost that the NESHAP would impose.

The economic analysis conducted prior to proposal indicated that many operators will likely experience difficulty in obtaining capital to purchase emission control equipment. To preclude unreasonable economic impacts, the NESHAP does not require vent controls on existing sources with an annual PCE consumption of less than 530 liters (140 gallons) per year for facilities with dry-to-dry machines or 760 liters (200 gallons) per year for facilities with transfer machine systems. Imposing additional costs by requiring a full-fledged performance test to determine compliance would add significantly to the economic impact of the NESHAP and would result in raising the low solvent consumption exemption levels for existing sources and decrease the emission reductions achieved by the NESHAP.

Several commenters believed that the NESHAP should include emission limitations and performance testing for carbon adsorbers. They believed that an emission limit for carbon adsorbers is necessary because operating requirements alone are not enough. Examples were cited of carbon adsorbers with damaged prefilters or leaking dampers drastically reducing emission control efficiency.

The concerns of the commenters regarding poor operation and maintenance of equipment are well founded. There is, however, incentive for an owner or operator to properly operate and maintain dry cleaning emission control equipment. Having invested what for most dry cleaning facilities will be a substantial sum of money in this equipment, properly operating and maintaining it will provide some return in terms of recovered PCE. Proper operation and maintenance will result in lower PCE consumption and reduce the dry cleaner's operating costs attributable to PCE purchases.

Beyond this economic incentive, however, the final NESHAP requires the owner or operator to follow the equipment manufacturer's specifications regarding proper operation and maintenance of equipment. In addition, the NESHAP requires the owner or operator to maintain a log containing information on the proper operation and maintenance of control devices.

To help dry cleaners determine that the control devices are operating properly, periodic monitoring is also required in the final NESHAP. If the control device used to achieve

compliance is a refrigerated condenser, the owner or operator is required to measure the temperature of the vapor stream passing through the refrigerated condenser. For refrigerated condensers used with transfer machine system washers, the temperature on the inlet side and outlet side of the refrigerated condenser must be measured. For refrigerated condensers used with transfer machine system dryers or reclaimers, or dry-to-dry machines, the temperature of the exhaust gas stream exiting the refrigerated condenser must be measured. Measurements must be taken once per week at the end of the cool down cycle prior to door opening. Records of this temperature measurement must be kept in a log maintained onsite.

If the control device used to achieve compliance is a carbon adsorber, the owner or operator is required to measure the PCE concentration at the exit of the carbon adsorber. Measurements must be taken once per week during the last aeration cycle prior to a scheduled desorption using a colorimetric detector tube. Records must be kept in a log (maintained on site) of the date and PCE concentration measured using the colorimetric detector tube.

The NESHAP requires that copies of the equipment manufacturer's operation and maintenance specifications be retained onsite. All of the above requirements will ensure proper operation and maintenance of equipment and will also ensure this equipment achieves the emission control performance it is capable of achieving.

2. Determining Equivalency

Guidance was requested regarding what type of information must be included with any request for a determination of equivalency (i.e., that the equipment a dry cleaner proposes to use is equivalent to that required by the NESHAP). Information was requested on the type and duration of emission data needed and the method for determining the control efficiency of the particular technology.

It is difficult to specify what information must be submitted for a determination of equivalency without knowing some details of the emission control technology or system for which the determination is requested. A description of this type of information must be broad and general in nature to accommodate all possibilities. It is possible, however, to be more specific regarding some requirements and the final NESHAP specifies that the following information must be submitted:

a. Diagrams, as appropriate, illustrating the emission control technology or system, its operation and integration into or function with dry-to-dry machines or transfer machine systems during each portion of the normal dry cleaning cycle.

b. Information quantifying vented PCE emissions from the dry-to-dry machines or transfer machine systems during each portion of the dry cleaning cycle with and without the use of the candidate emission control technology or system.

c. Information on solvent mileage achieved with and without the candidate emission control technology. Solvent mileage is the average weight of articles cleaned per volume of PCE used.

d. Identification of maintenance requirements and parameters to monitor to ensure proper operation and maintenance.

e. Explanation of why this submitted information is considered accurate and representative of both the short-term and long-term performance of the candidate emission control technology on the specific dry cleaning system examined.

f. Explanation of why this information can be extrapolated to dry cleaning systems other than the specific system(s) examined.

g. Information on the cross-media impacts (to water and solid waste) of the candidate emission control technology and demonstration that the cross-media impacts are less than or equal to the cross-media impacts of a refrigerated condenser.

3. Delegation of Authority to Determine Equivalency

Concern was expressed by some commenters that States were not delegated authority in the proposal to determine equivalency. Commenters strongly opposed limiting the authority for approving alternative control equipment and procedures proposed by individual dry cleaning sources to the EPA alone. It was believed that the EPA's retention of this delegation of authority would negatively impact the operating permit process. The emphasis in comments was that States must retain the right to take appropriate actions to implement effective emission control strategies to protect public health within their jurisdictions.

The EPA agrees that States should be allowed to implement effective emission strategies to protect public health within their jurisdictions. In some cases, States may feel it is necessary to implement more protective air pollution control measures than those adopted in national standards to control local problems.

The EPA also agrees that provisions limiting the authority to the EPA alone for making judgments regarding the equivalency of different equipment to control PCE emissions with the same or better performance than the control equipment required by the NESHAP are not warranted because section 112(l) of the Act would allow a State to request approval of a State's program that permits a source to seek permission to use an alternative means of emission limitation under section 112(h)(3), provided that the State demonstrated that its program would be no less stringent and that certain conditions were met. Section 112(l) of the Act authorizes States to submit programs to the Administrator for approval for implementing and enforcing emission standards. Section 112(l) also goes on to state that such programs may provide for partial, as well as complete, delegation of the EPA's authorities and responsibilities. The approval and delegation process is addressed in detail in the EPA's notice of proposed rulemaking: "Approval of State Programs and Delegation of Federal Authorities; Proposed Rule," published on May 19, 1993, (58 FR 29296).

As a result, the provision limiting the authority to judge the equivalency of different equipment to the EPA has been deleted from the final standards. Doing so, however, does not mean that these provisions will be "automatically" delegated to States upon application. In addition, delegating these provisions will not preclude the EPA from considering petitions submitted by various equipment suppliers or vendors and making equivalency determinations on a national level.

D. Other Issues and Follow-up to Today's Action

The NESHAP promulgated in today's **Federal Register** will achieve significant reductions in PCE emissions from new and existing dry cleaning facilities. There remain, however, several major issues associated with dry cleaning facilities that merit further attention. These include: (1) Indoor air pollution in residences located above dry cleaning facilities; and (2) groundwater pollution resulting from dry cleaning facilities. These issues were brought to light following proposal of the NESHAP by the New York Study (indoor air pollution) and the California Study (ground water pollution).

1. New York Study

The New York Study, performed by the State of New York, is an assessment

of indoor air pollution in residences located above dry cleaners. Many States and environmental groups referred to this study in their public comments on the NESHAP, and several commenters submitted copies of the study as attachments to their comments. They believed that the study shows that the risk to public health from exposure to PCE emissions from dry cleaners is significant and should be targeted for regulation. They mentioned that, although the Act does not specifically address indoor air pollution, indoor air emissions eventually become ambient air emissions.

The New York Study focuses on dry cleaners located in Albany, New York. All 102 dry cleaners listed in the Albany telephone directory were contacted. Of these 102 dry cleaners, 67 cleaned or pressed clothes on the premises. Of these 67, 6 had occupied residences above them.

The levels of PCE in the indoor and outdoor air at residences located above the 6 dry cleaners were measured over a 24-hour period. Identical measurements were taken at the same time at 6 control residences located at least 100 meters (330 feet) away from each dry cleaner. The control residences were selected based on their similarity to the study residences in terms of building type, age, and neighborhood.

The study found indoor air concentrations of PCE ranging from 100 to 55,000 micrograms per cubic meter (mcg/^{3}) [15 to 8,000 parts per billion (ppb)] in the 6 residences located above dry cleaners. The cancer risk estimate associated with these levels, based on the EPA's unit cancer risk estimate for PCE and lifetime exposure, is 1 in 100,000 to 1 in 100 ($10^{-5}$to 10^{-2}). Control residences had indoor air PCE concentrations ranging from 6 to 100 mcg/m^3 (1 to 15 ppb). The cancer risk associated with these levels is 1 in 1,000,000 to 1 in 100,000 (10^{-6} to 10^{-5}).

The New York study indicates that PCE emissions can accumulate in residences located above dry cleaning facilities, resulting in increased public exposure to PCE. While not definitive, in the EPA's opinion, based on various observations included in the New York study, the major contributor to the elevated PCE levels measured in the residences located above these dry cleaners seems to be fugitive emissions.

2. California Well Investigation Program

The California Well Investigation Program is an assessment of ground water contamination undertaken by the State of California. The study contends that PCE contaminated discharges into sewer lines by dry cleaning facilities has contaminated ground water in several areas.

The California Study focuses on wells in the Central Valley Region, which supply drinking water to municipal water systems. Water drawn from 215 out of some 2,000 wells tested contained detectable levels of PCE. Of these 215 wells, water drawn from 47 wells contained levels of PCE above the maximum contaminant level (MCL) of 5 parts per billion (ppb) in the National Revised Primary Drinking Water Regulations.

Soil gas surveys and ground water movement around 21 of the 47 wells with levels of PCE above the MCL indicate the source of PCE contamination in these wells to have originated from sewer lines. In 20 out of these 21 wells, dry cleaning facilities were identified as the sole users of PCE connected to the sewer lines. Soil gas surveys along the main sewer lines downstream from sewer laterals connecting the dry cleaners to the main sewer lines also showed relatively high concentrations of PCE. As a result, the study concludes that dry cleaning facilities are the source of the observed PCE contamination.

Recovery of PCE for reuse within the dry cleaning process generates wastewater contaminated with PCE. Most of the PCE contained in this wastewater is recovered in a water separator. Water from the water separator, however, is routinely discharged to the sewer at many dry cleaning facilities. Separator water generally contains about 150 ppm of PCE; but it may contain as much as 30 percent PCE, if the water separator is poorly operated.

Dry cleaning machines that use a refrigerated condenser for process vent control generate about 190 liters (50 gallons) per year of separator water; those with no process vent control generate even less. Dry cleaning machines that use a carbon adsorber for process vent control, on the other hand, generate about 7,600 liters (2,000 gallons) per year of separator water—40 times that generated by a refrigerated condenser.

The California study concludes that PCE discharged to sewers from dry cleaning facilities can contaminate ground water. Whether the primary source of PCE discharged to sewers by dry cleaning facilities is the result of leaking equipment, accidental spills, or PCE contaminated wastewater generated by dry cleaning or that generated by emission control equipment installed to control process vent emissions, however, is unclear.

The use of carbon adsorbers for process vent control significantly adds to the amount of PCE contaminated wastewater generated by dry cleaning facilities. While not conclusive, this suggests the use of carbon adsorbers for process vent control may be a primary contributor to ground water pollution resulting from dry cleaning facilities.

3. Follow-up to Today's Action

The EPA believes, based on information received to date, that PCE contamination of indoor air and ground water may present problems that warrant additional Federal actions. The EPA considered seeking an extension of the court deadline for the final rule to deal fully with these issues. This course of action, however, would have postponed the health and environmental benefits of the rule for an extended period of time. The EPA determined that the best environmental protection would be achieved by issuing today's rule as expeditiously as possible, and deciding subsequently how to address remaining indoor air pollution and ground water contamination associated with PCE dry cleaners.

Today's rule, while targeted primarily at reducing PCE contamination of outdoor air, may reduce indoor air contamination in some locations through requirements reducing fugitive and process vent emissions from dry cleaners. In addition, the rule requires uncontrolled machines to be controlled with refrigerated condensers, which will minimize generation of wastewater and solid waste.

In order to gain additional insight and understanding into the issues of indoor air pollution and ground water pollution associated with dry cleaning facilities, the EPA will convene a public meeting (see *Public Meeting* under **ADDRESSES** at the beginning of this preamble). The objective of this public meeting will be to gather additional information and solicit public comment on the magnitude and severity of the problems highlighted by the New York and the California studies and potential solutions or approaches for dealing with these problems. Copies of the New York and California studies are included in Docket No. A–88–11 (see Docket under **ADDRESSES**). (The New York Study is Docket No. A–88–11, Item No. IV–D–5 with additional information in Item No. IV–J–40; the California Study is also part of Item No. IV–J–40.) The EPA also would like to be informed of other studies conducted by States (or others) that address the relative efficiency of carbon adsorbers and refrigerated condensers, and their impact on air

emissions. Anyone wishing to speak and make presentations at the public meeting and/or wishing to submit written comments, please see the section Public Meeting under ADDRESSES at the beginning of this preamble.

The EPA will use the information received from the public meeting, as well as written comments, in deciding whether additional actions should be taken to reduce health and environmental risks from dry cleaners. The EPA will, at a minimum, publish and distribute the information presented at the public meeting. The EPA may then use this information to develop guidance for States and local agencies; and/or develop additional regulations. At the meeting, the EPA will explore the desirability and feasibility of using a regulatory negotiation or other consensus-building approach to address these issues.

With respect to indoor air pollution, the EPA specifically requests States and the public to provide their views and any available information on:

a. The number of dry cleaners co-located in buildings with residences or businesses.

b. The extent and severity of indoor air contamination with PCE from dry cleaners, and the adequacy of existing data on this problem.

c. The extent and severity of PCE contamination of fatty foods in residences, restaurants, and food stores that are co-located with or located near dry cleaners.

d. The extent to which PCE indoor air contamination results from fugitive emissions or process vent emissions.

e. The amount of fugitive emissions from different types of dry cleaning machines, and from the various pieces of ancillary equipment associated with the dry cleaning process.

f. Methods for reducing PCE contamination of indoor air, including but not limited to:

(1) Improved maintenance involving the use of instruments to inspect dry cleaning equipment for leaks of PCE.

(2) Increased room ventilation and/or ducting of emissions outdoors.

(3) Collection of steam press emissions.

(4) The use of vapor barriers.

(5) Improved training of dry cleaning workers, or other information dissemination activities.

(6) A phaseout of existing transfer machine systems (today's rule effectively bans new transfer machine systems but does not limit the period of time that existing transfer machine systems can remain in service).

(7) Other strategies, control technologies, and pollution prevention methods that can reduce fugitive emissions, especially at small dry cleaners.

g. The extent to which evaporators are in use, and their impact on air quality as well as wastewater contamination.

h. The relative performance of vented versus ventless machines in reducing PCE emissions.

i. The relative effectiveness, cost, and affordability of the available options, as well as key advantages and drawbacks, including information on:

(1) The economic impact of a requirement to replace existing carbon adsorbers with refrigerated condensers.

(2) The economic impact of a requirement to replace existing transfer machines with dry-to-dry equipment.

j. The appropriate Federal role in encouraging or requiring steps to reduce PCE contamination of indoor air.

k. The proposition that the EPA should voluntarily conduct a residual risk analysis for area source dry cleaners, as well as a statutorily mandated risk analysis for major sources, to assess remaining health and environmental risks after installation of MACT and GACT technology. (Based on the results of this analysis, the EPA could assess whether more stringent, health-based standards are warranted).

l. Examination of coin-operated dry cleaners exempt from this NESHAP to evaluate their potential contribution to indoor air pollution.

m. Evaluation of appropriate operator training and certification methods.

With respect to ground water contamination and solid waste generation by dry cleaners, the EPA specifically requests that States and the public provide their views and any available information on:

(1) The extent and severity of contamination of ground water with PCE from dry cleaners, and the degree of health threat posed by this contamination;

(2) The relative contribution of wastewater discharges, accidental spills, equipment leaks, and improper hazardous waste disposal to this ground water contamination;

(3) Costs of treating well water contaminated with PCE to make it safe for drinking, and the costs and feasibility of cleaning up ground water contaminated with PCE;

(4) The degree of solid or hazardous waste generation associated with the prevention/control technologies, information on how these wastes are managed and their environmental impact.

(5) Potential measures to prevent or minimize further contamination of ground water with PCE, including but not limited to:

(a) Use of wastewater evaporators by dry cleaners.

(b) Required replacement of existing carbon adsorbers used for process-vent control with refrigerated condensers, perhaps through a gradual phaseout. (The EPA particularly solicits comment on how the EPA could use its legal authorities to require a gradual phaseout, the environmental benefits of a phaseout, and the economic feasibility of potential phase-out schedules);

(c) Improved maintenance of dry cleaning equipment through improved training of dry cleaning workers or other information dissemination activities;

(d) Encouragement of emerging PCE emission control technologies that use adsorption but do not generate wastewater because regeneration is performed through heat desorption rather than steam stripping;

(e) Spill prevention and control measures;

(f) A ban or limit on the discharge of PCE-contaminated wastewater to sewers;

(g) Disposal of dry cleaner wastewater at hazardous waste facilities;

(h) The practical use of dry cleaner wastewater in boilers; and

(i) The relative effectiveness, costs, and affordability of the available options, as well as key advantages and drawbacks.

(6) The appropriate Federal role in encouraging or requiring steps to reduce the threat of ground water contamination from dry cleaners.

While examining these issues, the EPA, as part of its Design for the Environment (DfE) program is investigating potential substitutes for PCE in dry cleaning and developing an incentive program to encourage all dry cleaners to use control measures and work practices that minimize health and environmental risks.

The DfE program, which is operated by the EPA's Office of Pollution Prevention and Toxics, fosters cooperative study on a voluntary basis with businesses and trade associations in specific industries to evaluate the risks, performance, and costs of alternative chemicals, processes, and technologies. The DfE program is currently evaluating a variety of alternatives to the current use of PCE in dry cleaning, as well as emission control technologies for dry cleaning equipment, through its Cleaner Technologies Substitute Assessment (CTSA).

As part of the CTSA, the DfE program in conjunction with the Neighborhood Cleaners Association (NCA), the International Fabricare Institute (IFI), and a commercial vendor, conducted a 4-week study to test the economic feasibility and performance aspects of a potential alternative wet-cleaning process that does not use PCE. The alternative process primarily uses steam cleaning, spotting, tumble drying, soaps, and limited amounts of water to clean clothes. The EPA expects to release the results of the study in Fall 1993 and will address whether there may be circumstances under which wet-cleaning may be technically and economically feasible.

In addition to evaluating the wet-cleaning process, the DfE Dry Cleaning Project is assessing other pollution prevention and control options. The analysis will include evaluation of environmental and human health risks, and the performance and costs of various prevention and control technologies. This assessment, which is expected to be completed in Spring 1994, will provide the dry cleaning industry with valuable information when considering options for compliance, risk reduction, and pollution prevention.

For information on the Design for the Environment Dry Cleaning Project contact Jean E. (Libby) Parker, EPA, Office of Pollution Prevention and Toxics, mail code TS–779, 401 M Street, SW., Washington, DC 20460, telephone number (202) 260–0880.

As part of the EPA's focus on pollution prevention at this time, the Administrator strongly encourages those dry cleaners currently using carbon adsorbers for primary process vent control to replace them with refrigerated condensers as early as possible.

While the EPA conducts follow-up activities related to dry cleaners, the EPA notes that there are opportunities for State and local government to take action as well. For example, State and local governments may wish to investigate whether indoor air or ground water in their jurisdictions is being contaminated with PCE from dry cleaning. If a State or local government finds an indoor air pollution problem, for example, the government may wish to consider whether collocation of a dry cleaner in the same building with residences is appropriate.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. 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 rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA's responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Paperwork Reduction Act

Information collection requirements given in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0234.

This collection of information is estimated to have a public reporting burden averaging 3.2 hours per response, and to require 49 hours per recordkeeper annually. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In an Information Collection Request Action Notice dated June 5, 1992, OMB disapproved two of the information collection provisions for the PCE Dry Cleaning NESHAP. The first was the weekly records of leak detection and repair, and the second was the 5-year record retention period. The OMB questioned whether these provisions represented the least burdensome approach necessary to attain the goal of the standards. These concerns are addressed below.

With respect to the weekly leak detection and repair: The capture and reuse of PCE is the goal of the NESHAP. To the extent that there are fugitive emissions from leaks into the dry cleaning facility, the surrounding businesses, and the environment, the goal of the NESHAP cannot be attained. Leak detection is especially crucial for dry cleaning establishments located in mixed-use buildings, where fugitive PCE emissions tend to migrate into and build up in adjoining residences, restaurants, banks, and shops. (This is the conclusion of the New York Study which became available after the rule was proposed on December 9, 1991.)

Leaks result from unequal pressure in the system, and are also a function of the age, construction, and design of the system. A simple periodic inspection of the dry cleaning facility will alert the owner or operator of any leaks. The leaks can then be repaired on a timely basis, both meeting the goals of the NESHAP and saving the owner and operator the cost of replacing the PCE otherwise lost through leaks in the system. Therefore, frequent periodic inspections at all facilities are needed to ensure that the goal of the NESHAP is attained. However, to address concerns for those existing facilities with annual receipts below $75,000, these facilities are required to perform leak detection on a biweekly, rather than a weekly, basis.

With respect to the second issue, the 5-year retention period for records: The types of records required to be kept require very little storage space and are of great practical utility for purposes of determining compliance and following through with any necessary enforcement action. The recordkeeping required is so minimal that the records for a 5-year period literally could be kept in one notebook. The usefulness of the 5-year record retention period for the EPA results from the fact that dry cleaning facilities are so numerous and the EPA's inspection and audit resources so limited that inspections of any given facility will, of necessity, be rare. Congress recognized this, and granted a 5-year statute of limitations for NESHAP. A record retention period of less than 5 years would prevent the EPA from enforcing its regulations for fewer years than Congress has specifically mandated. The retention of records over 5 years also allows the EPA to establish a source's history and patterns of compliance for purposes of determining the appropriate level of enforcement action. In many cases, the additional information could benefit the source.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12291

Under Executive Order (E.O.) 12291, the EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The criteria set forth in section 1 of E.O. 12291 for determining whether a regulation is a major rule are as follows:

(1) The rule is likely to have an annual effect on the economy of $100 million or more; (2) the rule is likely to cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) the rule is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This promulgated regulation is not a major rule because it would result in none of the adverse effects mentioned above. The total annual cost is estimated to be less than $14 million a year, far below the $100 million criterion set forth in E.O. 12291. The price impacts are estimated to range from 0.5 and 2.5 percent. The economic impact analysis on the industry indicated that output adjustments are about a 0.5 percent decrease. These small market adjustments indicate that no significant adverse effects on competition, employment, investment, productivity, innovation, or international trade are expected. Therefore, this regulation is not subject to an RIA.

This promulgated rulemaking was submitted to the OMB for review as required under E.O. 12291.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq) requires the EPA to consider potential impacts of promulgated regulations on small business "entities." A regulatory flexibility analysis is required if preliminary analysis indicates that a promulgated regulation is expected to have a significant economic impact on a substantial number of small entities.

Firms in the dry cleaning industry are classified as small or large based on annual sales receipts. Commercial firms are classified as small if they earn less than $2.5 million per year. By this definition, over 99 percent of commercial dry cleaning firms are small (U. S. Department of Commerce, 1990b).

