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Briefings on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC
(two briefings)

WHEN: November 30 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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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[Docket No. FV93-967-1IFR; Amendment 1]

Celery Grown in Florida; Decreased Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized expenditures and established an assessment rate for the Florida Celery Committee (Committee) under Marketing Order No. 967 for the 1993-94 fiscal year. This interim final rule decreases the level of authorized expenses and reduces the assessment rate that generates funds to pay those expenses. Authorization of this decreased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1993, through July 31, 1994. Comments received by December 27, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, FAX 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or William J. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 813-299-4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 149 and Order No. 967, both as amended [7 CFR part 967], regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule is being issued in conformance with Executive Order 12866, and it has been determined that it is not a "significant regulatory action."

This interim final rule has been reviewed under Executive Order 12278, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida celery is subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable celery handled during the 1993-94 fiscal year, from August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately seven producers of Florida celery under this marketing order, and approximately seven handlers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Florida celery producers and handlers may be classified as small entities.

The budget of expenses for the 1993-94 fiscal year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Florida celery. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

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

The Committee met June 9, 1993, and unanimously recommended a 1993-94 budget of $90,000 and an assessment rate of $0.02 per crate. The expenses and assessment rate were published in the **Federal Register** as an interim final

rule July 16, 1993 [58 FR 38277]. That interim final rule added § 967.228, authorizing expenses and establishing an assessment rate for the Committee, and provided that interested persons could file comments through August 16, 1993. No comments were filed.

The committee budgeted $45,000 to the American Celery Council for promotional and merchandising activities. However, the Council is no longer in business. The Committee subsequently met on October 6, 1993, and unanimously recommended a decrease of $45,000 for promotion, merchandising, and public relations; reducing funding for the category to $15,000. This action reduces the total Committee budget for fiscal year 1993–94 to $45,000.

The Committee also unanimously recommended reducing the assessment rate by $0.01, for a total of $0.01. This rate, when applied to anticipated shipments of 4,500,000 crates, will yield $45,000 in assessment income. Funds in the Committee's authorized reserve as of July 31, 1992, were $27,853, which is within the maximum permitted by the order of one marketing year's expenses.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis;

(2) The fiscal year began on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Florida celery handled during the fiscal year;

(3) Handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and which is similar to budgets issued in past years; and

(4) This interim final rule provides a 30-day comments period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 967.228 is revised to read as follows:

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

§ 967.228 Expenses and assessment rate.

Expenses of $45,000 by the Florida Celery Committee are authorized, and an assessment rate of $0.01 per crate of assessable celery is established for the fiscal year ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: November 17, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–23805 Filed 11–23–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ASW–23]

Revocation of Class E Airspace: Berclair, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace at Berclair, TX. The Department of the Navy has canceled all standard instrument approach procedures (SIAP) serving the Naval Auxiliary Landing Field (NALF) Goliad Airport, Berclair, TX, making control of this airspace for instrument flight rule (IFR) operations unnecessary. The intent of this action is to revoke the controlled airspace extending upward from 700 feet above ground level (AGL), a transition area, since it is no longer needed to contain instrument flight rule (IFR) operations at this location.

EFFECTIVE DATE: 0901 u.t.c., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76 193–0530, telephone 817–624–5531.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the transition area at NALF Goliad Airport, Berclair, TX, was published in the **Federal Register** (58 FR 26268). The Department of the Navy has canceled all standard instrument approach procedures (SIAP) serving the NALF Goliad Airport. The airfield has been abandoned making control of this airspace for instrument flight rule (IFR) operations unnecessary. The intent of this action is to revoke the controlled airspace extending upward from 700 feet AGL, a transition area, that is no longer needed to contain IFR operations at this location. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet or more above ground level is now Class E airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Other than the change in terminology, this amendment is the same as that proposed in the notice.

Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be removed from the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Class E airspace at Naval Auxiliary Landing Field (NALF) Goliad, TX, that previously provided controlled airspace

from 700 feet AGL, a transition area, for aircraft executing all standard instrument approach procedure (SIAP) at NALF Goliad.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW TX E5 Berclair, TX [Removed]

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28842 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 91

[Docket No. 27314; Amendment No. 91–232]

RIN 2120–AE49

Special Federal Aviation Regulation No. 64; Special Flight Authorizations for Noise-Restricted Aircraft; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This final rule was published June 3, 1993 (58 FR 31640), and established a Special Federal Aviation Regulation that allows persons to bring noise-restricted aircraft into the United States under certain conditions without requesting an exemption. The publication of the rule contained errors in paragraph numbering. This document corrects those errors.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Laurette Fisher, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: 202–267–3561.

SUPPLEMENTARY INFORMATION: On June 3, 1993, the Federal Aviation Administration published a final rule that allows persons to bring noise-restricted aircraft into the United States under certain conditions without requesting an exemption. The publication of the rule contained errors in paragraph numbering and in a cross-reference. This document corrects those errors.