The economic impacts of the regulatory alternatives were analyzed based on consumption of PCE but described in terms of dry cleaning revenues.

For the commercial area source categories, the economic analysis did indicate that many firms within the class of sources with annual receipts of less than $75,000 would be affected significantly by the promulgated standard. Below this annual receipt level are found the very smallest family-operated businesses with low annual PCE consumption and few employees. Due to economic considerations, only pollution prevention measures (i.e., leak detection and repair) are required for this class of sources under GACT—no process vent control is required.

For the class of sources with annual receipts of $75,000 or greater, the economic impacts are much smaller. Less than 260 net closures due to the promulgated regulation are projected. The analysis indicates that firms in below-average financial condition may face difficulty in obtaining the required funds to purchase control equipment from traditional loan sources, such as banks. The analysis projects between 0 and 830 firms will be in this category. These firms will either obtain other financing (vendor-aided, relatives, personal assets, etc.), close, or sell their firm. For more detail see "Economic Impact Analysis of Regulatory Controls in the Dry Cleaning Industry" (EPA–45/3–91–021b) and "Dry Cleaning Facilities—Background Information for Promulgated Standards" (EPA–450/3–91–020b).

In summary, excluding requirements for process vent control for the class of sources with annual gross receipts of $75,000 or less drastically reduces the impacts on the commercial dry cleaning sector.

E. Miscellaneous

Under the operating permit regulations codified at 40 CFR part 70, any source that is a major source under the Act or any nonmajor source subject to a standard under sections 111 or 112 of the Act must obtain an operating permit. (See § 70.3(a)(1).) The part 70 regulations also provide that a State may, at its discretion, defer all nonmajor sources from the obligation to obtain a part 70 permit until such time as the EPA finishes a rulemaking regarding the applicability of the part 70 program to nonmajor sources. Part 70 further provides that, for nonmajor sources subject to a future standard promulgated under section 111 or 112, "* * * the Administrator will determine whether to exempt any or all such applicable sources from the requirements to obtain a part 70 permit at the time that the new standard is promulgated." (See § 70.3(b)(1) and (2).)

Today's final dry cleaning rule does not exempt area source dry cleaners from permitting requirements. The EPA believes that permitting these nonmajor sources will enhance the implementation and enforcement of the rule by clarifying how the rule applies to a particular source, and how relevant parts of the to-be-promulgated general provisions apply to dry cleaners. The general provisions, which were proposed in the **Federal Register** on August 11, 1993 (58 FR 42760), are generic requirements that sources subject to section 112 standards must meet.

However, under the existing provisions of part 70, States may choose to defer the obligation of all nonmajor sources to obtain a permit until the EPA "completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions * * *." In promulgating the permits rule, the EPA committed to complete that rulemaking within 5 years after the approval of the first State part 70 program that defers permitting of nonmajor sources.

The EPA believes, for the same reasons stated in the preamble to the operating permits rule, that the benefits to be gained from the permitting of nonmajor sources subject to this rule are not likely to accrue during the early stages of the permit program when permitting authorities will be occupied with the task of issuing permits to major sources. Once this task is complete, however, permitting authorities should be able to process permits for nonmajor sources subject to this rule on a relatively expedited basis. This expedited review should be the case, in part, because of the presumptive suitability of these sources for general permits.

In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 8 years from the date of promulgation as required by the Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 13, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code

of Federal Regulations is amended as set forth below:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories	
* * * * *	
63.322–63.325	2060–0234

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

4. Part 63 is amended by adding subpart M to read as follows:

Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

Sec.
63.320 Applicability.
63.321 Definitions.
63.322 Standards.
63.323 Test methods and monitoring.
63.324 Reporting and recordkeeping requirements.
63.325 Determination of equivalent emission control technology.

Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

§ 63.320 Applicability.

(a) The provisions of this subpart apply to the owner or operator of each dry cleaning facility that uses perchloroethylene.

(b) Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991, shall be in compliance with the provisions of this subpart beginning on September 22, 1993 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act.

(c) Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, shall comply with §§ 63.322(c), (d), (i), (j), (k), and (l), 63.323(d), and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) beginning on December 20, 1993, and shall comply with other provisions of this subpart by September 23, 1996.

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines and each existing transfer machine system and its ancillary equipment, as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total perchloroethylene consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment located in a dry cleaning facility that includes only transfer machine system(s) is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the perchloroethylene consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to § 63.323(d).

(f) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to § 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) in the dry cleaning facility must comply with §§ 63.322, 63.323, and 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by September 23, 1996, whichever is later.

(g) A dry cleaning facility is a major source if the facility emits or has the potential to emit more than 9.1 megagrams per year (10 tons per year) of perchloroethylene to the atmosphere. In lieu of measuring a facility's potential to emit perchloroethylene emissions or determining a facility's potential to emit perchloroethylene emissions, a dry cleaning facility is a major source if:

(1) It includes only dry-to-dry machine(s) and has a total yearly perchloroethylene consumption greater than 8,000 liters (2,100 gallons) as determined according to § 63.323(d); or

(2) It includes only transfer machine system(s) or both dry-to-dry machine(s) and transfer machine system(s) and has a total yearly perchloroethylene consumption greater than 6,800 liters (1,800 gallons) as determined according to § 63.323(d).

(h) A dry cleaning facility is an area source if it does not meet the conditions of paragraph (g) of this section.

(i) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to § 63.323(d) is initially less than the amounts specified in paragraph (g) of this section, but then exceeds those amounts, the dry cleaning facility becomes a major source and all dry cleaning systems located at that dry cleaning facility must comply with the appropriate requirements for major sources under §§ 63.322, 63.323, and 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amount specified, or by September 23, 1996, whichever is later.

(j) All coin-operated dry cleaning machines are exempt from the requirements of this subpart.

§ 63.321 Definitions.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Ancillary equipment means the equipment used with a dry cleaning machine in a dry cleaning system including, but not limited to, emission control devices, pumps, filters, muck cookers, stills, solvent tanks, solvent containers, water separators, exhaust dampers, diverter valves, interconnecting piping, hoses, and ducts.

Articles mean clothing, garments, textiles, fabrics, leather goods, and the like, that are dry cleaned.

Area source means any perchloroethylene dry cleaning facility that meets the conditions of § 63.320(h).

Biweekly means any 14-day period of time.

Carbon adsorber means a bed of activated carbon into which an air-perchloroethylene gas-vapor stream is routed and which adsorbs the perchloroethylene on the carbon.

Coin-operated dry cleaning machine means a dry cleaning machine that is operated by the customer (that is, the customer places articles into the machine, turns the machine on, and removes articles from the machine).

Colorimetric detector tube means a glass tube (sealed prior to use), containing material impregnated with a chemical that is sensitive to perchloroethylene and is designed to measure the concentration of perchloroethylene in air.

Construction, for purposes of this subpart, means the fabrication (onsite), erection, or installation of a dry cleaning system subject to this subpart.

Desorption means regeneration of a carbon adsorber by removal of the perchloroethylene adsorbed on the carbon.

Diverter valve means a flow control device that prevents room air from passing through a refrigerated condenser when the door of the dry cleaning machine is open.

Dry cleaning means the process of cleaning articles using perchloroethylene.

Dry cleaning cycle means the washing and drying of articles in a dry-to-dry machine or transfer machine system.

Dry cleaning facility means an establishment with one or more dry cleaning systems.

Dry cleaning machine means a dry-to-dry machine or each machine of a transfer machine system.

Dry cleaning machine drum means the perforated container inside the dry cleaning machine that holds the articles during dry cleaning.

Dry cleaning system means a dry-to-dry machine and its ancillary equipment or a transfer machine system and its ancillary equipment.

Dryer means a machine used to remove perchloroethylene from articles by tumbling them in a heated air stream (see reclaimer).

Dry-to-dry machine means a one-machine dry cleaning operation in which washing and drying are performed in the same machine.

Exhaust damper means a flow control device that prevents the air-perchloroethylene gas-vapor stream from exiting the dry cleaning machine into a carbon adsorber before room air is drawn into the dry cleaning machine.

Existing means commenced construction or reconstruction before December 9, 1991.

Filter means a porous device through which perchloroethylene is passed to remove contaminants in suspension. Examples include, but are not limited to, lint filter (button trap), cartridge filter, tubular filter, regenerative filter, prefilter, polishing filter, and spin disc filter.

Heating coil means the device used to heat the air stream circulated from the dry cleaning machine drum, after perchloroethylene has been condensed from the air stream and before the stream reenters the dry cleaning machine drum.

Major source means any dry cleaning facility that meets the conditions of § 63.320(g).

Muck cooker means a device for heating perchloroethylene-laden waste material to volatilize and recover perchloroethylene.

New means commenced construction or reconstruction on or after December 9, 1991.

Perceptible leaks mean any perchloroethylene vapor or liquid leaks that are obvious from:

(1) The odor of perchloroethylene;

(2) Visual observation, such as pools or droplets of liquid; or

(3) The detection of gas flow by passing the fingers over the surface of equipment.

Perchloroethylene consumption means the total volume of perchloroethylene purchased based upon purchase receipts or other reliable measures.

Reclaimer means a machine used to remove perchloroethylene from articles by tumbling them in a heated air stream (see dryer).

Reconstruction, for purposes of this subpart, means replacement of a washer, dryer, or reclaimer; or replacement of any components of a dry cleaning system to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source.

Refrigerated condenser means a vapor recovery system into which an air-perchloroethylene gas-vapor stream is routed and the perchloroethylene is condensed by cooling the gas-vapor stream.

Refrigerated condenser coil means the coil containing the chilled liquid used to cool and condense the perchloroethylene.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more dry cleaning facilities;

(2) For a partnership: A general partner;

(3) For a sole proprietorship: The owner; or

(4) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking official.

Room enclosure means a stationary structure that encloses a transfer machine system, and is vented to a carbon adsorber or an equivalent control device during operation of the transfer machine system.

Source, for purposes of this subpart, means each dry cleaning system.

Still means any device used to volatilize and recover perchloroethylene from contaminated perchloroethylene.

Temperature sensor means a thermometer or thermocouple used to measure temperature.

Transfer machine system means a multiple-machine dry cleaning operation in which washing and drying are performed in different machines. Examples include, but are not limited to:

(1) A washer and dryer(s);

(2) A washer and reclaimer(s); or

(3) A dry-to-dry machine and reclaimer(s).

Washer means a machine used to clean articles by immersing them in perchloroethylene. This includes a dry-to-dry machine when used with a reclaimer.

Water separator means any device used to recover perchloroethylene from a water-perchloroethylene mixture.

Year or *Yearly* means any consecutive 12-month period of time.

§ 63.322 Standards.

(a) The owner or operator of each existing dry cleaning system shall comply with either paragraph (a)(1) or (a)(2) of this section and shall comply with paragraph (a)(3) of this section if applicable.

(1) Route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser or an equivalent control device.

(2) Route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a carbon adsorber installed on the dry cleaning machine prior to September 22, 1993.

(3) Contain the dry cleaning machine inside a room enclosure if the dry cleaning machine is a transfer machine

system located at a major source. Each room enclosure shall be:

(i) Constructed of materials impermeable to perchloroethylene; and

(ii) Designed and operated to maintain a negative pressure at each opening at all times that the machine is operating.

(b) The owner or operator of each new dry cleaning system:

(1) Shall route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser or an equivalent control device;

(2) Shall eliminate any emission of perchloroethylene during the transfer of articles between the washer and dryer(s); and

(3) Shall pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning machine drum through a carbon adsorber or equivalent control device immediately before or as the door of the dry cleaning machine is opened if the dry cleaning machine is located at a major source.

(c) The owner or operator shall close the door of each dry cleaning machine immediately after transferring articles to or from the machine, and shall keep the door closed at all other times.

(d) The owner or operator of each dry cleaning system shall operate and maintain the system according to the manufacturers' specifications and recommendations.

(e) Each refrigerated condenser used for the purposes of complying with paragraph (a) or (b) of this section and installed on a dry-to-dry machine, dryer, or reclaimer:

(1) Shall be operated to not vent or release the air-perchloroethylene gas-vapor stream contained within the dry cleaning machine to the atmosphere while the dry cleaning machine drum is rotating;

(2) Shall be monitored according to § 63.323(a)(1); and

(3) Shall be operated with a diverter valve, which prevents air drawn into the dry cleaning machine when the door of the machine is open from passing through the refrigerated condenser.

(f) Each refrigerated condenser used for the purpose of complying with paragraph (a) of this section and installed on a washer:

(1) Shall be operated to not vent the air-perchloroethylene gas-vapor contained within the washer to the atmosphere until the washer door is opened;

(2) Shall be monitored according to § 63.323(a)(2); and

(3) Shall not use the same refrigerated condenser coil for the washer that is used by a dry-to-dry machine, dryer, or reclaimer.

(g) Each carbon adsorber used for the purposes of complying with paragraphs (a) or (b) of this section:

(1) Shall not be bypassed to vent or release any air-perchloroethylene gas-vapor stream to the atmosphere at any time; and

(2) Shall be monitored according to the applicable requirements in § 63.323 (b) or (c).

(h) Each room enclosure used for the purposes of complying with paragraph (a)(3) of this section:

(1) Shall be operated to vent all air from the room enclosure through a carbon adsorber or an equivalent control device; and

(2) Shall be equipped with a carbon adsorber that is not the same carbon adsorber used to comply with paragraph (a)(2) or (b)(3) of this section.

(i) The owner or operator of an affected facility shall drain all cartridge filters in their housing, or other sealed container, for a minimum of 24 hours, or shall treat such filters in an equivalent manner, before removal from the dry cleaning facility.

(j) The owner or operator of an affected facility shall store all perchloroethylene and wastes that contain perchloroethylene in solvent tanks or solvent containers with no perceptible leaks.

(k) The owner or operator of a dry cleaning system shall inspect the following components weekly for perceptible leaks while the dry cleaning system is operating:

(1) Hose and pipe connections, fittings, couplings, and valves;

(2) Door gaskets and seatings;

(3) Filter gaskets and seatings;

(4) Pumps;

(5) Solvent tanks and containers;

(6) Water separators;

(7) Muck cookers;

(8) Stills;

(9) Exhaust dampers;

(10) Diverter valves; and

(11) Cartridge filter housings.

(l) The owner or operator of a dry cleaning facility with a total facility consumption below the applicable consumption levels of § 63.320(d) or (e) shall inspect the components listed in paragraph (k) of this section biweekly for perceptible leaks while the dry cleaning system is operating.

(m) The owner or operator of a dry cleaning system shall repair all perceptible leaks detected under paragraph (k) of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt.

(n) If parameter values monitored under paragraphs (e), (f), or (g) of this section do not meet the values specified in § 63.323(a), (b), or (c), adjustments or repairs shall be made to the dry cleaning system or control device to meet those values. If repair parts must be ordered, either a written or verbal order for such parts shall be initiated within 2 working days of detecting such a parameter value. Such repair parts shall be installed within 5 working days after receipt.

§ 63.323 Test methods and monitoring.

(a) When a refrigerated condenser is used to comply with § 63.322(a)(1) or (b)(1):

(1) The owner or operator shall measure the temperature of the air-perchloroethylene gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine, dryer, or reclaimer weekly with a temperature sensor to determine if it is equal to or less than 7.2 °C (45 °F). The temperature sensor shall be used according to the manufacturer's instructions and shall be designed to measure a temperature of 7.2 °C (45 °F) to an accuracy of ± 1.1 °C (±2 °F).

(2) The owner or operator shall calculate the difference between the temperature of the air-perchloroethylene gas-vapor stream entering the refrigerated condenser on a washer and the temperature of the air-perchloroethylene gas-vapor stream exiting the refrigerated condenser on the washer weekly to determine that the difference is greater than or equal to 11.1 °C (20 °F).

(i) Measurements of the inlet and outlet streams shall be made with a temperature sensor. Each temperature sensor shall be used according to the manufacturer's instructions, and designed to measure at least a temperature range from 0 °C (32 °F) to 48.9 °C (120 °F) to an accuracy of ± 1.1 °C (± 2 °F).

(ii) The difference between the inlet and outlet temperatures shall be calculated weekly from the measured values.

(b) When a carbon adsorber is used to comply with § 63.322(a)(2) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with § 63.322(b)(3), the owner or operator shall measure the concentration of perchloroethylene in the exhaust of the carbon adsorber weekly with a colorimetric detector tube, while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber to determine that the perchloroethylene

concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube designed to measure a concentration of 100 parts per million by volume of perchloroethylene in air to an accuracy of ± 25 parts per million by volume; and

(2) Use the colorimetric detector tube according to the manufacturer's instructions; and

(3) Provide a sampling port for monitoring within the exhaust outlet of the carbon adsorber that is easily accessible and located at least 8 stack or duct diameters downstream from any flow disturbance such as a bend, expansion, contraction, or outlet; downstream from no other inlet; and 2 stack or duct diameters upstream from any flow disturbance such as a bend, expansion, contraction, inlet, or outlet.

(c) If the air-perchloroethylene gas-vapor stream is passed through a carbon adsorber prior to machine door opening to comply with § 63.322(b)(3), the owner or operator of an affected facility shall measure the concentration of perchloroethylene in the dry cleaning machine drum at the end of the dry cleaning cycle weekly with a colorimetric detector tube to determine that the perchloroethylene concentration is equal to or less than 300 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube designed to measure a concentration of 300 parts per million by volume of perchloroethylene in air to an accuracy of ±75 parts per million by volume; and

(2) Use the colorimetric detector tube according to the manufacturer's instructions; and

(3) Conduct the weekly monitoring by inserting the colorimetric detector tube into the open space above the articles at the rear of the dry cleaning machine drum immediately upon opening the dry cleaning machine door.

(d) When calculating yearly perchloroethylene consumption for the purpose of demonstrating applicability according to § 63.320, the owner or operator shall perform the following calculation on the first day of every month:

(1) Sum the volume of all perchloroethylene purchases made in each of the previous 12 months, as recorded in the log described in § 63.324(d)(1).

(2) If no perchloroethylene purchases were made in a given month, then the perchloroethylene consumption for that month is zero gallons.

(3) The total sum calculated in paragraph (d) of this section is the yearly perchloroethylene consumption at the facility.

§ 63.324 Reporting and recordkeeping requirements.

(a) Each owner or operator of a dry cleaning facility shall submit an initial report signed by a responsible official before a notary public certifying that the information provided in the initial report is accurate and true to the Administrator within 90 calendar days after September 22, 1993, which includes the following:

(1) The name and address of the owner or operator;

(2) The address (that is, physical location) of the dry cleaning facility;

(3) A brief description of the type of each dry cleaning machine at the dry cleaning facility;

(4) Documentation as described in § 63.323(d) of the yearly perchloroethylene consumption at the dry cleaning facility for the previous year to demonstrate applicability according to § 63.320; or an estimation of perchloroethylene consumption for the previous year to estimate applicability with § 63.320; and

(5) A description of the type of control device(s) that will be used to achieve compliance with § 63.322 (a) or (b) and whether the control device(s) is currently in use or will be purchased.

(6) Documentation to demonstrate to the Administrator's satisfaction that each room enclosure used to meet the requirements of § 63 322(a)(3) meets the requirements of § 63.322(a)(3) (i) and (ii).

(b) Each owner or operator of a dry cleaning facility shall submit a statement signed by a responsible official in the presence of a notary public to the Administrator by registered letter on or before the 30th day following the compliance dates specified in § 63.320 (b) or (c), certifying the following:

(1) The yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to § 63.323(d);

(2) Whether or not they are in compliance with each applicable requirement of § 63.322; and

(3) All information contained in the statement is accurate and true.

(c) Each owner or operator of an area source dry cleaning facility that exceeds the solvent consumption limit certified in paragraph (b) of this section shall submit a statement signed by a responsible official in the presence of a notary public to the Administrator by registered letter on or before the 30th day following the compliance dates specified in § 63.320(f) or (i), certifying the following:

(1) The new yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to § 63.323(d);

(2) Whether or not they are in compliance with each applicable requirement of § 63.322; and

(3) All information contained in the statement is accurate and true.

(d) Each owner or operator of a dry cleaning facility shall keep receipts of perchloroethylene purchases and a log of the following information and maintain such information on site and show it upon request for a period of 5 years:

(1) The volume of perchloroethylene purchased each month by the dry cleaning facility as recorded from perchloroethylene purchases; if no perchloroethylene is purchased during a given month then the owner or operator would enter zero gallons into the log;

(2) The calculation and result of the yearly perchloroethylene consumption determined on the first day of each month as specified in § 63.323(d);

(3) The dates when the dry cleaning system components are inspected for perceptible leaks, as specified in § 63.322(k) or (l), and the name or location of dry cleaning system components where perceptible leaks are detected;

(4) The dates of repair and records of written or verbal orders for repair parts to demonstrate compliance with § 63.322(m) and (n);

(5) The date and temperature sensor monitoring results, as specified in § 63.323 if a refrigerated condenser is used to comply with § 63.322(a) or (b); and

(6) The date and colorimetric detector tube monitoring results, as specified in § 63 323, if a carbon adsorber is used to comply with § 63.322(a)(2) or (b)(3).

(e) Each owner or operator of a dry cleaning facility shall retain onsite a copy of the design specifications and the operating manuals for each dry cleaning system and each emission control device located at the dry cleaning facility.

§ 63.325 Determination of equivalent emission control technology.

(a) Any person requesting that the use of certain equipment or procedures be considered equivalent to the requirements under § 63.322 shall collect, verify, and submit to the Administrator the following information to show that the alternative achieves equivalent emission reductions:

(1) Diagrams, as appropriate, illustrating the emission control technology, its operation and integration into or function with dry-to-dry

machine(s) or transfer machine system(s) and their ancillary equipment during each portion of the normal dry cleaning cycle;

(2) Information quantifying vented perchloroethylene emissions from the dry-to-dry machine(s) or transfer machine system(s) during each portion of the dry cleaning cycle with and without the use of the candidate emission control technology;

(3) Information on solvent mileage achieved with and without the candidate emission control technology. Solvent mileage is the average weight of articles cleaned per volume of perchloroethylene used. Solvent mileage data must be of continuous duration for at least 1 year under the conditions of a typical dry cleaning operation. This information on solvent mileage must be accompanied by information on the design, configuration, operation, and maintenance of the specific dry cleaning system from which the solvent mileage information was obtained;

(4) Identification of maintenance requirements and parameters to monitor to ensure proper operation and maintenance of the candidate emission control technology;

(5) Explanation of why this information is considered accurate and representative of both the short-term and the long-term performance of the candidate emission control technology on the specific dry cleaning system examined;

(6) Explanation of why this information can or cannot be extrapolated to dry cleaning systems other than the specific system(s) examined; and

(7) Information on the cross-media impacts (to water and solid waste) of the candidate emission control technology and demonstration that the cross-media impacts are less than or equal to the cross-media impacts of a refrigerated condenser.

(b) For the purpose of determining equivalency to control equipment required under § 63.322, the Administrator will evaluate the petition to determine whether equivalent control of perchloroethylene emissions has been adequately demonstrated.

(c) Where the Administrator determines that certain equipment and procedures may be equivalent, the Administrator will publish a notice in the **Federal Register** proposing to consider this equipment or these procedures as equivalent. After notice and opportunity for public hearing, the Administrator will publish the final determination of equivalency in the **Federal Register**.

[FR Doc. 93–23064 Filed 9–21–93; 8:45 am]

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Wednesday
September 22, 1993

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting and Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AA71

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to insure the continued compatibility of hunting and fishing with the purposes for which the individual refuges were established. Modifications are designed, to the extent practical, to make refuge hunting and fishing programs consistent with State regulations.

DATES: Comments must be received on or before October 7, 1993. See **SUPPLEMENTARY INFORMATION** below for discussion of comment period.

ADDRESSES: Address comments to Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358–1786.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358–1786.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to: (1) Insure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) insure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to insure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding these proposed amendments. Interested persons may submit written comments to the Assistant Director, Refuges and Wildlife (**ADDRESSES** above) by the end of the comment period. All substantive comments regarding content will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established.

The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it to hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The amendments to the codified refuge-specific hunting and fishing regulations make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these

programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR. Refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, suite 1692, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director —Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 W. Gate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8200.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska (Hunting and fishing on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting and fishing regulations for these refuges).
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3538.

Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of title 50 of the Code of Federal Regulations is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

1.a. Section 32.7 is amended by adding the alphabetical listings of Hanalei National Wildlife Refuge and Kakahaia National Wildlife Refuge under the state of Hawaii; and by removing the listing of Willow Creek National Wildlife Refuge under the state of California.

2. Section 32.20 *Alabama* is amended by revising paragraph D. of Choctaw National Wildlife Refuge; and by revising paragraph D.1. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Choctaw National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing, boating and public access are permitted only from one-half hour before sunrise to one-half hour after sunset.
2. Frogging, turtle trapping and bowfishing are not permitted.
3. The use of trot lines, snag lines, set lines, nets or traps is not permitted.
4. Airboats and jet skis are prohibited.
5. Fishing or entry is not permitted in the waterfowl sanctuary areas from December 1 through March 1.

Eufaula National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing, frogging and turtle trapping are permitted year-round in all refuge waters contiguous with the Walter F. George Reservoir, with the following exception: no bank fishing is allowed from the Bradley, Houston or Kennedy Units from November 1 through February 29, annually.

* * * * *

3. Section 32.23 *Arkansas* is amended by revising paragraph D.1. and adding new paragraph D.7. to Big Lake National Wildlife Refuge; by revising paragraph D.1. of Cache River National Wildlife Refuge; by revising paragraphs A., B. and C. of Felsenthal National Wildlife Refuge; by revising paragraphs A., B. and C. of Overflow National Wildlife Refuge; and by revising paragraph D. of Wapanocca National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Big Lake National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 1 through October 31 with the following exceptions: Bank fishing is permitted at any time in the area around Floodway Dam south of the Highway 18 bridge, and fishing only from sunrise to sunset from nonmotorized boats and boats with electric motors is

permitted in the Sand Slough-Mud Slough Area from November 1 through the end of February.

* * * * *

7. The taking of largemouth bass is permitted in accordance with the posted length and/or slot limits.

* * * * *

Cache River National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing or entry is not permitted in the waterfowl sanctuary areas from November 15 through February 28.

* * * * *

Felsenthal National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Overflow National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Wapanocca National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 15 through September 30 only from sunrise to sunset.

2. The use of live carp, shad, buffalo, and goldfish for bait is not permitted.

3. The use of yo-yos, jugs, drops, trot lines and all commercial fishing tackle is not permitted.

4. Big Creek and Ditch 8 are closed to fishing.

5. The taking of largemouth bass is permitted in accordance with the posted length and/or slot limits.

* * * * *

4. Section 32.24 *California* is amended by revising paragraph A.2. of Clear Lake National Wildlife Refuge; by revising paragraphs A. and B. of Colusa National Wildlife Refuge; by adding new paragraphs A.4. and A.5., and revising paragraphs B. and D. of Delevan National Wildlife Refuge; by revising paragraph B. of Kern National Wildlife Refuge; by revising paragraph A. of Kesterson National Wildlife Refuge; by revising paragraphs A.6. and B.1. of Lower Klamath National Wildlife Refuge; by removing paragraph A.5. and revising paragraph B. of Merced National Wildlife Refuge; by revising paragraphs A.4. and B. of Modoc National Wildlife Refuge; by revising paragraph A.4. and adding paragraph A.5., and by revising paragraph B. of Sacramento National Wildlife Refuge; by revising paragraph A. of Salinas River National Wildlife Refuge; by revising paragraph A.3. of Salton Sea National Wildlife Refuge; by removing paragraph A.6. of San Francisco Bay National Wildlife Refuge; by revising paragraphs A.3. and B. of San Luis National Wildlife Refuge; by removing paragraph A.5. of San Pablo Bay National Wildlife Refuge; by revising paragraphs A. and B. of Sutter National Wildlife Refuge; by revising paragraphs A.7. and B.1. of Tule Lake National Wildlife Refuge; and by removing the alphabetical listing of Willow Creek National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Clear Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

2. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

5. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant is permitted only in the free roam areas of the refuge subject to the following conditions:

1. A special one-day pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

D. Sport Fishing. Fishing is permitted during daylight hours only from February 15 through October 1.

* * * * *

Kern National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Pheasant hunting is only permitted in the free roam unit.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Kesterson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must travel to and from parking areas and blind sites with firearms unloaded.

2. Hunters may not use or possess more than 25 shells per day.

3. Hunters are restricted to their original spaced blind except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

4. Hunters must hunt from their original spaced blind except when shooting to retrieve crippled birds.

* * * * *

Lower Klamath National Wildlife Refuge

* * * * *

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. * * *

1. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Merced National Wildlife Refuge

* * * * *

B. Upland Game Hunting. [Reserved]

* * * * *

Modoc National Wildlife Refuge

* * * * *

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Hunting is by permit only and is limited to junior hunters possessing a valid Junior Hunting license. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

5. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. A special one-day only pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

Salinas River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, and moorhens is permitted on designated areas of the refuge.

* * * * *

Salton Sea National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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3. Firearms must be unloaded while being transported between parking areas and blind sites.

* * * * *

San Luis National Wildlife Refuge

* * * * *

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

2. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only nontoxic shot.

2. Access is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

7. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

1. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

5. Section 32.28 *Florida* is amended by revising paragraph D. of J.N. "Ding" Darling National Wildlife Refuge; by revising paragraphs D.1. and D.2. of Lower Suwannee National Wildlife Refuge; by revising the refuge heading and paragraph D. of Merritt Island National Wildlife Refuge; and by revising paragraphs C. and D. of St. Vincent National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

J.N. "Ding" Darling National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in refuge waters except in the Mangrove Head Pond, Tower Pond, and Tarpon Bay Slough at the Bailey Tract.

2. Taking of blue crabs is permitted with the use of dip nets only. The use of lines, traps, and bait are not permitted.

3. Daily limit of 20 blue crabs per person of which no more than 10 can be females.

4. The taking of horseshoe crabs, stone crabs and spider crabs is prohibited.

* * * * *

Lower Suwannee National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted in interior creeks, sloughs and ponds year-round from sunrise to sunset except that fishing is not permitted during quota big game hunts.

2. Boats are not permitted in refuge ponds. Boats may not be left on the refuge overnight.

Merritt Island National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing, crabbing, clamming, oystering and shrimping are permitted in designated areas of the refuge subject to the following conditions:

1. Night fishing is permitted from a boat only in Mosquito Lagoon, Indian River, Banana River, and Haulover Canal. A night fishing permit is required.

2. Fishing lines must be attended at all times.

3. Vehicle access north and south Haulover Canal is limited to designated public access routes and launch areas.

4. Boat launching off Black Point Wildlife Drive is prohibited.

5. Air thrust boats are prohibited.

6. Boat launching or mooring between sunset and sunrise is permitted only at Beacon 42 fish camp and Bair's Cove at Haulover Canal Recreation Area.

7. Motorized boats are prohibited year round in the Banana River Manatee Sanctuary (north of KARS Park on the west side of the Barge Channel and north of the Air Force power line on the east side of the Barge Channel). This includes any boat having an attached motor or a non-attached motor that is capable of use (including electric trolling motors).

* * * * *

St. Vincent National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer, sambar deer, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset.

2. Only nonmotorized boats and boats with electric motors are permitted.

3. The use of live minnows as bait is not permitted.

4. Fishing is permitted in Lakes 1, 2, and Oyster Pond from April 1 through September 30.

5. Fishing is permitted in Lakes 3, 4, and 5 from May 15 through September 30.

6. Section 32.29 *Georgia* is amended by adding paragraphs D.4. and D.5. to Banks Lake National Wildlife Refuge; by revising paragraph D.1. and adding new paragraph D.5 to Blackbeard Island National Wildlife Refuge; by revising paragraph D.2. and adding a new paragraph D.3. to Harris Neck National Wildlife Refuge; by adding new paragraphs D.4. and D.5. to Okefenokee National Wildlife Refuge; and by revising paragraphs D.1., D.2. and D.3. of Savannah National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

* * * * *

Banks Lake National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

4. The daily creel limit is 5 largemouth bass, 5 channel catfish, and 25 of any one, or combination, of bream or sunfish. Possession of more than the daily creel limit at any time is not permitted.

5. The taking of largemouth bass smaller than 14 inches is not permitted.

Blackbeard Island National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Freshwater fishing is permitted from March 15 through October 25 from sunrise to sunset.

* * * * *

5. Bank fishing into estuarine waters is permitted only from sunrise to sunset.

* * * * *

Harris Neck National Wildlife Refuge

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D. Sport Fishing. * * *

* * * * *

2. Bank fishing into estuarine waters is permitted only from sunrise to sunset.

3. The Barbour River Public boat ramp is closed to public access and use from March 1 through August 31.

Okefenokee National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

4. The daily creel limit is 5 largemouth bass, 5 channel catfish, and 25 of any one, or combination, of bream or sunfish. Possession of more than the daily creel limit is not permitted.

5. The taking of largemouth bass smaller than 14 inches is not permitted.

* * * * *

Savannah National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted on refuge impoundments from March 15 through October 31.

2. Fishing is permitted from boats into tidal creeks from February 1 through October 31.

3. Fishing is permitted from sunrise to sunset.

* * * * *

7. Section 32.30 *Hawaii* is amended by revising paragraph C. of Hakalau Forest National Wildlife Refuge; and by adding the alphabetical listings of Hanalei National Wildlife Refuge and Kakahaia National Wildlife Refuge to read as follows:

§ 32.30 Hawaii.

* * * * *

Hakalau Forest National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of feral pigs is permitted on designated areas of the refuge subject to the following condition: Reservations are required for hunters accessing Maulua Tract through Maulua Gate.

* * * * *

Hanalei National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge.

Kakahaia National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge.

8. Section 32.31 *Idaho* is amended by revising paragraph A. of Bear Lake National Wildlife Refuge; by revising paragraphs A. and B. of Camas National Wildlife Refuge; by revising paragraph A.3., adding a new paragraph B.4., and revising paragraph D.2. of Deer Flat National Wildlife Refuge; by removing paragraph A.4. of Kootenai National Wildlife Refuge; by revising paragraphs A. and B. of Minidoka National Wildlife Refuge to read as follows:

§ 32.31 Idaho.

* * * * *

Bear Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Air-thrust boats are not permitted.

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Camas National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant and grouse is permitted on designated areas of the refuge subject to the following condition: Pheasant hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Deer Flat National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Pheasant, quail and partridge hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Nonmotorized boats are permitted from ½ hour before sunrise to ½ hour after sunset from October 1 through April 14, within the area bounded by the water's edge extending to a point 200 yards lakeward in front of the lower dam fishing area A, and in front of the upper dam, fishing area B.

* * * * *

Minidoka National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of pheasant, partridge and cottontail rabbits, including pygmy rabbit, is permitted on designated areas of the refuge subject to the following condition: Pheasant hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

9. Section 32.32 *Illinois* is amended by revising paragraph D. of Chautauqua National Wildlife Refuge; by revising paragraphs B.1. and C.3., and adding new paragraph D.7 to Crab Orchard National Wildlife Refuge; by revising paragraphs C., D.2. and D.4. of Mark Twain National Wildlife Refuge; and by revising the refuge heading and paragraphs A.1., A.2., B.1., B.2., C.1., C.2., C.3., C.4., and adding new paragraph C.5. to Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Chautauqua National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Sport fishing, and the harvest of frogs and turtles, are allowed on all refuge waters during daylight hours from December 15 through October 15. Sport fishing is not allowed in the Waterfowl Hunting Area during waterfowl hunting season.

2. A 10 mile per hour boat speed limit is in effect throughout the entire sport fishing area.

3. Private boats may not be left in refuge waters overnight.

4. Motorboats are restricted to "slow speed/minimum wake."

Crab Orchard National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Upland game hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting season.

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. Deer hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting season.

D. Sport Fishing. * * *

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7. Organizers of all fishing events must possess a special use permit issued by the refuge.

Mark Twain National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of deer is permitted on the Gardner and Big Timber Divisions and on Turkey and Otter Islands.

2. Hunting of white tailed deer on the Delair Division is allowed with permit only. Hunters may only use historic weapons, and must check in and out of the refuge each day of hunting. Stands must be removed each day; the construction or use of permanent blinds, platforms or ladders is not permitted.

Hunting is permitted from one half hour before sunrise to 3:00 p.m.

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted in the Louisa Division, Iowa, from February 1 until September 15, with the exception of certain designated areas adjacent to the Port Louisa Road which are open to fishing all year.

* * * * *

4. Fishing is permitted in the Calhoun, Batchtown, and Gilbert Lake Divisions, Illinois, from December 16 through October 14.

Upper Mississippi River Wildlife and Fish Refuge

A. Hunting of Migratory Game Birds. * * *

1. Hunting of all migratory birds is prohibited on refuge areas posted "Area Closed," and on the Goose Island "No Hunting" Zone in Pool 8.

2. Permits are required for Potters Marsh in Pool 13 except during the early teal season.

B. Upland Game Hunting. * * *

1. Hunting is allowed until season closure, or March 1, whichever date occurs first, except that hunting of turkey is permitted during the State wild turkey season.

2. Hunting is permitted on refuge areas posted "Area Closed" beginning the day after the close of the regular duck season until season closure or March 1, whichever occurs first, except that hunting of turkey is permitted during the State spring wild turkey season.

3. Hunting is prohibited at all times on the Goose Island "No Hunting" Zone in Pool 8.

C. Big Game Hunting. * * *

1. Hunting is allowed until season closure, or March 1, whichever date occurs first.

2. Hunting is permitted on refuge areas posted "Area Closed" beginning the day after the close of the regular duck season until season closure or March 1, whichever date occurs first.

3. Hunting is prohibited at all times on the Goose Island "No Hunting" Zone in Pool 8.

4. Construction or use of permanent blinds, platforms or ladders is not permitted.

5. All stands must be removed from the refuge at the end of each day's hunt.

* * * * *

10. Section 32.34 *Iowa* is amended by revising paragraphs A.2., A.3. and D.4. of DeSoto National Wildlife Refuge; and by revising paragraph D.1. of Union Slough National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

DeSoto National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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2. Hunting is permitted until noon each day from November 1 through the second Friday in December.

3. Hunters may not use or possess more than 15 shells per day.

* * * * *

D. Sport Fishing. * * *

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4. Only the use of pole and line, or rod and reel, is permitted from April 15 through October 14 with the exception that archery and spear fishing are permitted only for nongame fish from April 15 to October 14.

* * * * *

Union Slough National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 1 through September 30.

* * * * *

11. Section 32.37 *Louisiana* is amended by revising paragraphs D.1. and D.2. and adding new paragraph D.3. to Bogue Chitto National Wildlife Refuge; by revising paragraphs C. and D. of Cameron Prairie National Wildlife Refuge; by revising paragraphs B., D.2., D.3., and D.4. of Catahoula National Wildlife Refuge; by revising paragraph D. of Delta National Wildlife Refuge; by revising paragraphs A., C. and D. of Lacassine National Wildlife Refuge; by adding new paragraph D.6 to Lake Ophelia National Wildlife Refuge; by revising paragraph D. of Sabine National Wildlife Refuge; and by revising paragraph D. of Tensas River National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Boque Chitto National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted year-round.

2. Camping is permitted in designated areas only.

3. Only cotton limb lines are permitted.

Cameron Prairie National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

D. Sport Fishing. Sport fishing is permitted subject to the following condition: Any person entering, using, or occupying the refuge for fishing must abide by all terms and conditions in the appropriate refuge fishing brochure.

Catahoula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Daily permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Boat launching on all refuge waters is permitted as designated in refuge brochure. Only nonmotorized boats or boats with motors of 10 horsepower or less are permitted. Boats may not be left on the refuge overnight.

3. Cowpen Bayou is open to fishing year-round.

4. Duck Lake, Muddy Bayou, all outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31.

* * * * *

Delta National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and crabbing are permitted year-round from sunrise to sunset except during the refuge waterfowl hunting season.

2. Only fishing with rod and reel or pole and line is permitted.

3. Camping is permitted year-round on designated areas only.

Lacassine National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Any person entering, using, or occupying the refuge for waterfowl hunting must abide by all the terms and conditions in the refuge hunting brochure.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Any person entering, using, or occupying the refuge for hunt must abide by all terms and conditions in the refuge hunting brochure.

D. Sport Fishing. Fishing and crayfishing are permitted on designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for fishing or crayfishing must abide by all terms and conditions in the refuge fishing brochure.

Lake Ophelia National Wildlife Refuge

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D. Sport Fishing. * * *

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6. The length limit for largemouth bass taken from Lake Ophelia is a minimum of 14 inches. Largemouth bass under 14 inches must be immediately released unharmed. Possession of largemouth bass under 14 inches is prohibited.

Sabine National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing, crabbing, crayfishing, and shrimp cast netting are permitted on designated areas of the refuge subject to the following conditions:

1. Only fishing with rod and reel or pole and line is permitted. Cast netting is permitted for shrimp only. Crabs and crayfish may be taken with hand lines only. The use and possession of any other type of fishing, crabbing, crayfishing or shrimping gear is prohibited except that persons using Hog

Island Gully or West Cove Canals may only transport shrimp trawls, butterfly nets or other gear from the boat ramps to Calcasieu Lake and return with their catch.

2. Fishing and public access is permitted from March 15 through October 15 on designated waterways and management units. Only bank fishing along Highway 27 is permitted year round.

3. Fishing, crabbing, and crayfishing are permitted from one hour before sunrise to one hour after sunset. The daily crab limit is 100 pounds per day per vehicle or boat. The daily crayfish limit is 100 pounds per day per vehicle or boat.

4. Cast netting is permitted from one hour before sunrise to noon only during the Louisiana Inland Water Shrimp Season. The daily limit is 5 gallons of shrimp per day per vehicle or boat. Cast nets may not exceed 6 feet in radius length.

5. Boats may not be dragged across levees. Outboard motors may be operated in designated refuge canals, bayous, and Management Units 1A, 1B, and 3. Outboard motors up to 25 hp are permitted in refuge Management Units 1A, 1B, and 3. The operation of any type of boat motor or trolling motor in the refuge marshes is prohibited.

6. Permits are required for sport jug fishing and fishing guide services.

7. All public access to the East Cove Unit located in the Cameron Creole Watershed Project is restricted to boat access only. A 250 foot zone around Grand Bayou and Lambert Bayou water control structures is closed to public activity except that boat passage is permitted for public access to the East Cove Unit when the Grand Bayou boat bay is open as posted for boat passage. Canal banks and control structures are closed to all public access and activities.

Tensas River National Wildlife Refuge

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D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge subject to the following condition: Permits are required.

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12. Section 32.39 *Maryland* is amended by revising paragraph C. of Eastern Neck National Wildlife Refuge to read as follows:

§ 32.39 Maryland.

* * * * *

Eastern Neck National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Only archery, shotgun, and muzzleloader hunting is permitted.

3. Loaded weapons are not permitted in parking areas or on blacktopped roads.

4. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

13. Section 32.40 *Massachusetts* is amended by revising paragraphs A. and C. of Parker River National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Parker River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters may not use or possess more than 25 shells per day.

2. Hunters using Area B must set out a minimum of six waterfowl decoys and hunt within 50 yards of these decoys.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted during planned refuge hunts subject to the following conditions:

1. Hunters must be in compliance with applicable State hunting regulations and the refuge permit.

2. Possession of a valid State hunting license and a refuge hunting permit is required.

* * * * *

14. Section 32.41 *Michigan* is amended by revising paragraph C. and adding text to paragraph D. of Shiawassee National Wildlife Refuge to read as follows:

§ 32.41 Michigan.

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Shiawassee National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits may be required.

2. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid colored hunter orange clothing or material.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is only permitted from boats; no bank fishing is allowed.

15. Section 32.42 *Minnesota* is amended by revising paragraphs A.1., B., and C. of Minnesota Valley National Wildlife Refuge; by revising paragraphs B., C.3., and D. of Rice Lake National Wildlife Refuge; and by removing paragraph A.3., revising paragraphs D.1., D.2. and adding paragraph D.4. to Tamarac National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Minnesota Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Permits may be required for special hunts and in selected areas.

* * * * *

B. Upland Game Hunting. Hunting of pheasant, grey and fox squirrel, cottontail rabbit, and turkey is permitted on designated areas of the refuge subject to the following conditions: permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits may be required.

2. The construction or use of permanent blinds or platforms is not permitted.

3. All portable stands must be removed from the refuge at the end of each day's hunt.

* * * * *

Rice Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of sharp-tailed grouse, ruffed grouse, spruce grouse, grey and fox squirrel, cottontail rabbit and snowshoe hare is permitted on designated areas of the refuge.

C. Big Game Hunting. * * *

* * * * *

3. Permits are required for firearms hunting.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing from non-motorized boats or boats powered by electric motors is permitted only in designated areas.

2. Ice fishing is permitted on Mandy Lake when ice conditions are safe.

3. Ice fishing shelters must be removed from the refuge following each day's fishing activity.

* * * * *

Tamarac National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted in North Tamarac Lake, Wauboose Lake, and Two Island Lake, all year in accordance with State and/or White Earth Reservation regulations.

2. Fishing is permitted in Blackbird Lake and Lost Lake from the first day of the State walleye season through Labor Day under State and/or White Earth Reservation regulations.

* * * * *

4. Fishing is permitted in Pine Lake from December 1 until March 31.

* * * * *

16. Section 32.43 *Mississippi* is amended by adding text to paragraph D. of Panther Swamp National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Panther Swamp National Wildlife Refuge

* * * * *

D. Sport Fishing. Sport fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on all refuge waters year-round except during refuge firearms deer hunts.

2. Frogging is permitted on all refuge waters during the State bullfrog season.

3. Trotlines and limb lines are permitted on Lake George, Landside Ditch, and the Auxiliary Channel only.

4. Commercial fishing is not permitted.

* * * * *

17. Section 32.44 *Missouri* is amended by removing paragraphs C.1. and C.3., redesignating paragraphs C.2. and C.4. as paragraphs C.1. and C.2., and revising paragraph D.2. of Mingo National Wildlife Refuge to read as follows:

§32.44 Missouri.