Accordingly, in **Federal Register** document number 93–13045, published June 3, 1993 at 58 FR 31640, make the following corrections:

1. On page 31641, column 2, in amendatory instruction number 2, the reference "Part 19" is corrected to read "Part 91".

2. On page 31641, column 2, in SFAR 64, in the fifth line from the bottom, the paragraph that begins "Contrary provisions of part 91," should be correctly designated as paragraph 1.

3. On page 31641, column 3, in SFAR 64, line 4, the reference "paragraph 3" is corrected to read "paragraph 2".

4. On page 31641, column 3, in SFAR 64, the paragraph designated 3. should be correctly redesignated as 2.

5. On page 31642, column 2, in SFAR 64, the paragraph designated 4. should be correctly redesignated as 3.

6. On page 31642, column 3, in SFAR 64, the paragraph designated 5. should be correctly redesignated as 4.

Issued in Washington, DC, on November 18, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 93–28823 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 100

[CGD 05–93–080]

Special Local Regulations for Marine Events; Holidays in the City Boat Parade and Fireworks Display; Town Point, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements special local regulations for the Holidays in the City Boat Parade and Fireworks Display. The event will consist of a boat parade of approximately 80 vessels and a fireworks display at the conclusion of the parade. The special local regulations are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 4:30 p.m. to 9 p.m., on November 27, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Boulevard, Portsmouth, Virginia 23703–2199 (804) 483–8559.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Thomas McK. Sparks, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

The Downtown Norfolk Council submitted an application to hold the Holidays in the City Boat Parade and Fireworks Display. The boat parade will be held in the Elizabeth River in the Town Point area between the Banana Landmass and the Berkley Bridge. The

fireworks display will be launched from Town Point Park. Since many spectator vessels are expected to be in the area to watch the boat parade and fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The waterway will be closed from 4:30 p.m. until 9 p.m. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501 for a total closure time in this case from 3:30 p.m. to 10 p.m. on November 27, 1993, except that the Coast Guard Patrol Commander may order that the draw be open for commercial vessels.

Date: November 15, 1993.

W.T. Leland,

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

[FR Doc. 93-28857 Filed 11-23-93; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 266

Privacy of Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service amends its Privacy Act regulations relating to disclosure of information to prospective employers about current or former employees. As amended, the regulation specifies the exact data elements that may be given to prospective employers without the employees' authorization to release and, more specifically, limits the terms that may be used when giving the reason for separation.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Officer (202) 268-2924.

SUPPLEMENTARY INFORMATION: On March 31, 1993, the Postal Service published in the **Federal Register** (58 FR 16806) proposed changes to its regulations at 39 CFR 266.4 to specify the exact data elements that may be given to prospective employers without the employee's authorization to release. As amended, the regulation will allow disclosure of the grade, duty status, length of service, job title, salary, and date and "reason for separation." Supporting policy in postal handbooks has stated that the reason for leaving as shown on Form 50, Notification of Personnel Action, may be given. Because such information contained on the Form 50 can be considered personal in nature, the amended regulation will limit disclosure to the reason for separation expressed in specific terms that do not have strong privacy implications. No comments were received regarding the proposed change. Consequently, the rule will be adopted as proposed except that the term "death" as a reason for separation has been dropped since this term generally would be inapplicable.

List of Subjects in 39 CFR Part 266

Privacy.

The rule will be adopted to read:

PART 266—PRIVACY OF INFORMATION

1. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Paragraph (b)(5) of § 266.4 is revised to read as follows:

* * * * *

(b) * * *

(5) *Employee Job References.* Prospective employers of a postal employee or a former postal employee may be furnished with the information in paragraph (b)(4) of this section, in addition to the date and the reason for separation, if applicable. The reason for separation must be limited to one of the following terms: retired, resigned, or separated. Other terms or variations of these terms (e.g., retired—disability) may not be used. If additional information is desired, the requester must submit the written consent of the employee, and an accounting of the disclosure must be kept.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93-28832 Filed 11-23-93; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E4010/R2017; FRL-4646-2]

RIN 2070-AB78

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

EFFECTIVE DATE: This regulation becomes effective November 24, 1993.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1E4010/R2017], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 18, 1993 (58 FR 43828), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New

Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 1E4010 to EPA on behalf of the Agricultural Experiment Station of California. The petition requested that the Administrator, purusant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) propose the establishment of a tolerance for residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine salt of glyphosate in or on the raw agricultural commodity celeraic, at 0.2 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

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

List of Subjects in 40 CFR Part 180

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

Dated: November 4, 1993.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

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

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

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

* * * * *

[FR Doc. 93-28729 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 0E2391/R2020; FRL-4648-9]

RIN 2070-AB78

Pesticide Tolerance for Phorate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for combined residues of the insecticide phorate (*O,O*-diethyl S[(ethylthio) methyl] phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) coffee beans. This regulation to establish the maximum permissible level for residues of the insecticide was requested by the American Cyanamid Co.

EFFECTIVE DATE: This regulation becomes effective November 24, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 0E2391/R2020], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6600.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 1, 1993 (58 FR 46150), EPA issued a proposed rule that gave notice that the American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, had submitted pesticide petition (PP) 0E2391 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose to establish a tolerance for the combined residues of the insecticide phorate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity coffee beans at 0.02 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the

objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

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

Dated: November 4, 1993.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is 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. In § 180.206 the commodity coffee beans is added to the list of commodities therein and the list is revised into a tabular format; as revised, the section reads as follows:

§ 180.206 Phorate; tolerances for residues.