* * * * *

Mingo National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Only non-motorized boats are permitted in the designated wilderness area. On refuge waters outside the wilderness area, hand powered boats, and boats with electric trolling motors may be used.

* * * * *

18. Section 32.45 *Montana* is amended by revising paragraph C. of Charles M. Russell National Wildlife Refuge; by revising paragraph C. of Lee Metcalf National Wildlife Refuge; and by removing the erroneous alphabetical listing of Willow Creek National Wildlife Refuge to read as follows:

§32.45 Montana.

* * * * *

Charles M. Russell National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of big game is permitted on designated areas of the refuge.

* * * * *

Lee Metcalf National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed and mule deer is permitted on designated areas of the refuge.

* * * * *

19. Section 32.47 *Nevada* is amended by revising paragraph A. of Ash Meadows National Wildlife Refuge; by revising paragraph A.2. and adding paragraph A.3., and adding text to paragraph B. of Pahranagat National Wildlife Refuge; and by revising paragraph A. of Ruby Lake National Wildlife Refuge to read as follows:

§32.47 Nevada.

* * * * *

Ash Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, snipe and doves is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Pahranagat National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Hunting of waterfowl, coots, moorhens and snipe is permitted only on the opening weekend and Tuesday, Thursday, and Saturday throughout the remainder of the season.

3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of jackrabbit is permitted only during the regular State season for cottontail rabbit.

* * * * *

Ruby Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, and snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

20. Section 32.50 *New Mexico* is amended by revising paragraphs D.1., D.2., D.3. and adding new paragraph D.4. to Maxwell National Wildlife Refuge to read as follows:

§32.50 New Mexico.

* * * * *

Maxwell National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from noon March 1 through October 31.

2. Fishing is permitted only in Lakes 13 and 14.

3. Boats are permitted on Lakes 13 and 14 only during the fishing season.

4. Fishing is not permitted within 150 feet of headgates.

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21. Section 32.51 *New York* is amended by revising paragraphs A., B. and C. of Montezuma National Wildlife Refuge to read as follows:

§32.51 New York.

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Montezuma National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

1. Permits/reservations are required.

2. Hunting is permitted only on Tuesdays, Thursdays and Saturdays during established refuge seasons set within the New York State western zone seasons.

3. Each hunter shall not have more than 15 steel shot shells in his/her possession.

4. Only motorless boats are permitted on the refuge hunting area.

5. Completion of the New York State Waterfowl Identification Course is required.

6. Hunting ends each day at 12 noon local time. All hunters must check out at the Route 89 Check Station by 1 p.m. local time.

B. Upland Game Hunting. [Reserved]

C. *Big Game Hunting.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. All hunters must possess and return at day's end a valid daily hunt permit card.

2. Hunting of deer is permitted on designated portions of the refuge by archery, shotgun, or muzzleloader only during established refuge seasons set within the general State deer season.

3. Hunters are permitted on the refuge one hour before legal sunrise and one hour after legal sunset.

4. Only portable tree stands may be used and must be removed from the refuge each day.

5. All firearms must be unloaded before legal sunrise and after legal sunset.

6. All bows must be disassembled, locked, or cased before legal sunrise and after legal sunset.

7. Hunters during the refuge firearms season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

22. Section 32.52 *North Carolina* is amended by revising paragraphs D.2, D.4 and D.5 of Mattamuskeet National Wildlife Refuge; and by revising paragraphs A.2. and B.3, adding paragraphs B.5. and B.6. and revising paragraph C.3. of Pocosin Lakes National Wildlife Refuge to read as follows:

§32.52 North Carolina.

* * * * *

Mattamuskeet National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Bank fishing and crabbing are permitted year-round along the Highway 94 Causeway and in the immediate vicinity of the Lake Landing water control structure, the Rose Bay water control structure, and the Outfall Canal water control structure. Other areas open to this activity are the Central Canal and East and West Main Canal as signed. Bank fishing and crabbing is permitted from one half hour before sunrise to one-half hour after sunset except that the Highway 94 Causeway is open to fishing and crabbing 24 hours per day.

* * * * *

4. All fish lines and crabbing equipment must be attended. Crabbing equipment is restricted to five handlines and/or hand-activated traps per person. The catch/possession limit is 12 blue crabs per day per person.

5. Airboats, sailboats, wind surfers, and jet skis are not permitted.

* * * * *

Pocosin Lakes National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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2. Firearms must be unloaded and encased while being transported by a vehicle or boat under power.

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B. Upland Game Hunting. * * *

* * * * *

3. Firearms must be unloaded and encased while being transported by a vehicle or boat under power.

* * * * *

5. Hunters must wear 500 square inches of florescent orange material above the waist, visible from all directions.

6. Possession of buckshot or slugs while hunting with dogs is prohibited.

C. Big Game Hunting. * * *

* * * * *

3. Firearms must be unloaded and encased while being transported by a vehicle or boat under power.

* * * * *

23. Section 32.55 *Oklahoma* is amended by adding new paragraphs D.6. and D.7. to Tishomingo National Wildlife Refuge; by revising paragraphs D.1, D.2, D.3, and adding new paragraph D.4. to Wichita Mountains National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Tishomingo National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

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6. Noodling within 500 feet of a boat launch area is not permitted.

7. Taking any type of bait from refuge lands or waters is not permitted.

* * * * *

Wichita Mountains National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fish may be taken only with pole and line or rod and reel.

2. Taking any type of bait from refuge lands or waters is not permitted.

3. Taking of frogs and turtles is not permitted.

4. Lake Elmer Thomas is closed to all fishing pending further notice.

24. Section 32.56 *Oregon* is amended by revising paragraph A. of Ankeny National Wildlife Refuge; by revising paragraph A. of Bandon Marsh National Wildlife Refuge; by revising paragraph A. of Baskett Slough National Wildlife Refuge; by revising paragraph A. of Bear Valley National Wildlife Refuge; by revising paragraph A.5. and adding new paragraphs A.6. and A.7, by revising paragraph B.3. and adding new paragraphs B.4. and B.5., by revising paragraph D.2 and adding new paragraphs D.4. and D.5. to Cold Springs National Wildlife Refuge; by revising paragraphs A.2. and B. of Deer Flat National Wildlife Refuge; by revising paragraph B. of Hart Mountain National Wildlife Refuge; by revising paragraph A.2. of Klamath Forest National Wildlife Refuge; by revising paragraph A. of Lewis and Clark National Wildlife Refuge; by revising paragraphs A.4. and B. of Lower Klamath National Wildlife Refuge; by revising paragraph A. and by adding new paragraph B.3. to Malheur National Wildlife Refuge; by revising paragraph A.4. and adding new paragraphs A.6. and A.7., revising paragraph B.4. and adding new paragraph B.5., and by revising paragraph D. of McKay Creek National Wildlife Refuge; by revising paragraphs A.6. and B.2., and adding new paragraph B.5, and by revising paragraphs D.3. and D.4. of Umatilla National Wildlife Refuge; by revising paragraph A.2. of Upper Klamath National Wildlife Refuge; and by revising paragraph A. of William L. Finley National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Ankeny National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves and pigeons is permitted on designated areas of the refuge subject to the following condition: Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.

* * * * *

Bandon Marsh National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, snipe, doves and pigeons is permitted on designated areas of the refuge subject to the following condition: Snipe hunters must possess and use, while in the field, only nontoxic shot.

* * * * *

Baskett Slough National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

* * * * *

Bear Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

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Cold Springs National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. The refuge is open from 5 a.m. to 1½ hours after sunset, October 1 through January 31.

6. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

7. Hunters may not possess or use more than 20 shells per day.

B. Upland Game Hunting. * * *

* * * * *

3. Hunting is permitted only by shotgun and bow and fluflu arrow.

4. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

5. The refuge is open from 5 a.m. to 1½ hours after sunset, October 1 through January 31.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Bank fishing only is permitted from October 1 through the last day of February from the west inlet canal across the face of the dam.

* * * * *

4. The refuge is open from 5 a.m. to 1½ hours after sunset.

5. Only fishing with rod and reel or pole and line is permitted.

Deer Flat National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of upland game is permitted on the Snake River Sector subject to the following conditions:

1. Hunting is not permitted from February 1 through May 31.

2. Pheasant, quail, and partridge hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Hart Mountain National Wildlife Refuge

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B. Upland Game Hunting. Hunting of partridge is permitted on designated areas of the refuge.

* * * * *

Klamath Forest National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Lewis and Clark National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Only unloaded firearms may be taken through posted retrieving zones when traveling to and from hunting areas.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Malheur National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, geese, ducks, coots, common snipe and pigeons is permitted on designated areas of the refuge subject to the following conditions:

1. Motorized boats are not permitted.

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

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3. Pheasant, quail and partridge hunters shall possess and use, while in the field, only nontoxic shot.

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McKay Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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4. The use of boats or floating devices is not permitted.

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6. Hunters may not possess or use more than 20 shells per day.

7. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

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4. Hunting is permitted only by shotgun and bow and flu-flu arrow.

5. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

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D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from 5 a.m. to 10 p.m., March 1 through September 30.

2. Only the use of pole and line or rod and reel is permitted.

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Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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6. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

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B. Upland Game Hunting. * * *

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2. In the McCormack Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Years Day.

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5. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

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D. Sport Fishing. * * *

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3. Fishing is permitted on refuge impoundments and ponds only from 5 a.m. to 10 p.m.

4. Only the use of pole and line or rod and reel is permitted.

Upper Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

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William L. Finley National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves and pigeons is permitted on designated areas of the refuge subject to the following condition: Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.

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25. Section 32.57 *Pennsylvania* is amended by revising the introductory text in paragraph B. for Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

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Erie National Wildlife Refuge

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B. Upland Game Hunting. Hunting of grouse, quail, squirrel, rabbit, woodchuck, raccoon, skunk, fox and opossum is permitted on designated areas of the refuge subject to the following conditions:

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26. Section 32.60 *South Carolina* is amended by revising paragraph D.2. of Santee National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

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Santee National Wildlife Refuge

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D. Sport Fishing. * * *

2. Fishing is permitted in Cantey Bay, Black Bottom, Savannah Branch and refuge ponds and impoundments from March 1 through October 10.

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27. Section 32.62 *Tennessee* is amended by revising paragraphs A., B., and D. of Chickasaw National Wildlife Refuge; by revising paragraphs B., C. and D. of Cross Creeks National Wildlife Refuge; by adding paragraph D.3. to Lake Isom National Wildlife Refuge; and by revising paragraphs A., B. and D. of Lower Hatchie National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

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Chickasaw National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, quail, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted with pole and line or rod and reel only.

2. The waterfowl sanctuary area is closed to fishing from November 15 through March 15.

Cross Creeks National Wildlife Refuge

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B. Upland Game Hunting. Hunting of squirrel is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in refuge pools and reservoirs from March 15 through October 31.

2. Bow and arrows, trotlines, limblines, jugs, and slat baskets are not permitted in refuge pools and reservoirs.

3. Taking of frogs is not permitted.

4. The length limit for largemouth bass taken from Elk and South Cross Creeks reservoirs is less than 12 inches and more than 15 inches. Largemouth bass from 12 inches to 15 inches must be immediately released unharmed. Possession of largemouth bass between 12 and 15 inches is prohibited.

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Lake Isom National Wildlife Refuge

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D. Sport Fishing. * * *

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3. Fishing with bow and arrow is not permitted.

Lower Hatchee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, quail, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted with pole and line or rod and reel only.

2. The waterfowl sanctuary area and the Sunk Lake Natural Area are closed to fishing from November 15 through March 15.

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28. Section 32.63 *Texas* is amended by revising paragraph D. of Aransas National Wildlife Refuge; and by revising the introductory text of paragraph D. of Laguna Atascosa National Wildlife Refuge to read as follows:

§ 32.63 Texas.

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Aransas National Wildlife Refuge.

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D. Sport Fishing. Fishing access is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from April 15 through October 15. Refuge access is from sunrise to sunset. Fishermen must be off the refuge by sunset.

2. Boat launching from refuge lands is not permitted.

3. Access by foot to bays is permitted only at designated entry points.

4. All fishermen must register at the visitor center. A permit is required for access to designated fishing areas of St. Charles Bay.

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Laguna Atascosa National Wildlife Refuge

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D. Sport Fishing. Sport fishing and crabbing are permitted only in that portion of the refuge designated as the Adolph Thomae, Jr., County Park and subject to the following conditions:

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29. Section 32.64 *Utah* is amended by revising paragraph A. of Ouray National Wildlife Refuge to read as follows:

§ 32.64 Utah.

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Ouray National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese and coots is permitted on designated areas of the refuge.

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30. Section 32.67 *Washington* is amended by revising paragraph A.3. and adding new paragraph B.3. to Columbia National Wildlife Refuge; by revising paragraphs A. and B. of Conboy Lake National Wildlife Refuge; by revising the refuge heading and paragraph A. of Julia Butler Hansen Refuge for the Columbian White-tailed Deer; by revising paragraphs A.4., A.8., introductory text of paragraph B., B.2., and by adding new paragraph B.3. to McNary National Wildlife Refuge; by adding new paragraphs A.3. and B.3. to Toppenish National Wildlife Refuge; by revising paragraph A.5. and adding a new paragraph B.4. to Umatilla National Wildlife Refuge; and by removing paragraph A.5. from Willapa National Wildlife Refuge to read as follows:

§ 32.67 Washington.

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Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

* * * * *

3. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Conboy Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, geese, and common snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

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Julia Butler Hansen Refuge for the Columbian White-tailed Deer

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

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McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

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8. On youth Hunt Day, only youth aged 10–17 and an adult 18 or over accompanying a youth may hunt.

B. Upland Game Hunting. Hunting of pheasant is permitted on the McNary Division of the refuge subject to the following conditions:

* * * * *

2. Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day and New Year's Day.

3. Hunters shall possess and use, while in the field, only nontoxic shot.

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Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

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3. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

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Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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5. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

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B. Upland Game Hunting. * * *

* * * * *

4. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

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31. Section 32.69 *Wisconsin* is amended by revising paragraphs C.1., C.3. and D.3. of Necedah National Wildlife Refuge; and by revising paragraphs B., C. and D.2. of Trempealeau National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

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Necedah National Wildlife Refuge

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C. Big Game Hunting. * * *

1. The possession of a loaded rifle or shotgun within 50 feet of the centerline of all paved or graveled roads and designated trails, or discharging these weapons from, across, down, or alongside these roads and trails within the refuge are prohibited.

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3. Portable tree stands must be removed from the tree at the close of shooting hours each day. All blinds, stands, platforms and ladders must be removed from the refuge at the end of the hunting season.

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D. Sport Fishing. * * *

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3. Non-motorized boats are permitted in Sprague-Goose Pools only when these pools are open to fishing. Motorized boats are permitted in Suk Cerney Pool.

Trempealeau National Wildlife Refuge

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B. Upland Game Hunting. Hunting of ring-necked pheasant, ruffed grouse, grey and fox squirrels and cottontail rabbits is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. * * *

* * * * *

2. Ice fishing shelters must be removed from the refuge following each day's fishing activity.

Dated: August 10, 1993.

Richard N. Smith,

Acting Director.

[FR Doc. 93–22634 Filed 9–21–93; 8:45 am]

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federal register

Wednesday
September 22, 1993

Part IV

Department of Education

Program for Children With Severe Disabilities; Inviting Application for New Awards for Fiscal Year (FY) 1994; Notice

DEPARTMENT OF EDUCATION

Program for Children With Severe Disabilities

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1994 and 1995.

SUMMARY: The Secretary announces priorities for fiscal years 1994 and 1995 under the Program for Children with Severe Disabilities. The Secretary takes this action to focus Federal financial assistance on an identified national need for the development and implementation of effective practices to enhance services to infants, toddlers, children, and youth with severe disabilities, including deaf-blindness. These priorities are designed to build the capacity of individuals and agencies to effect change with this population of children and their families.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dawn Hunter, U.S. Department of Education, 400 Maryland Avenue, SW., room 4620, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5809. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

SUPPLEMENTARY INFORMATION: This notice contains five funding priorities intended to advance the purpose of the Program for Children With Severe Disabilities. The purpose of the program is to provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for children with severe disabilities, including deaf-blindness. These priorities support projects for system change, outreach, training, research, and a research implementation institute.

Through the provision of improved services and better trained service providers, these priorities support National Education Goals 1 and 5 by assisting infants, toddlers, children, and youth with severe disabilities to begin school ready to learn, and when they become adults, to compete in a global economy.

On June 23, 1993 the Secretary published a notice of proposed priorities in the **Federal Register** (58 FR 34188).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this program is published in a separate notice in this issue of the **Federal Register.**

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, three parties submitted comments. An analysis of the comments and of changes in the priorities since publication of the notice of proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

General

Comment: While two commenters stated that the proposed priorities were commendable because the priorities are responsive to the needs of the field in regard to inclusive education, another commenter contended that by emphasizing serving children in inclusive settings without acknowledging the importance of maintaining a full continuum of services and placement settings for children with disabilities, the proposed priorities failed to recognize the importance of educational placement.

Discussion: The Secretary believes that because effective strategies related to inclusive education are still emerging, it is important to focus discretionary resources in the areas described in the priorities at this time. This is not intended to affect the requirements of the Part B of the Individuals with Disabilities Education Act regarding the continuum of services.

Changes: None.

Comment: One commenter questioned whether the term "general education classroom" is the most descriptive terminology for inclusive schooling. The commenter stated that it would be helpful if the priorities clarified the meaning of the term "general education classroom" to ensure that all students, including students with disabilities, have equal access to schools with sufficient support to meet their individual needs.

Discussion: The Secretary believes that the term "general education classroom," as used in these priorities, is consistent with the goal of inclusion. The Secretary also notes that Part B of IDEA requires that a child be educated in the school the child would attend if not disabled, unless the child's individualized education program requires some other arrangement.

Changes: None.

Proposed Absolute Priority 2—Model Inservice Training Projects To Prepare Personnel To Educate Students With Severe Disabilities in General Education Classrooms and Community Settings

Comment: One commenter wrote that the priority will promote ineffective teacher development programs that are not tailored to the needs of teachers in a given school if the model and materials developed by the projects are packaged. The commenter suggested that rather than requiring the project to package the model and materials, a project should provide a description of the model and the circumstances under which it was used, materials used, and adaptation and implementation issues to be considered when attempting to replicate the model.

Discussion: The Secretary agrees with the commenter that it is important to provide training to teachers based on the needs in particular schools and with regard to children with particular disabilities. However, there is a more critical need at this time to develop training that is generally applicable and useful to large numbers of personnel who are working with children with severe disabilities but who have little or no training. Such training need not be a one time event, nor would users of the inservice models be prevented from adapting the model or materials to better meet the needs of particular teachers. The language of the priority requiring that the model be packaged and that it be easily replicable will ensure that trainers seeking to use the model have the benefit of all the materials developed under the project and need not design new materials unless they so desire to meet particular circumstances.

Changes: None.

Proposed Absolute Priority 5—Institute on Implementing Inclusive Education for Children With Severe Disabilities

Comment: One commenter stated that the evaluation criterion requiring a project to report on the number of children with severe disabilities who are served in inclusive educational programs fails to recognize that it is not important where a child is educated but whether that child is benefiting from his educational placement.

Discussion: The Secretary recognizes the importance of how children are benefiting from inclusive educational programs. This is addressed by the requirement that the institute produce evaluation data about student outcomes.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to

applications that meet any one of the following priorities. The Secretary funds under this program only applications that meet these absolute priorities:

Absolute Priority 1—Research Projects for Educating Children with Severe Disabilities in Inclusive Settings

Background

This priority supports projects that conduct research to identify new or improved strategies that address the educational and related service needs of children and youth with severe disabilities in inclusive general education settings and, if appropriate, related activities in the community (e.g., employment training settings, and school and community recreation activities).

The field of severe disabilities has moved dramatically toward inclusive educational models within the past five years. Innovative strategies that promote inclusion in academic and social contexts have generated high interest among parents, professionals, employers, and individuals with severe disabilities. Despite the fact that the field has learned a great deal about how to produce positive outcomes for individuals with severe disabilities, many critical issues need to be further addressed. Although a number of strategies have been developed to enable full inclusion of children with disabilities in preschool programs and elementary schools, more research is needed to identify strategies for inclusive practices at the middle school and secondary school levels.

Additional research is needed to (1) determine the relative effectiveness of existing strategies, (2) identify more specifically the supports and conditions that must be present, (3) validate procedures that would ensure adequate student progress in inclusive settings, (4) refine procedures that promote positive and effective social interactions among same-aged peers, (5) determine what peer-mediated strategies promote the active and effective involvement of classmates in inclusive educational programs, (6) identify principles that can be effectively applied in modifying curricula, classroom activities, and instructional materials to ensure meaningful student participation and meet multiple instructional needs, (7) determine optimal use of personnel resources, and determine how use of personnel changes over time, and (8) identify strategies that promote inclusion in out-of-school settings and activities, including employment training settings and community recreational activities.

Priority

To be considered for funding under this priority, a research project must—

(1) Address one or more of the issues identified in the background section of this priority;

(2) Identify specific interventions or strategies to be investigated;

(3) Design the research activities in a manner that is likely to improve services for students with severe disabilities and, if appropriate, their families.

(4) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the interventions or strategies to be studied, the research design, and the target population;

(5) Conduct the research in typical, inclusive school and, if appropriate, community settings;

(6) Conduct the research using methodological procedures designed to produce unambiguous findings (a) regarding the effects of the interventions or strategies and interaction effects between particular approaches and particular groups of students or particular contexts; and (b) for use in national, State, and local policy analysis contexts; and

(7) Produce a variety of descriptive and outcome data, including (a) information regarding the settings, the service providers, the students, and, if applicable, their families, targeted by the project (e.g., age, disabilities, skill and ability levels, and membership in a special population, if appropriate); and (b) multiple, performance outcome data regarding the students who are the focus of the interventions or strategies.

Competitive Preference Priority

Within this absolute priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program:

Research projects that identify effective interventions or strategies enabling students with severe disabilities to be educated in general education classes (a) at the middle or secondary school levels, or (b) in urban or rural school districts, or both.

Absolute Priority 2—Model Inservice Training Projects To Prepare Personnel To Educate Students With Severe Disabilities in General Education Classrooms and Community Settings

Background

This priority supports capacity building projects that develop, demonstrate, evaluate, and disseminate inservice training models and accompanying materials. The purpose of these models is to prepare administrators, teachers, paraprofessionals, and related service personnel to provide, coordinate, and enhance services that result in students with severe disabilities being educated in general education classrooms and, if appropriate, community settings.

One of the major issues facing special education today is the lack of qualified personnel to meet the educational needs of individuals with severe disabilities. Inservice training is one strategy for meeting the needs of existing personnel by specifically targeting training to identified needs. This strategy can be used to (1) enhance the skills of personnel currently working with students with severe disabilities; (2) supplement training to regular educators; or (3) train personnel who have not previously worked with students with severe disabilities.