Tolerances are established for combined residues of the insecticide phorate (*O,O*-diethyl *S*[(ethylthio) methyl] phosphordithioate) and its cholinesterase-inhibiting metabolites in or on raw agricultural commodities as follows:

Commodity	Parts per million
Alfalfa, fresh	0.5
Alfalfa, hay	1.0
Barley, grain	0.1
Barley, straw	0.1
Beans	0.1
Beans, vines	0.5
Bermuda grass, straw	0.5
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Coffee beans[1]	0.02
Corn, forage	0.5
Corn, grain	0.1
Corn, sweet (K + CWHR)	0.1
Cottonseed	0.05
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Hops	0.5
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Lettuce	0.1
Milk (negligible residue)	0.02
Peanuts	0.1
Peanuts, hay	0.3
Peanuts, vines	0.3
Potatoes	0.5
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Rice	0.1
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Sorghum, fodder	0.1
Sorghum, grain	0.1
Soybeans	0.1
Sugar beet, roots	0.3
Sugar beet, tops	3.0
Sugarcane	0.1
Tomatoes	0.1
Wheat, grain	0.05
Wheat, green fodder	1.5
Wheat, straw	0.05

[1]There are no U.S. registrations as of September 1, 1993 for coffee beans.

[FR Doc. 93-28733 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 8E3642/R2031; FRL-4740-5]

RIN 2070-AB78

Pesticide Tolerance for Beta-(4-Chlorophenoxy)-Alpha-(1,1-Dimethylethyl)-1H-1,2,4-Triazole-1-Ethanol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes 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 raw agricultural commodity (RAC) imported bananas (whole) at 0.2 part per million (ppm). This regulation to establish the maximum permissible level for residues of the fungicide was requested by Mobay Corp.

EFFECTIVE DATE: This regulation becomes effective November 24, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 8E3642/R2031], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 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: In the **Federal Register** of September 22, 1993 (58 FR 49265), EPA issued a proposed rule that gave notice that Mobay Corp., P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition (PP) 8E3642 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-*H*-1,2,4-triazole-1-ethanol, and its butanediol metabolite, 4-(4-chlorophenoxy)-2-dimethyl-4-(1*H*-1,2,4-triazol-1-yl)-1,3-butanediol, calculated as parent compound, in or on the RAC bananas at 0.2 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

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

Dated: November 3, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is 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.

* * * * *

[FR Doc. 93–28908 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 180 and 186

[PP 3F2794, FAP 4H5439/R2022; FRL–4650–1]

RIN No. 2070–AB78

Pesticide Tolerances for Dicamba

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its 5-hydroxy metabolite (3,6-dichloro-5-hydroxy-*o*-anisic acid), resulting from the application of the sodium salt in or on the raw agricultural commodity (RAC) cottonseed at 3.0 parts per million (ppm) and a feed additive regulation for the same chemicals in or on the animal feed commodity cottonseed meal at 6.0 ppm. These rules were requested by Sandoz Agro, Inc., and establish the maximum level for residues of the herbicide in or on this RAC and animal feed commodity.

EFFECTIVE DATE: These regulations become effective November 24, 1993.

ADDRESSES: Written objections, identified by the document control number [PP 3F2794, FAP 4H5439/R2022], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmentral Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 12, 1993 (58 FR 52757), EPA issued a notice that announced that the Sandoz Crop Protection Corp., Corporate Headquarters, 1300 East Touhy Ave., Des Plaines, IL 60018, had submitted amended petitions for PP 3F2794 proposing to establish tolerances for residues of the herbicide dicamba (3,6-dichloro-*O*-anisic acid) and its 5-hydroxy metabolite, resulting from the application of the sodium salt, on the raw agricultural commodity cottonseed at 3.0 ppm and amending FAP 4H5439 to establish a tolerance for the same herbicide for the animal feed item cottonseed meal at 6.0 ppm. EPA had previously issued a notice of the original filings for PP 3F2794 and FAP 4H5439 in the **Federal Register** of August 1, 1984 (49 FR 30790).

No comments were received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The dicamba toxicological data listed below were considered in support of these tolerances.

1. Several acute toxciology studies placing technical-grade dicamba in Toxicity Categtory I for eye irritation, Toxicity Category III for acute oral toxity, Toxicity Category IV for skin irritation, Toxicity Category III for acute dermal, and Toxicity Category IV for acute inhalation toxicity.

2. A subchronic feeding study in rats fed dosages of 1, 50, 250, and 500 milligrams per kilogram of body weight per day (mg/kg/bwt/day) with a no-observed-effect level (NOEL) of 250 mg/kg/day based on decreased weight and food consumption, absence or reduction of cytoplasmic vacuolation of hepatocytes indicating reduced glycogen storage at 500 mg/kg/day.

3. A 1-year feeding study with dogs fed dosages of 0, 2, 11, and 52 mg/kg/day with a NOEL of 52 mg/kg/day [highest dosage tested (HDT)].