This priority is being established to meet the immediate need for trained personnel in inclusive general education and community settings. Because students with severe disabilities are a very heterogenous and low incidence group of students, personnel working with these students in general education classrooms and community settings must often demonstrate a broad array of competencies. These competency areas include, but are not limited to (a) instructional technology for teaching students in a variety of instructional situations, including cooperative learning groups and community-referenced or community-based instruction; (b) curriculum adaptation; (c) assistive technology to enhance participation and communication; (d) strategies for facilitating interactions between students with severe disabilities and their peers without disabilities; and (e) nonaversive behavior management.

In addition, personnel working with students with severe disabilities must have the skills to work collaboratively with a variety of other people (e.g., general and special education teachers, parents, paraprofessionals, related service providers, administrators,

transition specialists) who are interested in the education of these students.

Priority

To be considered for funding under this priority, a model inservice training project must—

(1) Identify the target population to be trained, including their roles and responsibilities, and the national needs addressed by the model;

(2) Delineate a conceptual framework on which the training model is to be based, including changes in personnel roles and responsibilities and the skills needed to implement the new roles or responsibilities;

(3) Identify the content of training, the format for delivery of training, and other activities of the model;

(4) Develop and demonstrate an inservice training model for professionals, paraprofessionals, or both, who are currently providing services to children or youth with severe disabilities and their families, or for those individuals who, through retraining, could provide those services;

(5) Include within the model an array of follow-up and support activities that ensure that personnel participating in the training acquire the skills being taught and use that knowledge in meeting the service needs of students with severe disabilities and their families;

(6) Coordinate with the State agency responsible for the Comprehensive System of Personnel Development (CSPD) under the Individuals with Disabilities Education Act (IDEA) and arrange for credit to be granted to trainees by appropriate agencies, organizations, or institutions of higher education;

(7) Evaluate the inservice training model through direct assessment of participants' skills following the training and, after a period of time, and include some direct observation measures of trainees in the service setting using standardized observational rating techniques; and

(8) Package the inservice training model to include all materials validated during the training effort so that the training can easily be replicated.

Invitational Priority

Within this absolute priority 2, the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Model inservice training projects that provide training to teams of general education, special education, and related service personnel.

Absolute Priority 3—Outreach Projects: Serving Children With Severe Disabilities in General Education and Community Settings

Background

This priority supports projects that build the capacity of educational and other agencies to adopt and implement proven models, or components of those models based on specific needs. At this time States are striving to provide improved services to children with severe disabilities in general education and community settings. Thus, State agencies and local service agencies need information and assistance in accessing the range of available, successful practices, curricula, and products. The models or components of models selected for outreach need not have been developed through this program. In addition, projects may disseminate and help replicate multiple models or components of models that were not developed by the applicant.

The practices to be implemented during the outreach activities may focus on, but are not limited to, transition from school to adult life, the use of activity-based curricula, nonaversive behavior management, facilitating social relationships in school and community settings, or strategies that facilitate the inclusion of children with severe disabilities into their neighborhood schools and local communities. To increase their visibility and to enhance the impact of outreach activities, projects are encouraged to establish adoption sites in multiple States.

Priority

To be considered for funding under this priority, an outreach project must—

(1) Disseminate information about and assist in replicating a proven model or models—or proven components of models—that provide or improve services for children with severe disabilities;

(2) Coordinate its dissemination and replication activities with (a) the lead agency for Part H of the IDEA for early intervention services or the State educational agency for special education, as well as (b) technical assistance, information, and personnel development networks within the State;

(3) Include (a) approaches relevant to programming in general education and local community settings; (b) active involvement of children and their families in the design, implementation, and evaluation of project activities; and (c) interagency coordination if multiple agencies are involved in the provision of services;

(4) Ensure that the model or components of models are consistent with Part B of the IDEA, are state-of-the-art, match the needs of the proposed sites, and have recent unambiguous evaluation information supporting their effectiveness;

(5) Use activities that include, but need not be limited to, public awareness, product development and dissemination, site development, training, and technical assistance;

(6) Describe the effects of model components (e.g., expected costs, needed personnel, staff training, equipment) on potential users, the sequence of implementation activities, and the criteria for selecting cooperating sites; and

(7) Evaluate the outreach activities to determine their effectiveness. The evaluation must include measures on the number of children and families served at each site, child and family progress, types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, and any changes in the model made by sites.

Competitive Priority

Within this absolute priority 3, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program:

Outreach projects that provide evidence that they will establish implementation sites in urban or rural areas, or both.

Absolute Priority 4—Statewide Systems Change: Children With Severe Disabilities

Background

This priority supports projects that enhance the capacity of States to serve children with severe disabilities—including children who are deaf-blind—in (a) developing, in conjunction with the IDEA Part B and Part H State Plans, activities to improve the quality of early intervention, special education, and related services in the State for children with severe disabilities, birth through 21 years of age; and (b) changing the delivery of these services from segregated to general education settings and natural environments in the child's neighborhood. It is expected that

projects will significantly increase the number of children with severe disabilities the State serves in general education settings, alongside children of the same age without disabilities.

Projects funded under this priority have been most successful in States that, prior to applying for funds, had already made the commitment to change the delivery of services for children with severe disabilities from segregated to general education settings. Therefore, the Secretary anticipates that projects proposed under this priority will show that such a commitment is already in place. Projects that have been most successful have also been characterized by a broad-based approach to systems change involving a variety of groups with a direct interest.

Although it is recognized that States are at different stages of changing the delivery of services from segregated to general education settings, the Secretary encourages projects to include representatives from the following groups in all planning and implementation activities: students and adults with severe disabilities and their families, early intervention personnel, general education and special education teachers, support personnel, related service personnel, school administrators, community agencies, institutions of higher education faculty, State legislators, and a variety of State agency staff.

Priority

To be considered for funding under this priority, a Statewide systems change project must—

(1) Establish a project advisory board that (a) is responsible for providing significant recommendations on project planning, implementation, and evaluation activities; and (b) has representation by parents of children participating in the project, service providers (both general education and special education, and providers of related services), institutions of higher education, relevant professional organizations, and State agency staff;

(2) Determine the resources, both human and fiscal, available at the community level to provide quality services to children with severe disabilities as well as resources available through other agencies or parties;

(3) Carry out activities that would assist children with severe disabilities to achieve their highest potential outcomes in general education settings within their neighborhoods—or, in the case of infants and toddlers, in natural environments, including nonsegregated settings—by implementing planned, capacity building activities that result in systematic and systemic change. These activities must include, but need not be limited to—

(a) Policy analysis and, if necessary, policy revision or further policy development, including development of necessary interagency agreements;

(b) Public awareness;

(c) Product development and dissemination;

(d) Site development;

(e) Staff and parent training;

(f) Technical assistance; and

(g) Analysis and, if necessary, revision of existing teacher training programs, including inservice training of faculty of institutions of higher education;

(4) Disseminate formal, written policies and procedures to relevant State agencies, institutions of higher education, local education agencies, other relevant community agencies, and professional and parent organizations for coordinating services to the target population of children with severe disabilities;

(5) Coordinate activities with the State and Multi-State Services Projects for Children with Deaf-Blindness, the State educational agency (including the State coordinator of services for children with severe disabilities, the coordinator for the comprehensive system of personnel development, and the State's transition project, if the State has a federally funded grant under State Systems for Transition Services), the lead agency for Part H of IDEA for early intervention services, other relevant State agencies, and institutions of higher education, as well as with technical assistance, information, and personnel development networks within the State, the Early Childhood Research Institute on Integration, the National Early Childhood Technical Assistance System, and the Institute on Implementing Inclusive Education for Children with Severe Disabilities; and

(6) Implement an evaluation plan that includes performance measures for—

(a) Changes in the delivery of special education and related services to the target population, and, in the case of infants and toddlers, changes in the delivery of early intervention services;

(b) The movement of children and youth with severe disabilities in the State from segregated settings to neighborhood general education settings—alongside their peers of the same age—and, in the case of infants and toddlers, to natural environments;

(c) The effectiveness of the training and technical assistance products and procedures; and

(d) The types and numbers of sites where activities are conducted, number and types of persons trained, types of follow-up activities, and number of children and families served at the site where activities were conducted.

Competitive Priority

Within this absolute priority 4, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program:

Statewide Systems Change projects from States that have not received a new Statewide System Change award since 1987.

Absolute Priority 5—Institute on Implementing Inclusive Education for Children With Severe Disabilities

Background

During the past five years research and demonstration activities related to inclusive education have expanded dramatically. Increasing numbers of State and local education agencies are involved in school reform and inclusion efforts to ensure that all students, including those with severe disabilities, are provided with equitable opportunities to receive effective educational and related services in their neighborhood schools. This priority is designed to help bridge the gap between the knowledge base and the state of practice by (a) translating theory and research about inclusive education into educational practices, and (b) increasing the capacity of State and local education agencies to provide inclusive educational opportunities.

The Secretary requires the Institute to coordinate its activities on an on-going basis with other relevant efforts sponsored by the Office of Special Education Programs (OSEP), including the Early Childhood Research Institute on Integration.

The Secretary anticipates funding one cooperative agreement with a project period of up to 60 months, subject to the requirements of 34 CFR 75.253(a) for continuation awards. In addition, in determining whether to continue the Institute for the last two years of the project period, the Secretary considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the project, are to be performed during the last half of the Institute's second year, and may be included in that year's

annual evaluation that the recipient is required to perform under 34 CFR 75.590.

Priority

To be considered for funding under this priority, an Institute on Implementing Inclusive Education project must—

(1) Present a synthesis of the relevant extant inclusion theory and research to serve as the conceptual and empirical basis for institute activities;

(2) Translate this knowledge base into inclusive educational practices and materials for use by program implementers and policy makers at the State, district, building, and classroom levels;

(3) Provide training and technical assistance for the adoption, use, and maintenance of inclusive educational practices to interested projects funded under Statewide Systems Change and to other educational agencies interested in systems change activities;

(4) Evaluate the effectiveness of the institute's activities in assisting with the implementation of inclusive educational practices by assessing (a) the types and number of sites where activities are conducted, (b) the number and types of people trained, (c) follow-up activities, and (d) the number of children with severe disabilities who are served in inclusive educational programs;

(5) Produce a variety of evaluation data, including (a) factors that contribute to the successful adoption, use, and maintenance of inclusive educational efforts; (b) descriptions of the instructional contexts and settings, classroom instructional supports, school organizational and administrative patterns, and the attitudes of school administrators, school personnel, families, and students; (c) information about student outcomes and the social validity of project activities; (d) information about how project activities are included as broader school reform efforts at State and local levels; (e) information about expected costs related to the successful adoption, use and maintenance of inclusive educational practices; and (f) analysis of policies and procedures at the State and local level;

(6) Provide training and technical assistance on inclusive educational practices to other OSEP-sponsored technical assistance entities and clearinghouses, including the National Early Childhood Technical Assistance System, the Federal and Regional Resource Centers, the Transition Network, the State and Multi-State Services to Children with Deaf-Blindness technical assistance project, Technical Assistance to Parent Program projects;

(7) Establish linkages and collaborative relationships among OSEP-sponsored research projects, including projects funded under Developing Innovations for Educating Children with Severe Disabilities Full-Time in General Education Classrooms, the Early Childhood Research Institute on Integration, and the Social Relationships Research Institute for Children and Youth with Severe Disabilities;

(8) Provide training and experience in translating research to practice, materials development, technical assistance, dissemination, and program evaluation for five graduate students annually;

(9) Conduct topical meetings and other activities on strategies and emerging practices in inclusive education; and

(10) Collect and ensure timely dissemination to policymakers and program implementers of information on inclusion, systems change, school reform and restructuring initiatives.

In determining whether to continue the Institute for the fourth and fifth years of the project, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and

(b) The degree to which the Institute's technical assistance, evaluation, and dissemination activities demonstrate the potential for significantly increasing the capacity of local school districts and State educational agencies to serve children with severe disabilities in inclusive school and community settings.

In order to apply for funding for years four and five, the Institute must set aside in its budget for the second year, funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the second year. These funds are estimated to be approximately $4,000.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 315.

Program Authority: 20 U.S.C. 1424.

Dated: September 16, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number: Program for Children with Severe Disabilities 84.086)

[FR Doc. 93–23194 Filed 9–21–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Program for Children With Severe Disabilities; Notice Inviting Application for New Awards for Fiscal Year (FY) 1994

[CFDA No.: 84.086]

Purpose of Program: The Program for Children with Severe Disabilities provides Federal assistance to address the special needs of infants, toddlers, children, and youth with severe disabilities—including children with deaf-blindness—and their families.

The competitions announced by this notice support National Education Goals 1 and 5 by assisting infants, toddlers, children, and youth with severe disabilities to enter school ready to learn, and, when they become adults, to compete in a global economy.

Eligible Applicants: Any public or nonprofit private organization or institutions may apply for a grant under this program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 315.

Priority: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions. However, no competition for new awards under Outreach Projects: Serving Children with Severe Disabilities in General Education and Community Settings will be held in 1994.

Applications Available: October 20, 1993.

Note: The Department is not bound by any estimates in this notice.

For Applications: To request an application, telephone (202) 205–8485. Individuals who use a

telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

FOR FURTHER INFORMATION CONTACT: Dawn Hunter, U.S. Department of Education, 400 Maryland Avenue, SW., room 4620, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5809. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

PROGRAM FOR CHILDREN WITH SEVERE DISABILITIES

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Research Projects for Educating Children with Severe Disabilities in Inclusive Settings (CFDA 84.086D).	12/15/93 .	2/14/94 ...	$525,000	$170,00–$180,000 .	$175,000	3	up to 36.
Model Inservice Training Projects to Prepare Personnel to Educate Students with Severe Disabilities in General Education Classrooms and Community Settings (CFDA 84.086R).	2/03/94 ...	4/05/94 ...	$495,000	$155,000–$170,000	$165,000	3	up to 36.
Statewide Systems Change: Children with Severe Disabilities (CFDA 84.086J).	1/14/94 ...	3/16/94 ...	$750,000	$210,000–$260,000	$250,000	3	up to 60.
Institute on Implementing Inclusive Education for Children with Severe Disabilities (CFDA 84.086V).	12/30/93 .	3/01/94 ...	$700,000	$690,000–$710,000	$700,000	1	up to 60.

Program Authority: 20 U.S.C. 1424.

Dated: September 16, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–23195 Filed 9–21–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
September 22, 1993

Part V

Postal Service

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 and Barcodes Rate Mailings; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 and Barcoded Rate Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal will amend the Domestic Mail Manual (DMM) requirements govering the preparation of second- and third-class letter-size automation rate mailings. This proposal primarily affects the presort and documentation of the residual portion of second- and third-class ZIP+4 and barcoded letter-size mail under DMM Modules E and M. Also included are an optional procedure for preparing the residual portion of First-Class ZIP+4 and barcoded letter-size mail and changes to Line 2 of AADC tray labels for letter-size mail prepared under DMM M815.

DATES: Comments must be received on or before October 22, 1993.

ADDRESSES: All written comments should be mailed or delivered to the Manager, Customer Mail Preparation, U.S. Postal Service, room 5621, 475 L'Enfant Plaza SW., Washington, DC 20260–6805. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday in room 5621 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Alexandrovich, (202) 268–2260.

SUPPLEMENTARY INFORMATION: On March 21, 1993, new preparation requirements took effect for letter-size pieces in automated rate categories. These requirements included significant changes in the preparation and processing of this mail, particularly for second- and third-class letters. The more salient preparation changes for second- and third-class letters were: (a) The preparation of mail into trays rather than sacks; (b) establishing a uniform 50-piece minimum for 3-digit presort; and (C) eliminating the states and mixed-states presort of the residual/basic portion of the mailing.

When these changes were made, the Postal Service did not anticipate the magnitude of the resulting increase in the volume of second- and third-class working residual mail at origin. Under the previous preparation requirements, second- and third-class residual (non-qualifying) mail was presorted to states or mixed states sacks. These sacks were routed from the origin to the appropriate state distribution center (SDC) for processing. The SDCs had the resources, in terms of equipment, staffing, and sort programs, to efficiently process residual volumes of states and mixed states mail.

With the elimination of states and mixed states presort requirements for second- and third-class residual/basic pieces in automation rate letter-size mailings, most residual mail must be processed at the entry Sectional Center Facility (SCF) site. This has caused considerable problems at many processing facilities since most do not have existing outgoing second- and third-class letter processing operations. At the same time, the basic presort rates applicable to the residual portion of these mailings are based on some presortation by the mailer.

This proposal will relieve the problems at these SCFs by requiring that all second- and third-class residual mail in automation rate mailings must be presorted and packaged at least to the Automated Area Distribution Center (AADC) level, and will replace the existing AADC trays preparation option for First-Class Mail with an option that accords with second- and third-class requirements.

Presortation of the residual portion of second- and third-class automated mailings to AADCs will elminate the need for piece processing of this mail at the entry SCF. Presorting the residual portion to the AADC level will not be required for First-Class automated letters which, unlike second- and third-class letters, pay a single-piece rate when AADC packages are prepared. There is no minimum for the preparation of AADC packages; a single piece to an AADC must be labeled to the AADC, and two or more pieces must be packaged.

The following is a summary of the proposed changes, by preparation option in DMM Module M.

ZIP+4 Presort and Barcoded-Tray-Based Mailings (DMM M812 and M814)

In tray-based mailings, the preparation of the qualifying portion of the mailing would not change for second- or third-class mail. There are no changes to preparation of First-Class mailings. In the residual portion of second- and third-class mailings, preparation would change as follows:

- All mail must be sorted by AADC area.
- Full AADC trays must be prepared if enough pieces exist to fill a tray.
- Less-than-full AADC trays are not permitted except for optional overflow trays.
- Mail remaining after preparing AADC trays must be placed in mixed-AADC trays. All mail in mixed-AADC trays must be prepared and labeled in AADC packages.
- AADC packages must bear a pink Label A or Optional Endorsement Line (OEL).
- AADC packages must be banded; separator cards are not allowed in AADC or mixed-AADC trays.

ZIP+4 Presort and Barcoded- Package-Based Mailings (DMM M813, M815, and M816)

In package-based mailings, the residual portion of second-and third-class mailings would be prepared under one of the two options described below. First-Class Mailings may be prepared under Residual Option 1 which will replace the existing AADC Tray option. First-Class Mail may continue to be prepared under either the existing ZIP Code sequencing and listing option or the physical separation option.

Residual Option 1

Under Residual Option 1, the residual and qualifying portions of the mailing are combined in SCF and AADC trays. Mixed-AADC trays are optional and are limited to residual mail. Placing residual mail in SCF trays is optional. Residual pieces in SCF trays must be prepared and labeled in 3-digit packages. Residual pieces in AADC and mixed-AADC trays must be prepared in AADC packages and labeled with a pink Label A or an OEL, except that pieces in full AADC trays containing only residual mail need not be packaged. AADC trays must be prepared if enough pieces exist to fill a tray and less-than-full AADC trays are permitted. In barcoded three-tier package-based mailings prepared under M816, residual mail is not permitted in the 5-digit tier.

Residual Option 2

Under Residual Option 2, the residual of the mailing is presented separately from the qualifying portion in AADC and optional mixed-AADC trays. AADC trays must be prepared if enough pieces exist to fill a tray. All pieces in less-than-full AADC and mixed-AADC trays must be prepared in AADC packages and labeled with a pink Label A or an OEL.

In addition, the AADC tray label for two-tier package-based preparation under DMM M815 is revised to change the position of the term "LTRS" on the second line so that it is consistent with other tray labels.

Note: Expect format changes in the final rule as the language in this proposal is edited to conform to that of the new DMM. These revisions will be exclusive of any changes made as a result of input received during the comment period.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

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

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

MODULE E, ELIGIBILITY

2. Make the following changes to Domestic Mail Manual (DMM) Module E: Eligibility.

* * * * *

E200 SECOND-CLASS MAIL

* * * * *

E240 Automation Discounts.

* * * * *

E242 ZIP+4 Discounts.

* * * * *

E242.2.0 Qualifying Presort.

E242.2.1 Tray-Based.

In tray-based presort mailings under M812:

* * * * *

d. In AADC and mixed-AADC trays, ZIP+4 coded or delivery point barcoded pieces can qualify for the A/G/J1 ZIP+4 rates; other pieces can qualify for the A/G/J1 presort rates.

* * * * *

E244 Barcoded Discounts (Letter-Size Pieces).

* * * * *

E244.2.0 Qualifying Presort.

E244.2.1 Tray-Based.

In tray-based mailings under M814:

* * * * *

d. In AADC and mixed-AADC trays, delivery point barcoded pieces can qualify for the A/G/J1 Barcoded rates; ZIP+4 coded nondelivery point barcoded pieces that meet the standards in C830 and do not bear a ZIP+4 barcode in the lower right corner can qualify for the A/G/J1 ZIP+4 rates; others; other pieces qualify for the A/G/J1 presourt rates.

* * * * *

E300 THIRD-CLASS MAIL

* * * * *

E340 Automation Discounts.

* * * * *

E342 ZIP+4 Discounts.

* * * * *

E342.2.0 Qualifying Presort.

E342.2.1 Tray-Based.

In tray-based presort mailings under M812,ZIP+4 coded or delivery point barcodedpieces in full or overflow 5-digit, 3-digit, and SCF trays can qualify for the 3/5 ZIP+4 rate; other pieces can qualify for the 3/5 presort rate. One less-than-full SCF tray is permitted for the SCF serving the post office where the mailing is entered. ZIP+4 coded or delivery point barcoded pieces in AADC or mixed-AADC trays can qualify for the basic ZIP+4 rate; other pieces can qualify for the basic presort rate.

* * * * *

E344 Barcoded Discounts (Letter-Size Pieces).

* * * * *

E344.2.0 Qualifying Presort.

E344.2.1 Tray-Based.

In tray-based mailings under M814:

* * * * *

c. In AADC or mixed-AADC trays, delivery point barcoded pieces can qualify for the basic Barcoded rate; ZIP+4 coded nondelivery point barcoded pieces that meet the standards in C830, and do not bear a ZIP+4 barcode in the lower right corner can qualify for the basic ZIP+4 rate; other pieces qualify for the basic presort rates.

MODULE M, MAIL PREPARATION AND SORTATION

3. Make the following changes to DMM Module M: Mail Preparation and Sortation:

M000 GENERAL PREPARATION STANDARDS

* * * * *

M013 Optional Endorsement Lines.

M013.1.0 Use.

M013.1.1 Address Block, Label.

Mailers may prepare mailings without applying pressure-sensitive package labels to the top mailpiece of packages by using a specific optional endorsement line above the address block or on the address label on the top mailpiece of a package as shown below:

On FIRM PACKAGES use
FIRM 12345
On CARRIER ROUTE use
CAR-RT-SORT**B–001
On 5-DIGIT PACKAGES use
5-DIGIT 12345
On OPTIONAL CITY PACKAGES use
MIXED CITY 12345 (Use lowest 5-digit ZIP Code assigned to that city.)
On 3-DIGIT PACKAGES use
3-DIGIT 771
On SCF PACKAGES use
SCF 750 (Use correct 3-digit ZIP Code as shown in L004.)
On OPTIONAL SDC PACKAGES use
ALL FOR SDC
On STATE PACKAGES use
ALL FOR STATE
On MIXED STATES PACKAGES use
MIXED STATES
On AADC PACKAGES use
ALL FOR AADC
On RESIDUAL PACKAGES use
WORKING

* * * * *

M013.2.0 Format.