4. A 2-year chronic feeding/carcinogenicity study in rats fed dosages

of 0, 2.5, 12.5, and 125 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 125 mg/kg/day (HDT) and a systemic NOEL of 125 mg/dg/day (HDT).

5. A 2-year chronic feeding/carcinogenicity study in mice fed dosages of 0, 5.6, 18, 115, and 360 mg/kg/day with no carcinogenic effects observed under the condition of the study at dose levels up to and including 360 mg/kg/day (HDT) and a systemic NOEL of 115 mg/kg/day based on decreased weight in females and increased mortality in males at 360 mg/kg/day.

6. A developmental toxicity study in rats fed dosages of 0, 64, 160, and 400 mg/kg/day with no clear evidence of developmental effects. The maternal NOEL of 160 mg/kg/day was based on reduced food consumption and deaths at 400 mg/kg/day.

7. A developmental toxicity study in rabbits fed dosages of 0, 1.0, 3.0, and 10 mg/kg/day with no developmental effects occurring, even at the highest dose tested. A fetotoxic NOEL of 3.0 mg/kg/day was based on reduced fetal body weight at 10 mg/kg/day. This study was used in calculation of the Reference Dose (RFD) formerly known as the accceptable daily intake (ADI).

8. Mutagenicity studies include in vitro unscheduled DNA synthesis (did not induce UDS with or without metabolic activation up to 3,000 micrograms/milliliter [ug/mL]); an Ames test (not mutagenic to any strains of Salmonella typhimurium); and an in vitro microbiological mutagenicity and DNA synthesis with E. coli (negative with or without metabolic activation at 1,000 ug/plate).

The RFD, based on a NOEL of 3.0 mg/kg/day established in a developmental study in rabbits and using an uncertainty factor of 100, is calculated to be 0.03 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and food or feed additive regulation is 0.004816 mg/kg/bwt/day for the overall U.S. population. The current action will increase the TMRC by 0.000062 mg/kg/bwt/day (0.2 percent of the RFD) for the overall U. S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action will increase the TMRC 0.000021 mg/kg body weight/day (.07% percent of the RfD) and 0.000112 mg/kg body weight/day (.37% of the RfD), respectively. This tolerance and feed additive regulation and previously established tolerances and food or feed additive regulations utilize a total of 16 percent of the RFD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances and food or feed additive regulations utilize, respectively, a total of 73 and 42 percent of the RFD, assuming that residue levels are at the established tolerances on food or feed additive regulation and that 100 percent of the crop is treated.

Data lacking include additional information on a chromosome aberration mutagencity study in Chinese hamster ovary cells, and the repeat of the two-generation rat reproduction study. The petitioner has been notified of the deficiencies. Despite the absence of these studies, EPA believes that the establishment of these tolerances will not significantly increase the risk posed by dicamba because the total increase in utilized RFD is less than 1 percent (0.21 percent).

Although dicamba itself has not been shown to be carcinogenic, chemical analysis of dicamba indicates that certain formulations may contain low levels of dimethyl-*N*-nitrosamine (DMNA) as an impurity. The contaminant dimethylnitrosoamine present in the formulation is due to the use of the dimethylamine (DMA) salt. The current proposed formulation change to the sodium salt negates this concern. Nitrosamine generation depends on the presence of a secondary amine as a substrate and a nitrating or a nitrosating agent. Neither is present in the sodium salt formulation; therefore, no nitrosamine risk will be present.

Because technical dicamba contains up to 50 parts per billion (ppb) of 2,7-dichlorodibenzo-*p*-dioxin (2,7-DCDD), the Agency has evaluated data on DCDD. The data evaluated included two carcinogenicity studies in which DCDD were fed to mice (at 750 and 1,500 mg/kg/day) and rats (at 250 and 500 mg/kg/day). Effects include marginal increased incidences of combination of leukemias and lymphomas, hemangiosarcomas and hemangiomas, and of hepatocellular carcinomas and adenomas in male B6C3F1 mice. These effects were "considered as suggestive of a carcinogenic effect of 2,7-dichlorodibenzo-*p*-dioxin in these animals," (Toxicology and Carcinogenesis Studies of 2,7-Dichlorodibenzo-*p*-dioxin. Report #123 (1979). NIH Pub #79-1378). A clear association between treatment and the noted liver tumors could not be made taking into account the study results and the historical incidences of these tumors. The incidences of the remaining tumors (leukemias and lymphomas, hemangiosarcomas and hemagiomas) were not dose related.

The National Toxicology Program Report of July 9, 1991 (NTIS #PB290570/AS) stated that the carcinogenic potential of DCDD was negative in male rats, negative in female rats, negative in female mice, and only equivocally positive (only possibly positive) in male mice. In addition, the International Toxicity Equivalency Factor (ITEF) for Di-dioxins is 0 according to NATO-CCMS (Committee on Challenge the ITEF of Risk Assessments for Complex Mixtures of Dioxin and Related Compounds) Update of TEF's dated February 1989 by Barnes, Ketz, and Bottimore. In light of these data, there is insufficient evidence to conclude that DCDD induces cancer in animals. The Agency has evaluated pertinent toxicology and residue information and has concluded that there is no potential carcinogenic risk to humans from a DCDD impurity in the dicamba to be used on cotton.

In developmental studies, it was reported that low incidence of cardiac lesions was observed in fetuses following the oral administration of 250 to 2,000 ug/kg/day of DCDD to female Wistar rats on days 6 to 15 of gestation; however, examination of sections of myocardium and pericardium from fetuses of female rats (strain not specified) adminstered 100 mg/kg/day on days 6 to 15 of gestation revealed no morphological differences from controls. Based on examination of these studies, the Agency has concluded that the residue levels from this compound will not pose a significant risk to the consuming public.

The pesticide is useful for the purposes for which the tolerances are sought and capable of achieving the intended physical or technical effect. The nature of the residue is adequately understood for the purpose of establishing these tolerances. Adequate analytical methodology (gas chromatography with an electron-capture detector) is available for enforcement purposes. This method is listed in the Pesticide Analytical Manual, Vol. II. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in milk, meat, fat, and meat byproducts and liver and kidney of cattle, goats, horses, hogs, and sheep from the use of dicamba on cotton will be covered by established tolerances for dicamaba and metabolite 3,6-dichloro-2-hydroxybenzoic acid on these commodities. No secondary residues are expected to occur in poultry or eggs from this use.

Based on the data and information cited above, the Agency has determined that the establishment of tolerances by amending 40 CFR parts 180 and 186 will protect the public health and that use of the pesticide in accordance with the feed additive regulation will be safe. Therefore, EPA is establishing the tolerances and feed additive regulation as described below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; the resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted these rules 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 Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: November 3, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follow:

PART 180—[AMENDED]

1. In part 180:

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

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

b. In § 180.227 by adding new paragraph (c), to read as follows:

§ 180.227 Dicamba; tolerances for residues.

* * * *

(c) A tolerance is established for the combined residues of dicamba (3,6-dichloro-*o*-anisic acid) and its 5-OH metabolite (3,6-dichloro-5-hydroxy-*o*-anisic acid), resulting from the application of the sodium salt of dicamba in or on the following raw agricultural commodity.

Commodity	Parts per million
Cottonseed	3.0

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.1800, to read as follows:

§ 186.1800 Dicamba.

(a) Tolerances are established for the combined residues of of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on the processed feeds when present therein as a result of application of this herbicide to growing crops.

Feed	Parts per million
Sugarcane molasses	2.0

(b) A tolerance is established for the combined residues of dicamba (3,6-dichloro-*o*-anisic acid) and its 5-OH metabolite (3,6-dichloro-5-hydroxy-*o*-anisic acid), resulting from the application of the sodium salt, to the growing crop in or on the following processed feed.

Feed	Parts per million
Cottonseed meal	6.0

[FR Doc. 93-28907 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7009

[AK-932-4210-06; AA-17983, AA-14907, AA-16671]

Partial Revocation of Executive Order No. 4257, Dated June 27, 1925; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 169.14 acres of National Forest System lands withdrawn for use by the Coast Guard, Department of Transportation, for the Amelius Island, Cliff Point, and Grand Island Lighthouses. The lands are no longer needed for the purpose for which they were withdrawn. This action also opens the Amelius Island Lighthouse land for selection by the State of Alaska, if such land is otherwise available. Any of this land that is not selected by the State will be open to such forms of disposition as may by law be made of National Forest system lands. Additionally, the Cliff Point Lighthouse land is part of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness, and the Grand Island Lighthouse is part of the Admiralty Island National Monument and Admiralty Island National Monument Wilderness, as established and designated by the Alaska National Interest Lands Conservation Act. The lands remain withdrawn from all forms of entry, appropriation, or disposal under the public land laws.

EFFECTIVE DATE: November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

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

1. Executive Order No. 4257, dated June 27, 1925, which withdrew National Forest System lands for lighthouse

purposes, is hereby revoked insofar as it affects the following described lands:

Copper River Meridian

Tongass National Forest

(a) Amelius Island Lighthouse

Land within sec. 6, T. 66 S., R. 75 E., described as:

Small island about 400 yards in diameter 1¾ nautical miles 147° true from Point Amelius. (Approximate latitude 56° 10½′ north, longitude 133° 52′ west.)

The area described contains approximately 20 acres.

(b) Cliff Point Lighthouse

Land within T. 71 S., R. 100 E., described as Tracts A, B, and C of U.S. Survey No. 1714, excluding the following parcel:

Beginning at a point on low water line, west shore of Portland Canal, 300 feet in a direct line, southerly, from the center of the concrete slab forming the foundation of Cliff Point Light;

Thence west true 300 feet;

Thence north true 600 feet;

Thence east true 150 feet, more or less, to an intersection with the low water line;

Thence southeasterly and southerly, following the windings of the low water line to point of beginning. This parcel contains approximately 3.6 acres.

The area described, less exclusion, contains approximately 89.76 acres.