* * * * *

M013.2.6 ZIP Code.

Except for carrier route presort packages, state distribution center (SDC) packages, state packages, AADC packages, and mixed states packages, or (for fourth-class bound printed matter) carrier route packages, the optional endorsement line must include the applicable ZIP Code information. Mixed-state bundles of fourth-class bound printed matter must have facing slips with the information required by standard.

* * * * *

M020 Packages and Bundles.

* * * * *

M020.3.0 Additional Standards-Automation Rate Mailings.

* * * * *

M020.3.3 Prohibited.

Packages must not be prepared in full trays in tray-based mailings of larger than postcard-size pieces except in mixed-AADC trays and as permitted by standard for oversize pieces.

* * * * *

M020.3.6 Separator Cards.

Separator cards: a. Must be used for First-Class Mail to delineate groups of 100 pieces within trays of residual mail if the physical separation option is chosen.

* * * * *

M020.3.7 Identification [Revise the last sentence to read as follows: "Residual First-Class pieces may be prepared using separator cards as permitted by standard."]

* * * * *

M800 AUTOMATION-COMPATIBLE MAIL

M810 Letter-Size Mail.

M812 ZIP+4 Presort—Tray-Based Mailings.

M812.1.0 Basic Standards.

* * * * *

M812.1.5 Packaging.

Separator cards are permitted only under 4.3. Packaging is required:

a. For mailings consisting entirely of pieces that qualify *by size* for First-Class card rates, regardless of the actual rate claimed or class of mail. Package labels are required in less-than-full trays.

b. For second- and third-class mail in mixed-AADC trays. Package labels are required.

M812.1.6 No Packaging.

* * * * *

c. Residual mail must be prepared under 4.0 or 5 0.

* * * * *

M812.4.0 Residual Mail—First-Class.

M812.4.1 Definition:

Pieces remaining after packages and trays are prepared under 2.0 or 3.0 are residual (nonqualifying) mail. Residual mail must be prepared under 4.2 or 4.3, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M812.4.2 Sequence, Grouping.

[Delete current M812.4.2f through M812.4.2h and insert the following:]

* * * * *

f. For Line 1 of the tray label, use "MXD," followed by the applicable name, state, and ZIP Code of the SCF of entry from L003 or L004.

g. For Line 2: FCM LTRS followed by ZIP+4 WORKING or ZIP+4 WKG.

M812.4.3 Separation by Rate.

a. [Insert current M812.4 3a. Delete the phrase "First-Class" in M812 4.3a(1) and M812.4.3a(3). Delete sections M812.4.3a(4) and M812.4.3a(5).]

b. [Insert current M812.4.3b.]

c. For Line 1 of the tray label, use "MXD," followed by the applicable entry SCF name, state, and ZIP Code in L003 or L004.

d. For Line 2: FCM LTRS followed by:

(1) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(2) On trays of other mail: WORKING or WKG.

* * * * *

[Insert new M812.5 0; renumber current M812.5 0 as M812.6.0.]

M812.5.0 Residual Mail—Second-and Third-Class

M812.5.1 Definition.

Pieces remaining after packages and trays are prepared under 2.0 or 3.0 are residual (nonqualifying) mail.

M812.5.2 Grouping.

Residual pieces must be sorted by AADC area. A piece count listing must be provided that shows by AADC area and rate category the number of pieces with and without ZIP+4 codes.

M812.5.3 Packaging.

Residual mail in mixed-AADC trays must be packaged and labeled.

M812.5.4 Size.

Tray size: a. AADC: full trays; one-less-than-full tray permitted per destination per mailing.

b. Mixed-AADC: full trays; one less-than-full tray permitted.

M812.5.5 Presort and Labeling.

Residual presort sequence and labeling: a. AADC (required); use L804 on Line 1.

b. Mixed-AADC (optional with no minimum); on Line 1 use "DIS" followed by the applicable origin SCF name, state, and ZIP Code from L003 or L004.

M812.5.6 Line 2.

Use 2C, NEWS, or 3C, followed by: a. For AADC trays: AADC ZIP+4 PRESORT.

b. For mixed-AADC trays: ZIP+4 WORKING or ZIP+4 WKG.

M812.5.7 Presentation.

When presented to the USPS, trays of residual mail must be separate from trays of qualifying mail.

M812.6.0 DOCUMENTATION—FIRST-CLASS.

M812.6.1 Mailing Statement [Insert current M812.5.2.]

M812.6.2 Overflow Trays. [Insert current M812.5.2.]

M812.6.3 When Not Required.

[Insert current M812 5 3 and revise as follows:]

Documentation under 6.4 through 6 9 is not required if each piece in the mailing is correctly ZIP+4 coded or delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are separated when presented to the USPS.

M812.6.4 Standards.

[Insert current M812.5.4; delete "Combined mailings of second-class publications must be documented under E238.".]

M812.6.5 Segmentation, Labeling.

Documentation must be segmented and labeled by sortation (tray level). Within each, tray destinations and contents must be reported by ZIP Code (ZIP Code option) as shown in 6.6 or by tray label or number and ZIP Code (tray label option) as shown in 6.7. Under either option, data must be presented as shown in 6.8 and 6 9.

M812.6.6 Zip Code Option.

[Insert current M812.5.6]

M812.6.7 Tray Label Option.

[Insert current M812.5.7]

M812.6.8 Line Entries Under Either Option.

[Insert current M812.5.8; delete 8c and 8d and revise 8a and 8b as follows:]

a. In mailings of nonidentical-weight pieces with postage affixed, to separately report pieces weighing 2 ounces or less and pieces weighing more, and by ounce increment if postage is paid by precanceled stamps, the pieces weigh more than 1 ounce, and postage beyond the first ounce rate is not affixed.

b In postage-affixed mailings, in which all pieces do not have the correct postage, including those previously separated under 6.8a, to separately report letter mail weighing 1 ounce or less and card-rate pieces.

M812.6.9 Subtotals and Summaries Under Either Option.

[Insert current M812.5.9; revise M812.5.9b as follows:]

b. Each rate (or weight increment, combination of rate and discount, or other variable in 6.8), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing.

M812.7.0 DOCUMENTATION—SECOND-AND THIRD-CLASS

M812.7.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M812" must be placed at the top and, as appropriate, "Automated Site" (if prepared under 3.0), "ZIP Code Option" or "Tray Label Option," based on the documentation method used.

M812.7.2 Overflow Trays.

If there are overflow trays, a listing of them must accompany the mailing statement regardless of other documentation.

M812.7.3 When Not Required.

Documentation under 7.4 through 7.9 is not required if each piece in the mailing is correctly ZIP+4 coded or delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate,

and the trays for each rate are separated when presented to the USPS.

M812.7.4 Standards.

Documentation must meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M812.7.5 Segmentation, Labeling.

Documentation must be segmented and labeled by sortation (tray level). Within each, tray destinations and contents must be reported by ZIP Code (ZIP Code option) as shown in 7.6 or by tray label or number and ZIP Code (tray label option) as shown in 7.7. Under either option, data must be presented as shown in 7 8 and 7.9.

M812.7.6 ZIP Code Option.

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays.

a. For 5-digit trays: 5-digit ZIP Code.

b For city trays: lowest assigned 5-digit ZIP Code.

c. For 3-digit trays: 3-digit ZIP Code.

d. For SCF trays: 3-digit ZIP Code.

e. For AADC trays: The prefix "AADC" followed by the 3-digit AADC code in L804 (L803 for Automated Sites).

f. For mixed-AADC trays: for each AADC package, the prefix "AADC" followed by the 3-digit AADC code in L804 (L803 for Automated Sites).

M812.7.7 Tray Label Option.

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray is reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray as follows:

a. For 5-digit trays: 5-digit ZIP Code.

b. For city trays: lowest assigned 5-digit ZIP Code.

c. For 3-digit trays: 3-digit ZIP Code.

d. For SCF trays: 3-digit ZIP Code.

e. For AADC trays: The prefix "AADC" followed by the 3-digit AADC code in L804 (L803 for Automated Sites).

f. For mixed-AADC trays: for each AADC package, the prefix "AADC" followed by the 3-digit AADC code in L804 (L803 for Automated Sites).

M812.7.8 Line Entries Under Either Option.

Under either option, each line entry must report ZIP+4 coded (including delivery point barcoded) and non-ZIP+4 coded pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separately report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b In third-class mailings, to separately report pieces at each destination entry rate.

M812.7.9 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a ZIP+4 code or delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with ZIP+4 codes or delivery point barcodes.

b Each rate (or other variable 7.8), the number of pieces at each rate, the total postage at each rate, and the postal postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. A list of overflow trays.

d. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

M813 ZIP+4 Presort—Package-Based Mailings.

M813.1.0 BASIC STANDARDS

M813.1.1 Standards.

First-Class Mail claimed at a ZIP+4 presort rate must be prepared as a package-based mailing under 2.0, 3 0 or 4.0, 5.0, and 8.0, or as a tray-based mailing under M812. Second- and third-class mail must be prepared as package-based mailing under 2.0, 6.0 or 7.0, and 9.0, or as a tray-based mailing under M812. Grouping, packaging, labeling, and traying are subject to the standards in M010 through M030.

* * * * *

M813.1.3 Packaging.

[Add the following sentence to the end of the section; "Packaging (no separator cards) is required in AADC trays, and mixed-AADC trays, except for full AADC trays containing only residual pieces."]

* * * * *

M813.1.5 Separator Cards.

Separator cards may not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, or in the residual portion unless permitted by 5.0.

* * * * *

M813.2.0 PACKAGE PREPARATION

M813.2.1 Size.

* * * * *

c. 3-digit:

(1) Required at 50 pieces. Smaller packages prohibited at 3/5 Presort rates.

(2) Optional with no minimum for residual pieces in SCF trays and in 3-digit trays for single 3-digit SCFs (First-, second-, and third-class under Residual Option 1 only).

d. AADC: required with no minimum:

(1) For residual pieces in AADC trays that also contain qualifying packages under Residual Option 1.

(2) For residual pieces in less-than-full AADC trays.

(3) For residual pieces in mixed-AADC trays.

M813.2.2 Presort and Labeling.

* * * * *

c. 3-digit (required qualifying and optional residual); use green Label 3 or OEL.

d. AADC (required for residual pieces in AADC trays that also contain qualifying mail, in less-than-full AADC trays, and in mixed-AADC trays only); use pink Label A or OEL.

M813.3.0 TRAY PREPARATION—FIRST-CLASS QUALIFYING MAIL

M813.3.1 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 3.2a through 3.2c must be placed in full trays to the next available level or in AADC trays.

M813.3.2 Size.

[Delete M813.3.2b; renumber M813.3.2c through M813.3.2e as M813.3.2b through M813.3.2d]

M813.3.3 Presort Sequence and Labeling.

[Delete M813.3.3b; renumber M813.3.3c through M813.3.3e as M813.3.3b through M813.3.3d; revise new sections M813.3.3b through M813.3.3d as follows:]

b. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on

Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

c. SCF (required); use L004 on Line 1 for mail for listed 3-digit areas.

d. AADC (required); use L804 on Line 1.

M813.3.4 Line 2.

Line 2: FCM LTRS and:

a. On 5-digit, 3-digit, and SCF trays: ZIP+4 PRESORT.

b. On AADC trays: AADC ZIP+4 PRESORT.

M813.4.0 OPTIONAL PREPARATION FOR AUTOMATED SITES—FIRST-CLASS QUALIFYING MAIL

* * * * *

M813.4.7 Line 2.

Line 2: FCM LTRS and: [Insert current M813.4.7a and b.]

* * * * *

M813.5.0 RESIDUAL MAIL—FIRST-CLASS

M813.5.1 Definition.

Pieces remaining after packages and trays are prepared under 2.1a through 2.1c(1), 2.2a through 2.2c(1), 3.0, and 4.0 are residual (nonqualifying) mail. Residual mail must be prepared under 5.2, 5.3, or 5.4, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M813.5.2 Residual Option 1.

Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 6.4c through f. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

M813.5.3 Sequence, Grouping.

[Delete current M813.5.2f through h and insert the following:]

* * * * *

f. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code from L003 or L004.

g. For Line 2: FCM LTRS followed by ZIP+4 Working or ZIP+4 WKG.

M813.5.4 Separation by Rate.

[In current M813.5.3, delete the phrase "First-Class" in M813.5.3a(1) and M813.5.3a(3). Delete sections M813.5.3a(4) and M813.5.3a(5). Revise M813.5.3c and M813.5.3d to read as follows:]

c. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code in L003 or L004.

d. For Line 2: "FCM LTRS" followed by:

(1) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(2) On trays of other mail: WORKING or WKG.

[Insert new M813.6.0 and M813.7 0; renumber current M813.6.0 as M813.8.0.]

M813.6.0 TRAY PREPARATION—SECOND- AND THIRD-CLASS MAIL

M813.6.1 Qualifying Mail.

Pieces prepared under 2.1a through 2.1c(1) and 2.2a through 2.2c are qualifying mail. Qualifying mail may not be placed in mixed-AADC trays.

M813.6.2 Residual Mail.

Pieces remaining after packages are prepared under 2.1a through 2.1c(1) and 2.2a through 2.2c are residual (nonqualifying) mail. Residual mail must be prepared under one of the following two options:

a. Residual Option 1. Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 6.4b through f. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

b. Residual Option 2. Under this option, residual mail is kept separate from qualifying mail. Residual pieces must be prepared in AADC trays and optional mixed-AADC trays under 2.1, 2.2, and 6.4e and f. All residual pieces in less-than-full AADC and in mixed-AADC trays must be prepared in AADC packages.

M813.6.3 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 6.4a through 6.4d must be placed in full trays to the next available tray level or in AADC trays. AADC packages remaining after full AADC trays are prepared may be placed in mixed-AADC trays.

M813.6.4 Tray Size.

Tray size: a. 5-digit: required full trays; less-than-full and overflow trays prohibited.

b. City: optional full trays (available for second-class only); less-than-full and overflow trays prohibited.

c. 3-digit: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit SCF serving the post office of entry if listed in L003.

d. SCF: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry.

e. AADC: required if enough pieces to fill tray; less-than-full and overflow trays allowed.

f. Mixed-AADC trays: optional full trays; one less-than-full tray permitted.

M813.6.5 Presort and Labeling.

Tray presort sequence and labeling:

a. 5-digit (required); use destination of packages on Line 1 for nonmilitary mail; on Line 1 for military mail, use "APO" or "FPO," followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340), or AP (for ZIPs 962–966), followed by the destination ZIP on packages.

b. City (optional; for second-class only); use lowest ZIP Code for destination from L001 on Line 1.

c. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

d. SCF (required); use L004 on LIne 1 for mail for listed 3-digit areas.

e. AADC (required); use L804 on Line 1.

f. Mixed-AADC (optional); on Line 1 use "DIS" followed by the applicable origin SCF name, state, and SCF Code from L003 and L004.

M813.6.6 Line 2.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On 5-digit, 3-digit, and SCF trays: ZIP+4 PRESORT.

b. On city trays (for second-class mail only): ZIP+4 PRESORT, and CITY, right-justified under the ZIP Code on Line 1.

c. On AADC trays: AADC ZIP+4 PRESORT.

d. On mixed-AADC trays: ZIP+4 PRESORT WKG.

M813.7.0 OPTIONAL PREPARATION FOR AUTOMATED SITES—SECOND- AND THIRD-CLASS MAIL

M813.7.1 5-Digit Trays.

5-digit tray preparation may be omitted.

M813.7.2 Package Size.

Package size: a. 3-digit: (1) Required at 50 pieces. Smaller packages prohibited at 3/5 Presort rates.

(2) Optional with no minimum for residual pieces in SCE trays and in 3-digit trays for single 3-digit SCFs (Residual Option 1 only).

b. AADC: required with no minimum: (1) For residual pieces in AADC trays that also contain qualifying packages under Residual Option 1.

(2) For residual mail in less-than-full AADC trays.

(3) For residual pieces in mixed-AADC trays.

M813.7.3 Presort and Labeling.

Package presort and labeling: a. 3-digit (required for qualifying pieces, optional for Residual Option 1); use green Label 3 or OEL.

b. AADC (required for residual pieces in AADC trays that also contain qualifying mail, in less-than-full AADC trays, and in mixed-AADC trays only); use pink Label A or OEL.

M813.7.4 Qualifying Mail.

Pieces prepared under 7.1 through 7.2a(1) are qualifying mail. Qualifying mail may not be placed in mixed-AADC trays.

M813.7.5 Residual Mail.

Pieces remaining after packages are prepared under 7.1 through 7.2a(1) are residual (nonqualifying) mail. Residual mail must be prepared under one of the following two options:

a. Residual Option 1. Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 7.7. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

b. Residual Option 2. Under this option, residual mail is kept separate from qualifying mail. Residual pieces must be prepared in AADC trays and optional mixed-AADC trays under 7.7. All residual pieces in less-than-full AADC trays and in mixed-AADC trays must be prepared in AADC packages.

M813.7.6 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 7.7a and 7.7b must be placed in full trays to the next available tray level or in AADC trays. AADC packages remaining after full AADC trays are prepared may be placed in mixed-AADC trays.

M813.7.7 Tray Size.

Tray size: a. 3-digit: required full trays; less-than-full and overflow trays prohibited.

b. SCF: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry if listed in L802.

c. AADC: required if enough pieces to fill tray; less-than-full and overflow trays allowed.

d. Mixed-AADC trays: optional full trays; one less-than-full tray permitted.

M813.7.8 Tray Presort and Labeling.

Tray presort sequence and labeling:

a. 3-digit (required); use L801 on Line 1.

b. SCF (required); use L802 on Line 1.

c. AADC (required); use L803 on Line 1.

d. Mixed-AADC (optional); on Line 1 use "DIS" followed by the applicable SCF of entry name, state, and SCF Code from L003 or L004.

M813.7.9 Line 2.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On 3-digit and SCF trays: ZIP+4 PRESORT.

b. On AADC trays: AADC ZIP+4 PRESORT.

c. On mixed-AADC trays: ZIP+4 PRESORT WORKING or ZIP+4 PRESORT WKG.

M813.8.0 DOCUMENTATION—FIRST-CLASS

M813.8.1 Mailing Statement.

[Insert current M813.6.1.]

* * * * *

M813.8.2 When Not Required.

[Insert current M813.6.2; change "Documentation under 6.3 through 6.8" to "Documentation under 8.3 through 8.8".]

* * * * *

M813.8.3 Standards.

[Insert current M813.6.3; delete "Combined mailings of second-class publications must be documented under E238.".]

* * * * *

M813.8.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual), except if the residual is separated under 5.4. Each must be either segmented further by type of package (e.g., 5-digit, 3-digit, AADC for Residual Option 1) under 8.5, or have all represented 3- and 5- digit ZIP Codes (and AADC codes for Residual Option 1) reported in a continuous sequential list under 8.6 within each tier listing. Under either option, data must be presented as shown in 8.7 and 8.8.

M813.8.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. for 5-digit packages: 5-digit ZIP Code.

b. for 3-digit packages; 3-digit ZIP Code.

c. for AADC packages: the prefix AADC followed by the 3-digit AADC code in L804.

M813.8.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within each tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M813.8.7 Line Entries Under Either Option.

Under either option, each line entry must report ZIP+4 coded (including delivery point barcoded) and non-ZIP+4 coded pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In mailings of nonidentical-weight pieces with postage affixed, to separately report pieces weighing 2 ounces or less and pieces weighing more, and by ounce increment if postage is paid by precanceled stamps, the pieces weigh more than 1 ounce, and postage beyond the first ounce rate is not affixed.

b. In postage-affixed mailings, in which all pieces do not have the correct postage, including those previously separated under 8.7a, to separately report letter mail weighing 1 ounce or less and card-rate pieces.

M813.8.8 Subtotals and Summaries Under Either Option.

[Insert current M813.6.8; change M813.6.8b to read as follows:]

b. Each rate (or weight increment, combination of rate and discount, or other variable in 8.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing.

M813.9.0 DOCUMENTATION—SECOND- AND THIRD-CLASS

M813.9.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M813" must be placed at the top and, as appropriate, "Automated Site" (if prepared under 7.0).

M813.9.2 When Not Required.

Documentation under 9.3 through 9.8 is not required if each piece in the mailing is correctly ZIP+4 coded or delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are segregated when presented to the USPS.

M813.9.3 Standards.

Documentation must meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M813.9.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). Each must be segmented further by type of package (e.g., 5-digit, 3-digit, AADC) under 9.5, or have all represented 3- and 5-digit ZIP Codes and AADC codes reported in a continuous sequential list under 9.6 within each tier listing. Under either option, data must be presented as shown in 9.7 and 9.8.

M813.9.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. For 5-digit packages: 5-digit ZIP Code.

b. For city packages: lowest assigned 5-digit ZIP Code.

c. For 3-digit packages: 3-digit ZIP Code.

d. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804 or L803 for Automated Site mailings.

M813.9.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within each tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For city packages: lowest assigned 5-digit ZIP Code.

c. For 3-digit packages: 3-digit ZIP Code.

d. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804 (or L803 for automated site mailings).

e. For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

M813.9.7 Line Entries Under Either Option.

Under either option, each line entry must report ZIP+4 coded (including delivery point barcoded) and non-ZIP+4 coded pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separate report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b. In third-class mailings, to separately report pieces at each destination entry rate.

M813.9.8 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a ZIP+4 code or delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with ZIP+4 codes or delivery point barcodes.

b. Each rate (or other variable in 9.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

M814 BARCODED—TRAY-BASED MAILINGS

M814.1.0 BASIC STANDARDS

* * * * *

M814.1.4 Packaging.

Separator cards are permitted only under 4.3. Packaging is required:

a. For mailings consisting entirely of pieces that qualify by size for First-Class card rates, regardless of the actual rate claimed or class of mail.

Package labels are required in less-than-full trays.

b. For second- and third-class mail in mixed-AADC trays. Package labels are required.

M814.1.5 No Packaging.

* * * * *

c. Residual mail must be prepared under 3.0 or 4.0.

* * * * *

M814.3.0 RESIDUAL MAIL—FIRST-CLASS

M814.3.1 Definition.

Pieces remaining after packages and trays are prepared under 2.0 are residual (nonqualifying) mail. Residual mail must be prepared under 3.2 or 3.3, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M814.3.2 Sequencing, Grouping.

[Delete M814.3.2f. Renumber M814.3.2g to M814.3.2f and change the term "DIS" to "MXD." Renumber M814.3.2h to M814.3.2g and change to read as follows: "For Line 2: FCM LTRS, followed by BARCODED WKG."]

M814.3.3 Separation by Rate.

[In a(1), delete "First-Class." In a(3) delete "First-Class." Delete M814.3.3a(4) and M814.3.3a(5). In M814.3.3c change "DIS" to "MXD." In M814.3.3d change "class of mail" to "FCM LTRS."]

* * * * *

M814.4.0 RESIDUAL MAIL—SECOND- AND THIRD-CLASS

M814.4.1 Definition.

Pieces remaining after packages and trays are prepared under 2.0 are residual (nonqualifying) mail.

M814.4.2 Grouping.

Residual pieces must be sorted by AADC area. A piece count listing must be provided that shows by AADC area and rate category the number of pieces with a delivery point barcode, the number of pieces without a delivery point barcode that qualify for the ZIP+4 rates, and the number of other pieces.

M814.4.3 Packaging.

Residual mail in mixed-AADC trays must be packaged and labeled.

M814.4.4 Size.

Tray size: a. AADC: full trays; one less-than-full tray permitted per destination per mailing.

b. Mixed-AADC: full trays; one less-than-full tray permitted.

M814.4.5 Presort and Labeling.

Residual presort sequence and labeling:

a. AADC (required); use L804 on Line 1.

b. Mixed-AADC (optional with no minimum); on Line 1 use "DIS" followed by the applicable origin SCF name, state, and ZIP Code from LOO3 or L004.

M814.4.6 Line 2.

Use 2C, NEWS, or 3C, followed by:

a. For AADC trays: AADC BARCODED.

b. For mixed-AADC trays: BARCODED WKG.

M814.4.7 Presentation.

When presented to the USPS, trays of residual mail must be separated from trays of qualifying mail.

M814.5.0 DOCUMENTATION—FIRST-CLASS

M814.5.1 Mailing Statement.

Insert current M814.4.1.].

M814.5.2 Overflow Trays.

[Insert current M814.4.2.]

M814.5.3 When Not Required.

[Insert current M814.4.3.]

M814.5.4 Standards.

[Insert current M814.4.4; delete "Combined mailings of second-class publications must be documented under E238."]

M814.5.5 Segmentation, Labeling.

Documentation must be segmented and labeled by sortation (tray-level). Within each, tray destination and contents must be reported by Zip Code (ZIP Code option) as shown in 5.6 or by tray label or number and Zip Code (tray label option) as shown in 5.7. Under either option, data must be presented as shown in 5.8 and 5.9.

M814.5.6 ZIP Code Option.

[Insert current M814.4.6.]

M814.5.7 Tray Label Option.

[Insert current M814.4.7.]

M814.5.8 Line Entries Under Either Option.

[Insert current M814.4.8; delete the phrase "a tray total" in first sentence; delete 8c and 8d. In 8a delete "First-Class." In 8b delete "First-Class."]

* * * * *

M814.5.9 Subtotals and Summaries Under Either Option.

[Insert current M814.4.9; in 9b change "4.8" to "5.8" and delete "(For second-class mailings, postage rates and computed totals may be omitted.)"]

M814.6.0 DOCUMENTATION—SECOND- AND THIRD-CLASS

M814.6.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M814" must be placed at the top, based on the documentation used, and "ZIP Code Option" or "Tray Label Option."

M814.6.2 Overflow Trays.

If there are overflow trays, a listing of them must accompany the mailing statement regardless of other documentation.

M814.6.3 When Not Required.

Documentation under 6.4 through 6.9 is not required if each piece in the mailing is correctly delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are separated when presented to the USPS.

M814.6.4 Standards.

Documentation must meet the basic standards in PO12 and those below.

Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M814.6.5 Segmentation, Labeling.

Documentation must be segmented and labeled by sortation (tray level).

Within each, tray destinations and contents must be reported by ZIP Code (ZIP Code option) as shown in 6.6 or by tray label or number and ZIP Code (tray label option) as shown in 6.7. Under either option, data must be presented as shown in 6.8 and 6.9.

M814.6.6 ZIP Code Option.

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays.

a. For 5-digit trays: 5-digit ZIP Code.

b. For city trays: lowest assigned 5-digit ZIP Code.

c. For 3-digit trays: 3-digit ZIP Code.

d. For SCF trays: 3-digit ZIP Code.

e. For AADC trays: the prefix "AADC" followed by the 3-digit AADC code in L804.

f. For mixed-AADC trays: for each AADC package, the prefix "AADC" followed by the 3-digit AADC code in L804.

M814.6.7 Tray Label Option.

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray is reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray as follows:

a. For 5-digit trays: 5-digit ZIP Code.

b. For city trays: lowest assigned 5-digit ZIP Code.

c. For 3-digit trays: 3-digit ZIP Code.

d. For SCF trays: 3-digit ZIP Code.

e. For AADC trays: the prefix "AADC" followed by the 3-digit AADC code in L804.

f. For mixed-AADC trays: for each AADC package, the prefix "AADC" followed by the 3-digit AADC code in L804.

M814.6.8 Line Entries Under Either Option.

Under either option, each line entry must separately report delivery point barcoded mail, correctly ZIP+4 coded nonbarcoded mail (meeting the standards in C830), and other pieces by each rate for which specific numbers of pieces are eligible and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separately report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b. In third-class mailings, to separately report pieces at each destination entry rate.

M814.6.9 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with delivery point barcodes.

b. Each rate (or other variable in 4.8), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. A list of overflow trays.

d. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

M815 Barcoded—Two-Tier Package-Based Mailings.

M815.1.0 BASIC STANDARDS

M815.1.1 Standards.

First-Class Mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M814, as a two-tier package-based mailing under 1.2 through 1.8, 2.0 through 4.0, and 6.0, or as a three-tier package-based mailing under M816. Second- and third-class mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M814, as a two-tier package-based mailing under 1.2 through 1.8, 5.0, and 7.0, or as a three-tier package-based mailing under M816. Grouping, packaging, labeling, and traying are subject to the standards in M010 through M030.

M815.1.2 Packaging.

[Change last sentence to read "Packaging or separator cards are required, as appropriate, for other pieces for other pieces placed in city, 3-digit, or SCF trays." Add the following sentence to the end of the section: "Packaging (no separator cards) is required in AADC trays and mixed-AADC trays, except for full AADC trays containing only residual pieces."]

* * * * *

M815.1.4 Separator Cards.

Separator cards may not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, or in the residual portion unless permitted by 4.0.

* * * * *

M815.2.0 Package Preparation.

M815.2.1 Size.

* * * * *

c. 3-digit: (1) Required at 50 pieces (optional for First-Class Mail not claimed at the 3-digit Barcoded rate). Smaller packages prohibited at 3-digit barcoded rates.

(2) Optional with no minimum for residual pieces in SCF trays and in 3-digit trays for single 3-digit SCFs (First-, second-, and third-class under Residual Option 1 only).

d. AADC: required with no minimum:

(1) For residual pieces in AADC trays that also contain qualifying packages under Residual Option 1.

(2) For residual pieces in less-than-full AADC trays.

(3) For residual pieces in mixed-AADC trays.

M815.2.2 Presort and Labeling.

* * * * *

c. 3-digit (required for second- and third-class mail and First-Class Mail claimed at the 3-digit Barcoded rate; optional for residual prepared under Residual Option 1); use green Label 3 or OEL.

d. AADC (required for second- and third-class residual; optional for First Class residual); use pink Label A or OEL.

M815.3.0 TRAY PREPARATION—FIRST-CLASS QUALIFYING MAIL

M815.3.1 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 3.2a through 3.2c must be placed in full trays to the next available level or in AADC trays.

M815.3.2 Size.

[Delete M815.3.2b; renumber M815.3.2c through M815.3.2e as M815.3.2b through M815.3.2d.]

M815.3.3 Presort and Labeling.

[Delete M815.3.3b; renumber M815.3.3c through M815.3.3e as M815.3.3b through M815.3.3d; revise new sections M815.3.3b through M815.3.3d as follows:]

b. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

c. SCF (required); use L004 on Line 1 for mail for listed 3-digit areas.

d. AADC (required); use L804 on Line 1.

M815.3.4 Line 2.

Line 2: FCM LTRS and:

a. On 5-digit, 3-digit, and SCF trays: BARCODED.

b. On AADC trays: AADC BARCODED.

M815.4.0 RESIDUAL MAIL—FIRST-CLASS

M815.4.1 Definition.

Pieces remaining after packages and trays are prepared under 2.0 and 3.0 are residual (nonqualifying) mail. Residual mail must be prepared under 4.2, 4.3, or 4.4, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M815.4.2 Residual Option 1.

Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 5.4c through f. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

M815.4.3 Sequence, Grouping.

[Insert current M815.4.2; replace current M815.4.2f through with the following:]

f. For Line 1 of the tray label, use "MXD," followed by the application origin SCF name, state, and ZIP Code from L003 or L004.

g. For Line 2: FCM LTRS BARCODED WKG.

M815.4.4 Separation by Rate.

[Insert current M815.4.3; delete the phrase "First-Class" in M815.4.3a(1) and M815.4.3a(3); delete sections M815.4.3a(4) and M815.4.3a(5); revise M815.4.3c and M815.4.3d to read as follows:]

c. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code in L003 or L004.

d. For Line 2: FCM LTRS followed by:

(1) On trays of delivery point barcoded mail: BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

M815.5.0 TRAY PREPARATION—SECOND- AND THIRD-CLASS MAIL

M815.5.1 Qualifying Mail.

Pieces prepared under 2.1a through 2.1c(1) and 2.2a through 2.2c are qualifying mail. Qualifying mail may not be placed in mixed-AADC trays.

M815.5.2 Residual Mail.

Pieces remaining after packages are prepared under 2.1a through 2.1c(1) and 2.2a through 2.2c are residual (nonqualifying) mail. Residual mail must be prepared under one of the following two options:

a. Residual Option 1. Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional

mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 5.4b through f. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

b. Residual Option 2. Under this option, residual mail is kept separate from qualifying mail. Residual pieces must be prepared in AADC trays and optional mixed-AADC trays under 2.1, 2.2, and 5.4 e and f. All residual pieces in less-than-full AADC and in mixed-AADC trays must be prepared in AADC packages.

M815.5.3 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 5.4a through 5.4d must be placed in full trays to the next available level or in AADC trays. AADC packages remaining after full AADC trays are prepared may be placed in mixed-AADC trays.

M815.5.4 Tray Size.

Tray size:

a. 5-digit: required full trays; less-than-full and overflow trays prohibited.

b. City: optional full trays (available for second-class only); less-than-full and overflow trays prohibited.

c. 3-digit: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry if listed in L003.

d. SCF: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry.

e. AADC: required if enough pieces to fill tray; less-than-full and overflow trays allowed.

f. Mixed-AADC trays: optional full trays; one less-than-full tray permitted.

M815.5.5 Presort and Labeling.

Tray presort sequence and labeling:

a. 5-digit (required); use destination of packages on Line 1 for nonmilitary mail; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340), or AP (for ZIPs 962–966), followed by the designation ZIP on packages.

b. City (optional; for second-class only); use lowest ZIP Code for destination from L001 on Line 1.

c. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPS 962–965), followed by the designation 3-digit ZIP Code prefix.

d. SCF (required); use L004 on Line 1 for mail listed 3-digit areas.

e. AADC (required); use L804 on Line 1.

f. Mixed-AADC (optional); on Line 1 use "DIS" followed by the applicable SCF of entry name, state, and SCF Code from L003 or L004.

M815.5.6 Line 2.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On 5-digit, 3-digit, and SCF trays: LTRS BARCODED.

b. On city trays (for second-class mail only): LTRS BARCODED, and CITY, right-justified under the ZIP Code on Line 1.

C. On AADC trays: LTRS AADC BARCODED.

d. On mixed-AADC trays; LTRS BARCODED WKG.

M815.6.0 Documentation—First-Class.

M815.6.1 Mailing Statement.

[Insert current M815.5.1.]

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M815.6.2 When Not Required.

[Insert current M815.5.3; change "Documentation under 5.4 through 5.8" to "Documentation under 6.4 through 6.8"]

* * * * *

M815.6.3 Standards.

[Insert current M815.5.2; delete "Combined mailings of second-class publications must be documented under E238."]

* * * * *

M815.6.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual), except if the residual is separated under 4.4. Each must be either segmented further by type of package (e.g., 5-digit, 3-digit, AADC for Residual Option 1) under 6.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for Residual Option 1) reported in a continuous sequential list under 6.6 within each tier listing. Under either option, data must be presented as shown in 6.7 and 6.8.

M815.6.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M815.6.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within each tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

815.6.7 Line Entries Under Either Option

Under either option, each line entry must report delivery point barcoded pieces, correctly ZIP+4 coded nonbarcoded pieces (that meet OCR readability and related standards in C830), and other pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In mailings of nonidentical-weight pieces with postage affixed, to separately report pieces weighing 2 ounces or less and pieces weighing more, and by ounce increment if postage is paid by precanceled stamps, the pieces weigh more than 1 ounce, and postage beyond the first ounce rate is not affixed.

b. In postage-affixed mailings, in which all pieces do not have the correct postage, including those previously separated under 6.7a, to separately report letter mail weighing 1 ounce or less and card-rate pieces.

M815.6.8 Subtotals and Summaries Under Either Option.

[Insert current M815.5.8; change M815.5.8b to read as follows:]

b. Each rate (or weight increment, combination of rate and discount, or other variable in 5.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing.

M815.7.0 DOCUMENTATION—SECOND- AND THIRD-CLASS

M815.7.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany

each mailing. The endorsement "M815" must be placed at the top.

M815.7.2 When Not Required.

Documentation under 7.3 through 7.8 is not required if each piece in the mailing is correctly delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are segregated when presented to the USPS.

M815.7.3 Standards.

Documentation must meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M815.7.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). Each must be segmented further by type of package (e.g., 5-digit, 3-digit, AADC) under 7.5, or have all represented 3- and 5-digit ZIP Codes and AADC codes reported in a continuous sequential list under 7.6 within each tier listing. Under either option, data must be presented as shown in 7.7 and 7.8.

M815.7.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. For 5-digit packages: 5-digit ZIP Code.

b. For city packages: lowest assigned 5-digit ZIP Code.

c. For 3-digit packages: 3-digit ZIP Code.

d. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M815.7.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within each tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For city packages: lowest assigned 5-digit ZIP Code.

c. For 3-digit packages: 3-digit ZIP Code.

d. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

e. For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefix 5DG, CTY, and 3DG, respectively.

M815.7.7 Line Entries Under Either Option.

Under either option, each line entry must report delivery point barcoded pieces, correctly ZIP+4 coded nonbarcoded pieces (that meet OCR readability and related standards in C830), and other pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separately report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b. In third-class mailings, to separately report pieces at each destination entry rate.

M815.7.8 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with delivery point barcodes.

b. Each rate (or other variable in 5.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

M816 Barcoded—Three-Tier Package-Based Mailings

M816.1.0 BASIC STANDARDS

M816.1.1 Standards.

First-Class Mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M814, as a two-tier package-based mailing under M815, or as a three-tier package-based mailing under 2.0 through 6.0, and 8.0. Second, and third-class mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M814, as a two-tier package-based mailing under M815, or as a three-tier package-based mailing under 2.0 through 4.0, 7.0, and 9.0. Grouping, packaging, labeling, and traying are subject to the standards in M010 through M030.

M816.1.2 Packaging.

[Change last sentence to read "Packaging or separator cards are required, as appropriate, for other pieces for other pieces placed in city, 3-digit, or SCF trays, unless accepted under 1.3." Add the following sentence to the end of the section: "Packaging (no separator cards) is required in AADC trays and mixed-AADC trays, except for full AADC trays containing only residual pieces."]

* * * * *

M816.1.4 Separator Cards.

Separator cards may not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, or in the residual portion unless permitted under 6.0.

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M816.4.0 PACKAGE PREPARATION—3-DIGIT TIER

M816.4.1 Size.

Package size:

a. City (second-class only): optional at 50 pieces; smaller packages prohibited.

b. 3-digit:

(1) Required at 50 pieces (optional for First-Class Mail not claimed at the 3-digit Barcoded rate). Smaller packages prohibited at 3-digit Barcoded rates.

(2) Optional with no minimum for residual pieces in SCF trays and in 3-digit trays for single 3-digit SCFs (First-, second-, and third-class under Residual Option 1 only).

c. AADC: required with no minimum:

(1) For residual pieces in AADC trays that also contain qualifying packages under Residual Option 1.

(2) For residual pieces in less-than-full AADC trays.

(3) For residual pieces in mixed-AADC trays.

M816.4.2 Presort and Labeling.

a. City (optional; for second-class only): package labels not required, except under Residual Option 1.

b. 3-digit (required for second- and third-class mail and First-Class Mail claimed at the 3-digit Barcoded rate): use green Label 3 or OEL.

c. AADC (required for second- and third-class residual; optional for First-Class residual); use pink Label A or OEL.

M816.5.0 TRAY PREPARATION—FIRST-CLASS 3-DIGIT TIER

M816.5.1 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 5.2b and 5.2c must be placed in full trays to the next available level or in AADC trays.

M816.5.2 Size.

[Delete M816.5.2a; renumber M816.5.2b through M816.5.2d as M816.5.2a through M816.5.2c.]

M816.5.3 Presort and Labeling.

a. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

b. SCF (required); use L004 on Line 1 for mail for listed 3-digit areas.

c. AADC (required); use L804 on Line 1.

M816.5.4 Line 2.

Line 2:

a. On 3-digit and SCF trays: FCM LTRS 3DG BARCODED.

b. On AADC trays: FCM LTR AADC 3D BARCODE.

M816.6.0 RESIDUAL MAIL—FIRST-CLASS

M816.6.1 Definition.

Pieces not packaged and trayed under 2.0, 3.0, 4.1a, 4.1b(1), 4.2a and b, or 5.0 are residual (nonqualifying) mail. Residual mail must be prepared under 6.2, 6.3, or 6.4, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M816.6.2 Residual Option 1.

Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 4.1, 4.2, 7.4c through f, 7.5c through f, 7.6, and 7.7. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

M816.6.3 Sequence, Grouping.

[Insert current M816.6.2; replace current M816.6.2f through h with the following:]

f. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code from L003 or L004.

g. For Line 2: FCM LTRS BARCODED WKG.

M816.6.4 Separation by Rate.

[Insert current M816.6.3; delete "First-Class" in M816.6.3a(1) and M816.6.3a(3). Delete sections M816.6.3a(4) and M816.6.3a(5). Revise M816.6.3c and M816.6.3d to read as follows:]

c. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code in L003 or L004.

d. For Line 2: FCM LTRS followed by:

(1) On trays of delivery point barcoded mail: BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

M816.7.0 TRAY PREPARATION—SECOND- AND THIRD-CLASS—3-DIGIT TIER AND RESIDUAL

M816.7.1 Qualifying Mail.

Pieces prepared under 4.1a and 4.1b(1), and 4.2a and 4.2b are qualifying mail. Qualifying mail may not be placed in mixed-AADC trays.

M816.7.2 Residual Mail.

Pieces not packaged and trayed under 2.0, 3.0, 4.1a, 4.1b(1), 4.2a and b, 7.4a through e, and 7.5a through e are residual (nonqualifying) mail. Residual mail is not permitted in the 5-digit tier. Residual mail must be prepared under one of the following two options:

a. Residual Option 1. Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 4.1, 4.2, 7.4b through f, 7.5b through f, 7.6, and 7.7. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

b. Residual Option 2. Under this option, residual mail is kept separate from qualifying mail. Residual pieces must be prepared in AADC trays and optional mixed-AADC trays under 4.1, 4.2, 7.4b through f, 7.5b through f, 7.6, and 7.7. All residual pieces in less-than-full AADC and in mixed-AADC trays must be prepared in AADC packages.

M816.7.3 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 7.4a through 7.4d must be placed in full trays to the next available level or in AADC trays. AADC packages remaining after full AADC trays are prepared may be placed in mixed-AADC trays.

M816.7.4 Tray Size.

Tray size:

a. 5-digit: required full trays; less-than-full and overflow trays prohibited.

b. City: optional full trays (available for second-class only); less-than-full and overflow trays prohibited.

c. 3-digit: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit SCF serving the post office of entry if listed in L003.

d. SCF: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry.

e. AADC: required if enough pieces to fill tray; less-than-full and overflow trays allowed.

f. Mixed-AADC trays: optional full trays; one less-than-full tray permitted.

M816.7.5 Presort and Labeling.

Tray presort sequence and labeling:

a. 5-digit (required); use destination of packages on Line 1 for nonmilitary mail; on Line 1 for military mail, use "APO" or "FPO," followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340), or AP (for ZIPs 96–966), followed by the destination ZIP on packages.

b. City (optional; for second-class only); use lowest ZIP Code for destination from L001 on Line 1.

c. 3-digit (required); for nonmilitary mail, Use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340) or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

d. SCF (required); use L004 on Line 1 for mail for listed 3-digit areas.

e. AADC (required); use L804 on Line 1.

f. Mixed-AADC (optional); on Line 1 use "DIS" followed by the applicable SCF of entry name, state, and SCF Code from L003 or L004.

M816.7.6 Line 2—Mailings Prepared Under Residual Option 1.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On city trays (for second-class mail only); LTRS BARCODED, and CITY, right-justified under the ZIP Code on Line 1.

b. On 3-digit, and SCF trays: LTRS BARCODED.

c. On AADC trays: LTRS AADC BARCODED.

d. On mixed-AADC trays: LTRS BARCODED WKG.

M816.7.7 Line 2—Mailings Prepared Under Residual Option 2.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On city trays (for second-class mail only): LTRS 3DG BARCODED.

b. On 3-digit and SCF trays: LTRS 3DG BARCODED.

c. On AADC trays: LTR AADC 3D BARCODED.

d. On mixed-AADC trays: LTRS BARCODED WKG.

M816.8.0 DOCUMENTATION—FIRST-CLASS

M816.8.1 Mailing Statement.

[Insert current M816.7.1.]

* * * * *

M816.8.2 When Not Required.

[Insert current M816.7.3; change "Documentation under 7.4 through 7.8" to "Documentation under 8.4 through 8.8".]

* * * * *

M816.8.3 Standards.

[Insert current M816.7.2; delete "Combined mailings of second-class publications must be documented under E238."]

* * * * *

M816.8.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., 5-digit presort, 3-digit presort, and residual), except if the residual is separated under 6.4 the residual tier need not be included. Each must be either segmented further by type of package (e.g., 5-digit, 3-digit, AADC for Residual Option 1) under 8.5, or have all represented 3- and 5-digit ZIP Codes reported in a continuous sequential list under a presort tiers listing and all 3-digit (and AADC codes for Residual Option 1) reported in a continuous sequential list under a residual tier listing under 8.6. Under either option, data must be presented as shown in 8.7 and 8.8.

M816.8.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M816.8.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially By ZIP Code, regardless of package type within a separate presort listing and a separate residual tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M816.8.7 Line Entries Under Either Option.

Under either option, each line entry must report delivery point barcoded pieces, correctly ZIP+4 coded nonbarcoded pieces (that meet OCR readability and related standards in C830), and other pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In mailings of nonidentical-weight pieces with postage affixed, to separately report pieces weighing 2 ounces or less and pieces weighing more, and by ounce increment if postage is paid by precanceled stamps, the pieces weigh more than 1 ounce, and postage beyond the first ounce rate is not affixed.

b. In postage-affixed mailings, in which all pieces do not have the correct postage, including those previously separated under 8.7a, to separately report letter mail weighing 1 ounce or less and card-rate pieces.

M816.8.8 Subtotals and Summaries Under Either Option.