(c) Grand Island Lighthouse

Land within T. 43 S., R. 69 E., described as Tracts A and B of U.S. Survey No. 1717, excluding the following parcel:

Beginning at a point on low water line, east shore of Grand Island, 300 feet in a direct line, southerly, from the center of Grand Island Beacon, a slatted tripod anchored to concrete piers;

Thence west true 300 feet;

Thence north true 400 feet more or less, to an intersection with low water line;

Thence southeasterly and southerly following the winding of the low water line to point of beginning. This parcel contains approximately 2.8 acres.

The area described, less exclusion, contains approximately 59.38 acres.

The areas described aggregate approximately 169.14 acres.

2. Subject to valid existing rights, the land described in paragraph 1(a) is hereby opened to selection by the State of Alaska under section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described in paragraph 1(a), for a period of ninety-one (91) days from the date of publication of this order, if such land is otherwise available. Any of the land described in paragraph 1(a) that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest reservation, and any other withdrawal of record.

4. At 10 a.m. on February 23, 1994, the land described in paragraph 1(a) will be opened to such forms of disposition as may by law be made of the National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. The land described in paragraph 1(b) is part of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness, and the land described in paragraph 1(c) is part of the Admiralty Island National Monument and Admiralty Island National Monument Wilderness pursuant to sections 503, 703, and 707 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2399, 2418, and 2421. The lands described will remain withdrawn from all forms of entry, appropriation, or disposal under the public land laws. Any lands described in paragraph 1(b) and 1(c) that may be outside of the Misty Fjords National Monument and the Misty Fjords National Monument Wilderness, or the Admiralty Island National Monument and Admiralty Island National Monument Wilderness, will remain withdrawn from all forms of entry, appropriation, or disposal under the public land laws until a further opening order is published.

Dated: November 2, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–28826 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–JA–M

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43 CFR Public Land Order 7010

[WY–930–4210–06; WYW 88891; WYW 128399]

Opening of Land, Under Section 24 of the Federal Power Act, in Geological Survey Order Dated August 5, 1955, Which Established Powersite Classification No. 433; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, a total of 220 acres of National Forest System lands withdrawn by a Geological Survey Order dated August 5, 1955, which established the Bureau of Land Management's Powersite Classification No. 433. This order will permit consummation of a pending land sale and also allows future land exchanges of Forest Service administered lands. The lands have been and continue to be open to mineral leasing, and under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: November 24, 1993.

FOR FURTHER INFORMATION CONTACT:

Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6127.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1988); and pursuant to the determinations by the Federal Energy Regulatory Commission in DVWY–182 and DVWY–188, it is ordered as follows:

1. At 9 a.m. on November 24, 1993, the following described National Forest System lands withdrawn by a Geological Survey Order dated August 5, 1955, which established Powersite Classification No. 433, will be opened to disposal by sale or exchange subject to the provisions of Section 24 of the Federal Power Act, as specified in Federal Energy Regulatory Commission determinations DVWY–182 and DVWY–188, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Sixth Principal Meridian

Bridger-Teton National Forest

T. 45 N., R. 112 W.,

Sec. 20, NE¼NE¼;

Sec. 21, W½NW¼NE¼, NE¼NW¼, and NW¼NW¼.

T. 38 N., R. 113 W.,

Sec. 29, N½NW¼.

The areas described aggregate 220 acres in Teton and Sublette Counties.

Dated: November 9, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–28828 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 232

Docket No. R-150

[RIN 2133-AB05]

Uniform Financial Reporting Requirements

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule to clarify its uniform financial reporting requirements applicable to the preparation and submission to MARAD of financial reports and other financial information by participants in MARAD financial assistance programs. These amendments will ensure that there is observance of generally accepted accounting principles in the keeping of financial records and the submission to MARAD of financial reports by these participants. Amendments also reflect changes in the MARAD organizational structure.

EFFECTIVE DATE: This final rule is effective December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Richard J. McDonnell, Director, Office of Financial Approvals, Maritime Administration, Washington, DC 20590. Telephone (202)366-5861.

SUPPLEMENTARY INFORMATION: The purpose of the regulations at 46 CFR part 232 is to provide direction to participants in MARAD's financial assistance programs in maintaining, in a uniform format, a chart of accounts which is the basis for the preparation of periodic financial reports and information that MARAD requires them to submit on Form MA-172. That format is derived from generally accepted accounting principles (GAAP), as promulgated by the Financial Accounting Standards Board of the American Institute to Certified Public Accountants. MARAD is amending its regulations to reflect many changes in the GAAP, including changes in terminology, that have occurred since these regulations were promulgated ten years ago, and to clarify its longstanding policy that required reporting to MARAD be in conformity with GAAP. Whenever a provision in these regulations could be construed to be in conflict with the requirements of GAAP, the requirements of GAAP shall prevail. Accordingly, when a change occurs in GAAP, e.g., a change in the name of an account, that change will now be deemed to be incorporated in these regulations without the need for a rulemaking.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12866, (September 30, 1993) and it has been determined that this is not a "significant regulatory action." It will not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

This rulemaking does not involve any change in important Departmental policies and is considered nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). Because the economic impact should be minimal, further regulatory evaluation is not necessary. Since this is a rule of agency procedure related to the format required for periodic financial reporting to MARAD, notice and public comment is not required pursuant to 5 U.S.C. 553(b)(3)(A).