[Insert current M816.7.8; change M816.7.8b to read as follows:]

b. Each rate (or weight increment, combination of rate and discount, or other variable in 8.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing.

M816.9.0 DOCUMENTATION—SECOND- AND THIRD-CLASS

M816.9.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M816" must be placed at the top.

M816.9.2 When Not Required.

Documentation under 9.3 through 9.8 is not required if each piece in the mailing is correctly delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are segregated when presented to the USPS.

M816.9.3 Standards.

Documentation must meet the basic standards in PO12 and those below. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M816.9.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., 5-digit presort, 3-digit presort and residual). Each must be segmented further by type of package (e.g., 5-digit, 3-digit, AADC) under 9.5, or have all represented 3- and 5-digit ZIP Codes and AADC codes reported in a continuous sequential list under 9.6 within a presort tier listing and a residual tier listing. Under either option, data must be presented as shown in 9.7 and 9.8.

M816.9.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. for 5-digit packages: 5-digit ZIP Code.

b. for city packages; lowest assigned 5-digit ZIP Code.

c. for 3-digit packages: 3-digit ZIP Code.

d. for AADC packages: the prefix AADC followed by the 3-digit AADC code in L804.

M816.9.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within a separate presort listing and a separate residual tier listing:

a. for 5-digit packages: 5-digit ZIP Code.

b. for city packages: lowest assigned 5-digit ZIP Code.

c. for 3-digit packages: 3-digit ZIP Code.

d. for AADC packages: the prefix AADC followed by the 3-digit AADC code in L804.

e. for second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefix 5DG, CTY, and 3DG, respectively.

M816.9.7 Line Entries Under Either Option

Under either option, each line entry must report delivery point barcoded pieces, correctly ZIP+4 coded nonbarcoded pieces (that meet OCR readability and related standards in C830), and other pieces by each rate for which specific numbers of pieces are

eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separately report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b. In third-class mailings, to separately report pieces at each destination entry rate.

M816.9.8 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with delivery point barcodes.

b. Each rate (or other variable in 9.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

An appropriate amendment to 39 CFR 111.3 will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–23178 Filed 9–21–93; 8:45 am]

BILLING CODE 7710–12–M

federal register

Wednesday
September 22, 1993

Part VI

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 346, et al.
National Institute on Disability Rehabilitation Research; Final Rule

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

National Institute on Disability Rehabilitation Research

34 CFR Parts 346, 347, 354, 355, 356, 357, 358, 359, and 360

RIN 1820–AB09

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends existing regulations for certain programs authorized under the National Institute on Disability and Rehabilitation Research. These technical amendments result primarily from the Rehabilitation Act Amendments of 1992. The amendments to the regulations add new definitions and program activities and make other changes consistent with the new legislation.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3422), Washington, DC 20202. Telephone: (202) 205–9739. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: These technical amendments implement statutory changes made by the Rehabilitation Act Amendments of 1992. Most of the changes are to conform terminology of the regulations with terminology in the Act, specifically in the use of "individual with a disability", "children with disabilities", "individual with a mental disability", and similar phrases to replace phrases using the word "handicapped", "handicapped individual", or "disabled individual."

The regulations also implement a portion of the Amendments that apply to the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407). Title II of that statute originally provided that only private agencies and organizations were eligible to apply for grants under two of the programs authorized by that title. The Amendments expanded eligibility to public as well as private agencies and organizations, including institutions of higher education, and this provision is reflected in these regulations.

The regulations further clarify that the purpose of the Fellowship program is to provide support to qualified individuals with disabilities as well as others. These regulations also state that the purpose of the Research Training Grants program is to provide training in rehabilitation research to qualified individuals with disabilities as well as other qualified individuals.

These regulations add a provision from the statute addressing the needs of minorities with disabilities to the selection criteria for Field-Initiated projects, the Innovation Grants program, and the Research Training Grants Program. This provision will be applied to other NIDRR programs through pending Notices of Proposed Rulemaking.

These regulations support the National Education Goals, particularly National Education Goal 5, which calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these final regulations are small public and private agencies receiving Federal funds under these programs. However, the regulations will not have a significant economic impact on the small entities affected because the regulations will not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations make only technical changes to implement legislation and to correct errors in previously published regulations.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since these changes merely incorporate statutory amendments into existing regulations or make technical corrections to previously published regulations, and do not establish new substantive policy, public comment could have no effect on the content of the amended regulations.

Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these amended regulations is unnecessary and contrary to the public interest.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 346

Education, Elementary and secondary education, Grant program—education.

34 CFR Part 347

Colleges and universities, Education, Elementary and secondary education, Grant program—education, Teachers.

34 CFR Part 354

Education, Educational research, Grant program—education, Individuals with disabilities, Vocational rehabilitation.

34 CFR Part 355

Education, Education of individuals with disabilities, Grant program—education.

34 CFR Part 356

Adults with disabilities, Children with disabilities, Education, Educational research, Fellowships, Individuals with disabilities.

34 CFR Part 357

Education, Educational research, Grant program—education, Individuals with disabilities, Manpower training programs, Vocational rehabilitation.

34 CFR Part 358

Education, Educational research, Grant program—education, Individuals with disabilities, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 359

Education, Educational research, Grant program—education, Individuals with disabilities, Individuals with severe disabilities, Vocational rehabilitation.

34 CFR Part 360

Education, Educational research, Grant program—education, Individuals with disabilities, Manpower training programs, Vocational rehabilitation.

Dated: September 17, 1993.

(Catalog of Federal Domestic Assistance Number 84.133, National Institute on Disability and Rehabilitation Research)

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 346, 347, 354, 355, 356, 357, 358, 359, and 360 of title 34 of the Code of Federal Regulations as follows:

Part 346—TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES: DEMONSTRATION AND INNOVATION PROJECTS OF NATIONAL SIGNIFICANCE

1. The authority citation for part 346 continues to read as follows:

Authority: 29 U.S.C. 2201–2271, unless otherwise noted.

2. Section 346.3 is revised to read as follows:

§ 346.3 Who is eligible for assistance under this program?

Public and private agencies and organizations, including institutions of higher education, may apply for grants or cooperative agreements under this program.

(Authority: 29 U.S.C. 2261(a))

PART 347—TRAINING AND PUBLIC AWARENESS PROJECTS OF NATIONAL SIGNIFICANCE IN TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

3. The authority citation for part 347 continues to read as follows:

Authority: 29 U.S.C. 2201–2271, unless otherwise noted.

4. Section 347.3 is amended by revising paragraphs (a) and (c) to read as follows:

§ 347.3 Who is eligible for assistance under this program?

(a) Public and private agencies and organizations, including institutions of higher education, are eligible to receive awards under the technology training program.

* * * * *

(c) Public and private agencies and organizations, including institutions of higher education, are eligible to receive awards under the public awareness projects program.

PART 354—DISABILITY AND REHABILITATION RESEARCH: MODEL RESEARCH AND TRAINING PROGRAM

5. The authority citation for part 354 continues to read as follows:

Authority: 29 U.S.C. 762(b)(12), unless otherwise noted.

6. In 34 CFR part 354 the words "handicapped individuals" are removed, and the words "individuals with disabilities" are added, in their place, in the following places:

(a) § 354.1; and

(b) § 354.10 (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5).

PART 355—DISABILITY AND REHABILITATION RESEARCH: KNOWLEDGE DISSEMINATION AND UTILIZATION PROGRAMS

7. The authority citation for part 355 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

8. In 34 CFR part 355 the words "handicapped persons" are removed, and the words, "individuals with disabilities" are added, in their place, in the following places:

(a) § 355.1; and

(b) § 355.10(c).

PART 356—DISABILITY AND REHABILITATION RESEARCH: RESEARCH FELLOWSHIPS

9. The authority citation for part 356 continues to read as follows:

Authority: 29 U.S.C. 761a(d), unless otherwise noted.

10. Section 356.1 is amended by adding, ", including those who are individuals with disabilities,", after the word "individuals" and removing the words "disabled persons" and adding, in their place, the words "individuals with disabilities".

§ 356.2 [Amended]

11. Section 356.2 is amended by removing the words "handicapped persons" in paragraph (b) and adding, in their place, the words "individuals with disabilities".

§ 356.3 [Amended]

12. Section 356.3(c)(2) is amended by removing the words "handicapped children or mentally disabled persons", and adding, in their place, the words "children with disabilities or individuals with mental disabilities", removing the words "non-handicapped children", and adding, in their place, the words "children who do not have disabilities", and removing the words "handicapped adults", and adding, in their place, the words "adults with disabilities".

13. Section 356.11 is revised to read as follows:

§ 356.11 What types of problems may be researched under the fellowship program?

Problems encountered by individuals with disabilities in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research may be addressed under this program.

(Authority: Secs. 202(d), 202(g)(1), 204; 29 U.S.C. 761a(d), 761a(g)(1), 762)

PART 357—DISABILITY AND REHABILITATION RESEARCH: FIELD-INITIATED PROJECTS

14. The authority citation for part 357 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

15. Section 357.32 is amended by adding a new paragraph (a)(3) to read as follows:

§ 357.32 How does the Secretary evaluate an application under this program?

(a) * * *

(3) The application addresses the needs of individuals with disabilities from minority backgrounds.

* * * * *

PART 358—DISABILITY AND REHABILITATION RESEARCH: INNOVATION GRANTS PROGRAM

16. The authority citation for part 358 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(14), unless otherwise noted.

17. The authority citation for § 358.1 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

18. Section 358.10(a) is amended by removing the words "disabled individuals", and adding, in their place, the words "individuals with disabilities" and by revising the authority citation to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

19. The authority citation for § 358.30 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

20. Section 358.31 is amended by revising paragraph (a)(3) and the authority citation to read as follows:

§ 358.31 How does the Secretary select applications for new grants?

(a) * * *

(3) Any other requirement that applies to the selection of applications for new grants, including the extent to which the application addresses the needs of minority individuals with disabilities.

* * * * *

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

21. The authority citation for § 358.32 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

22. The authority citation for § 358.33 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

23. The authority citation for § 358.34 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

PART 359—DISABILITY AND REHABILITATION RESEARCH: SPECIAL PROJECTS AND DEMONSTRATIONS FOR SPINAL CORD INJURIES

24. The authority citation for part 359 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(4), unless otherwise noted.

25. The authority citation for § 359.1 is revised to read as follows:

(Authority: Sec. 204(b)(4); 29 U.S.C. 762(b)(4))

26. Section 359.2 is revised to read as follows:

§ 359.2 Who is eligible for assistance under this program?

The agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

(Authority: Sec. 204(b)(4)(A); 29 U.S.C. 762(b)(4)(A))

27. The authority citation for § 359.3 is revised to read as follows:

(Authority: Secs. 202 and 204; 29 U.S.C. 761a and 762)

28. The authority citation for § 359.4 is revised to read as follows:

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

29. The authority citation for § 359.10 is revised to read as follows:

(Authority: Sec. 204(b)(4); 29 U.S.C. 762(b)(4))

30. Section 359.11 is amended by redesignating paragraph (f) as paragraph (g), adding a new paragraph (f), and revising the authority citation to read as follows:

§ 359.11 What activities must each recipient carry out under this program?

* * * * *

(f) Address the needs of individuals with spinal cord injuries from minority backgrounds;

* * * * *

(Authority: Secs. 21(b)(6) and 204(b)(4); 29 U.S.C. 718b and 762(b)(4))

31. The authority citation for § 359.30 is revised to read as follows:

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

32. Section 359.31 is amended by revising paragraphs (c)(4)(iii), (d)(5)(iii), and the authority citation to read as follows:

§ 359.31 What selection criteria does the Secretary use in reviewing applications under this program?

* * * * *

(c) * * *

(4) * * *

(iii) Individuals with disabilities; and

* * * * *

(d) * * *

(5) * * *

(iii) Individuals with disabilities; and

* * * * *

(Authority: Secs. 202(e) and 204(b)(4); 29 U.S.C. 761a(e) and 762(b)(4))

33. The authority citation for § 359.32 is revised to read as follows:

(Authority: Sec. 204(b)(4)(C); 29 U.S.C. 762(b)(4)(C))

PART 360—DISABILITY AND REHABILITATION RESEARCH: RESEARCH TRAINING AND CAREER DEVELOPMENT PROGRAM

34. The authority citation for part 360 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

35. Section 360.31 is amended by revising paragraphs (a)(2), (b)(1), and (d)(3) to read as follows:

§ 360.31 What selection criteria are used under this program?

(a) * * *

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who have direct experience with underserved populations, including minority populations; and

* * * * *

(b) * * *

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities;

* * * * *

(d) * * *

(3) The applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age, or disability;

* * * * *

[FR Doc. 93–23193 Filed 9–21–93; 8:45 am]

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Reader Aids

Federal Register

Vol. 58, No. 182

Wednesday, September 22, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

46073–46528.....1
46529–46758.....2
46759–47014.....3
47015–47198.....7
47199–47370.....8
47371–47618.....9
47619–47820.....10
47821–47982.....13
47983–48258.....14
48259–48444.....15
48445–48590.....16
48591–48774.....17
48775–48952.....20
48953–49174.....21
49175–49420.....22

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
September 11, 1993.....48583
Presidential Determinations:
No. 93–27 of June 24, 1993.....49175
No. 93–35 of August 30, 1993.....48259
No. 93–36 of August 30, 1993.....48261
No. 93–37 of September 2, 1993.....48263
Executive Orders:
December 12, 1917 (Revoked in part by PLO 6995) (2 EO's).....48458
4257 (Revoked in part by PLO 6996).....48458
6546 (Revoked by PLO 6989).....38083, 48545
11858 (Amended by EO 12860).....47201
12334 (Revoked by EO 12863).....48441
12537 (Revoked by EO 12863).....48441
12775 (See DOT rule of Sept. 2).....46540
12779 (See DOT rule of Sept. 2).....46540
12860.....47201
12863.....48441
12864.....48773
Proclamations:
6587.....47199
6588.....47981
6589.....48585
6590.....48587
6591.....48589
6592.....48771
6593.....49173

5 CFR

831.....48265, 49177
837.....48265
841.....48265
842.....48265
844.....48265
846.....47821, 48265
870.....47823
871.....47823
872.....47823
873.....47823
890.....47823
Ch. XXVI.....47619
Proposed Rules:
2634.....46096

7 CFR

54.....48591
246.....47015
301.....49186
Ch. III.....47206
400.....47203
406.....46073
781.....48273
915.....46759
932.....48592
944.....48595
946.....47025
947.....46760, 47025
948.....47025
953.....47025
955.....47023
958.....47025
982.....47025
989.....47028, 48274
1030.....48953
1160.....46761
1220.....47983
1230.....47204
1910.....48275
1924.....48275
1941.....48275
1943.....48275
1944.....48300
1945.....48275
1955.....48275
1962.....46074
1980.....48275
Proposed Rules:
52.....47071
68.....49248
319.....47074
1007.....47653
1093.....47653
1094.....47653
1096.....47653
1108.....47653
1160.....46877
1405.....46886
1413.....46886
1710.....48800
1755.....46097, 46110
1786.....48465
1944.....48330
1980.....46889

8 CFR

204.....48775
211.....48775
223.....48775
223a.....48775
235.....48775
251.....48775
252.....48775
264.....48775
274a.....48775
299.....48775
316.....48775
334.....48775

9 CFR

Ch. I....47206
51....47984
78....48445
96....47029
317....47624
381....47624

Proposed Rules:

78....47222
82....46569
92....47084, 48003
94....47834
113....47222
313....47673

10 CFR

73....48424
860....47984

Proposed Rules:

2....48004
20....47676
72....47222, 48004
430....47326, 48800

12 CFR

7....46529
34....46529
208....47206
211....46076, 47206
225....47206
262....47985
611....48780
613....48780
614....48780
620....48780
621....48780
627....48780
931....47181
932....47181
933....47181

Proposed Rules:

3....48206
208....48206
215....47400
303....48979
325....48206
620....47836
936....46569

13 CFR

107....47031
121....47371, 48954

Proposed Rules:

121....46573, 47181, 48981

14 CFR

25....46536, 47628
39....46076, 46766, 46767, 46768, 46769, 46770, 46771, 46772, 47033, 47034, 47035, 47036, 47038, 47209, 47825, 47826, 47827, 47828, 47986
71....46539, 47039, 47040, 47041, 47042, 47043, 47044, 47045, 47371, 47372, 47373, 47374, 47375, 47631, 47633, 47635, 47829, 47830, 48301, 48722, 48792
91....48722, 48793
97....47046, 47048, 48958, 48959
121....46500

Proposed Rules:

Ch. I....46585, 47405, 47678
39....46135, 46136, 46137, 46139, 46914, 46916, 46917, 47085, 47224, 47225, 47227, 47405, 47407, 47409, 47678, 47837, 47839, 48009, 48010, 48616, 48617, 48983, 48984, 48986, 48987, 48989
61....48748
71....46586, 47087, 47411, 47413, 47680, 48331
125....49164
135....49164
382....47681

15 CFR

770....47052
771....47049, 47051, 47052
774....47052
775....47051, 47052
776....47052
777....47049
778....47049
779....47049, 47052
785....47051, 47052
799....47049, 47322, 48302

Proposed Rules:

295....46919

16 CFR

435....49096

18 CFR

2....47636

Proposed Rules:

2....48994
Subchapter B....48991

19 CFR

Proposed Rules:

175....47413
284....48332

20 CFR

360....48597

Proposed Rules:

416....49249

21 CFR

Ch. I....48597
10....49190
20....48793, 48794
101....49190
172....48598
177....48598
206....47948
207....47948
310....46744, 46746, 46749
314....47340, 47948
330....47948
510....47056, 47376
520....47210
522....47376
556....47210
558....47056, 47962
573....47962
804....46514
807....46514
821....48599

Proposed Rules:

207....46587
211....47088
314....47088
334....46589
514....47088
870....46919

22 CFR

201....48796
42....48446, 48447
121....47636
514....48447

24 CFR

25....47377
86....47056
91....49156
201....47319, 47377
203....47319
234....47319

Proposed Rules:

200....48556
204....48556
206....48556
267....48556

26 CFR

1....46773, 46828, 46835, 47060, 47061, 47639, 47639, 47784, 49352

Proposed Rules:

1....47013, 47089, 47090, 48801
48....48801
601....48802

27 CFR

24....48424
47....47831

Proposed Rules:

5....46141

28 CFR

23....48448
527....47976

Proposed Rules:

58....48472

29 CFR

4....49192
2606....48600
2617....48600
2619....48305
2676....48306

Proposed Rules:

1910....47690
1915....47690
1917....47690
1918....47690
1926....47690
1928....47690

30 CFR

913....46845, 48961
914....46857, 48963
935....46861
944....48600
948....46676

Proposed Rules:

840....48332
842....48332
843....48332
913....47237, 48333
914....48996
917....48333
920....48998
935....48333

31 CFR

500....47643
515....47643
550....47643
575....47643
580....46540, 47643
585....47643

32 CFR

40....47619
342....48306
371....48308

Proposed Rules:

199....47692, 48473

33 CFR

100....46078
117....46080, 47067, 47068
156....48434
161....46081
165....46078, 46082, 46083, 47069, 47987, 47988, 47989, 47990, 47991, 48967
323....48424
328....48424
334....47788

Proposed Rules:

100....47099
162....46144
334....47786

34 CFR

21....47192
232....46756
346....49418
347....49418
354....49418
355....49418
356....49418
357....49418
358....49418
359....49418
360....49418
649....47069

Proposed Rules:

607....48478

36 CFR

1222....49193
1230....49193

Proposed Rules:

7....48336
222....48808
242....46678
1253....49251

38 CFR

3....46865
21....46865, 46866, 49196
47....48455

Proposed Rules:

3....46919, 48483
20....47100
36....49251, 49253

39 CFR

Proposed Rules:

111....49402
265....48808

40 CFR

9....49354
52....46541, 46867, 47211, 48309, 48312, 48315, 47379, 47383, 47385, 47391, 47831
63....49354
73....48318
80....46508, 48968
81....47391
110....48424
112....48424

116....48424
117....48424
122....48424
180....46084, 46087, 47214, 47215, 48320
185....46087, 48456
186....48322, 48322
228....46544
230....48424
232....48424
271....47216
272....49199
281....47217
300....46087, 49200
401....48424
712....47647
716....47647

Proposed Rules:
Ch. I....47414, 48012
52....47101, 47103, 47239, 47414, 47415, 47701, 47705, 47707, 47840, 48339, 48344, 48812, 48813, 48999, 49001, 49254, 49258
55....48619
81....49001
122....47845
123....46145, 47417, 47845
131....47845
148....48092
132....47845
180....46147, 46149, 49263, 49264, 49265, 49267
260....48092
261....48092
268....48092
271....48092
372....46596, 47709
721....46921, 48346, 48347, 48348, 49269, 49271
745....46921

41 CFR

101–40....48972
101–49....46088

Proposed Rules:
105–57....46596
201–20....49005
201–39....49005

42 CFR

412....46270
413....46270
435....48611
436....48611
493....48323

Proposed Rules:
417....46925
433....49272
1001....49008

43 CFR

2....48973
3160....47354

Proposed Rules:
4....48815
1780....48815
4100....48815
5450....47241
5460....47847
5510....47847
8360....46151
9230....47847
9260....47847

Public Land Orders:
6989....48545
6995....48458
6996....48458

44 CFR

3....47218
206....47992, 47994
353....47996

45 CFR

205....49218
233....49218
400....46089

Proposed Rules:
301....47417
305....47417
607....46597
608....46600
1180....48622
1207....46602, 48424
1208....46602, 48424

46 CFR

171....47784

Proposed Rules:
10....48572
12....48572

47 CFR

2....49220
21....46547, 49220
22....46547, 49220
43....48323
61....48323, 48756
64....48752, 48756
65....48756
69....48756
73....46090, 46550, 46551, 48323, 48324, 48325, 48326, 48614
76....46718
94....46547, 49220
95....48459
97....47218, 48459

Proposed Rules:
32....49276
36....48816
64....48623
73....46152, 46605, 48349, 48820, 49278
76....46737

48 CFR

232....46091
252....46091
522....47398
552....47398
814....48973
833....48973
836....48973
852....48973
1807....48974
1808....47219
1832....48614
1852....47219
2017....47220
2052....47220

Proposed Rules:
215....47242
225....47243, 48484, 48545
252....47243, 48484, 48545
1815....47244
1831....47244
1852....47244

49 CFR

107....46872
171....47650
172....47650
173....47650
174....47650
179....47650
192....48460
571....46551, 46873
585....46551

Proposed Rules:
27....47681
173....48485
174....48485
180....48485
393....48624
571....46928, 46938, 47426, 47427, 48350
572....48350
1160....48628
1162....48628
1166....48628
1312....47104

50 CFR

17....49242, 49244
217....48797, 48975
222....48326
227....48326, 48797, 48975
285....48464
661....46093, 48001
663....46094, 47651
672....46095
675....47221, 47833

Proposed Rules:
17....46940, 47428, 47851, 48012, 48351, 49279
32....48732, 49382
100....46678
222....47710, 49352
227....46944, 47710, 49352
285....46153
625....47245
630....46153
641....48502
642....47428
650....46606
678....46153

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 19, 1993

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