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains reporting requirements that have previously been approved by the Office of Management and Budget (Approval No. 2133-005).

List of Subjects in 46 CFR Part 232

Maritime carriers, Reporting requirements, Uniform system of accounts.

Accordingly, 46 CFR part 232 is amended as follows:

1. The authority citation for 46 CFR part 232 is revised to read as follows:

Authority: Section 204(b), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b)); 49 CFR 1.66.

2. The table of contents is amended with respect to § 232.4 (A) Asset Accounts, as follows:

a. The title of account 160 is revised to read "Bad Debts."

b. The titles for accounts 360 and 380, respectively, are exchanged; and

c. The title of account 390 is revised to read "Intangible Assets".

3. Section 232.1, is amended by revising paragraph (b), to read as follows:

§ 232.1 Purpose and applicability.

* * * * *

(b) *Applicability.* This regulation is application to all participants in financial assistant programs administered by the Maritime Administration, U.S. Department of Transportation, that are required to file periodic financial reports with that agency.

4. Section 232.2 is amended as follows: a. In paragraph (a), after "generally accepted accounting principles," add "(promulgated by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants)", and remove the text that follows.

b. In paragraph (b), remove the words "the accounting principles contained in this part" and substitute the words "generally accepted accounting principles".

c. Remove existing paragraph (c) and redesignate paragraphs (d) through (f) as paragraphs (c) through (e), respectively.

d. In newly designated paragraph (d), substitute the name, "Office of Financial Approvals", for the "Office of Financial Management".

e. Revise the newly designated paragraphs (c) and (e), respectively, to read as follows:

§ 232.2 General instructions

* * * * *

(c) *Reconciliation of financial reports.* When a program participant issues certified financial statements following accounting policies different from those followed for the financial statement filed with the Maritime Administration (such as reports filed with the Securities and Exchange Commission, public service commissions or other regulatory agencies, or reports using other acceptable accounting methods differing from methods used for this regulation's purposes), the program participant shall clearly set forth the nature and amount of each adjustment necessary to reconcile the published statements with those filed with the Maritime Administration.

* * * * *

(e) *Effective Date.* This regulation is effective as of December 27, 1993 and its requirements are mandatory for financial reports for accounting periods ending on or after December 31, 1993.

§ 232.3 [Amended]

5. Section 232.3, Chart of Accounts, is amended in paragraph (a) by removing the word, "basis", and substituting the word, "guide", and by adding a sentence at the end to read, "However, whenever there is a conflict between the meaning of any term used in the Chart of Accounts in this part 232 and that stated in any revision to generally accepted accounting principles, the meaning of the latter shall control and shall be followed."

6. Section 232.4 is amended as follows:

a. In paragraph (b)(A)(*2*)(i), substitute the words, "a related party", for "an affiliated company."

b. In paragraph (b)(A)(*5*), revise the heading to read" 160 Allowance for Bad Debts."

c. In paragraphs (b)(A)(*8*)(i) and (iv) substitute the words, "related parties", for "affiliated companies".

d. In paragraph (h)(a)(*8*)(i), substitute the words "related parties" for the word "affiliates".

e. Redesignate existing paragraph (b)(A)(*11*) as paragraph (b)(A)(*10*) and redesignate existing paragraph (b)(A)(*10*) as paragraph (b)(A)(*11*). Revise the heading of newly designated (b)(A)(*10*) to read "360 Deferred Charges" and revise the heading of newly designated (b)(A)(*11*) to read "380 Other Assets". In newly designated paragraph (b)(A)(*11*), in the first sentence of the text, remove the "(i)" at the beginning and the words "including deferred charges," and, in the last sentence of that paragraph, substitute the words, "related parties", for "affiliated companies", which words appear twice, separated by a comma.

e. In paragraph (b)(A)(*12*), revise the heading to read *390 Intangible Assets.*

f. In paragraph (b)(B)(*1*)(ii), substitute the words, "related parties", for "affiliated companies."

g. Paragraph (b)(A)(*3*)(ii), (b)(A)(*4*)(ii) and (b)(A)(*8*)(ii) are revised to read as follows:

§ 232.4 Balance Sheet Accounts

* * * * *

(b) * * *

(A) *Asset Accounts.*

(1) * * *

(*3*) *140 Notes receivable.*

(i) * * *

(ii) Separate subaccounts shall be used to segregate notes receivable from related parties.

(*4*) *150 Accounts Receivable.*

(i) * * *

(ii) Separate subaccounts shall be used to segregate trade or traffic receivables, claims receivables and miscellaneous receivables. Receivables arising from transactions with related parties shall also be segregated.

* * * * *

(*8*) *310 Investments.*

(i) * * *

(ii) Separate subaccounts shall be maintained for the various investments, including those resulting from related party transactions.

* * * * *

7. Section 232.5 is amended as follows:

a. In paragraph (b)(E)(*1*)(ii) remove the text beginning after the third semi-colon with the words "hull and machinery insurance costs", and ending with the words "second seamen's insurance premiums", preceding the fourth semi-colon, and substitute the following text, "hull and machinery insurance costs, including premium expense, deductibles which have been incurred or paid, protection and indemnity insurance, including premium expense, personal injury and illness deductibles which have been incurred or paid, and second seaman's insurance premiums".

b. In paragraph (b)(E)(*1*)(iii), remove the words, "direct costs", and substitute the words, "expenses directly".

c. Revise paragraph (b)(E)(*11*)(i) to read as follows:

§ 232.5 Income Statement Accounts

* * * * *

(b) * * *

(e) * * *

(11) *990 Cumulative Effect of Change in Accounting Policy.*

(i) This account shall be used to report the cumulative effect of a change in accounting policy or a change required under generally accepted accounting principles.

* * * * *

By Order of the Maritime Administrator.

Dated: November 17, 1993.

Joel Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 93–28704 Filed 11–23–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 93–22, FCC 93–489]

Interstate Pay-Per-Call Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: The Commission adopted this Order to delay the effective date of its regulation requiring common carriers transmitting and billing interstate pay-per-call services to display all charges for such services separately from local or long distance telephone charges. This regulation was scheduled to take effect on November 1, 1993. The Commission delayed the effective date until January 1, 1994 to avoid the disruption and confusion that would result if carriers are unable to complete modifications to their billing systems by the required deadline.

EFFECTIVE DATE: Section 64.1510 (a)(2)(ii) and (b) is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Spangler, Enforcement Division, Common Carrier Bureau, 202–632–4890.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in CC Docket No. 93–22 (FCC 93–489), adopted and released on October 29, 1993. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC. The full text of this Order may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Order

1. On October 29, 1993, the Commission adopted and released an Order in CC Docket No. 93–22, summarized here, which extends the effective date of certain regulations applicable to billing of interstate pay-per-call charges. Specifically, acting on its own motion, the Commission reconsidered the effective date of the

"separate billing" requirements contained in § 64.1510 (a)(2)(ii) and (b), 47 CFR 64.1510 (a)(2)(ii), (b), and extended that date from November 1, 1993 to January 1, 1994. The separate billing requirement compels interexchange carriers (IXCs) carrying and billing for interstate pay-per-call services to list all charges for such services separately from charges related to local or long distance telephone services.

2. In extending the effective date of that requirement, the Commission observed the apparent difficulty of some carriers in completing the modifications to billing systems necessary to list pay-per-call charges separately by November 1, 1993, and the disruption likely to flow from failure to meet such requirements.[1] To avoid violating the separate billing requirements of Section 64.1510, an IXC would be required to (1) cease transmitting pay-per-call services, either entirely or, to the extent possible, selectively for those particular regions where billing cannot be accomplished as required; or (2) continue transmission of pay-per-call services but defer billing until compliance is assured. The Commission observed that either option could threaten the financial stability and, quite possibly, even the survival of some producers of pay-per-call services, since revenue would be either deferred or completely lost. In addition, consumers would not be well served if familiar pay-per-call programs are no longer available or if bills are not rendered until significantly after the services were used.

3. The Commission concluded that consumers would not be substantially harmed by a 60 day extension of separate billing requirements given other pay-per-call regulations mandating actions by IXCs that are designed to promote consumer awareness on pay-per-call matters. Nonetheless, the Commission found an extension beyond 60 days to be unwarranted. In addition, the Commission also let stand the requirement that all IXC bills for interstate pay-per-call charges rendered after November 1, 1993 include a brief disclosure statement informing subscribers of their pay-per-call rights and responsibilities in the manner set forth in § 64.1510 (a)(2)(i)

4. Accordingly, *it is ordered*, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that effectuation of Sections 64.1510 (a)(2)(ii), (b) is extended from November 1, 1993 until January 1, 1994.

5. *It is further ordered*, That, because of the action taken herein on our own motion, the Petitions filed by the parties identified in footnote 1 are dismissed.

6. *It is further ordered*, pursuant to Section 1.103(a) of the Commission's rules, 47 CFR 1.103(a), that this Order is effective upon release.[2]

List of Subjects in 47 CFR Part 64

Communications common carriers, Computer technology, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–28768 Filed 11–23–93; 8:45 am]

BILLING CODE 6712–01–M

[1] Thirteen parties have requested or supported waiver of the November 1 effective date with respect to certain provisions in Section 64.1510. *See* AllTel Service Corporation Comments in Support of AT&T's Petition for Limited Interim Waiver on an Expedited Basis (Oct. 27, 1993); American Telephone and Telegraph Company (AT&T) Petition for Limited Interim Waiver on an Expedited Basis (Oct. 20, 1993); Cincinnati Bell Telephone (CBT) Petition for Temporary Limited Waiver (Oct. 20, 1993); GTE Service Corporation's Comments in Support of AT&T (Oct. 22, 1993); MCI Telecommunications Corporation Petition for Limited Waiver (Oct. 26, 1993); National Telephone Cooperative Association Comments in Support of AT&T's Petition for Limited Waiver (Oct. 27, 1993); New England Telephone and Telegraph Company Petition for Limited Waiver (Oct. 25, 1993); North State Telephone Company Petition for Limited Waiver (Oct. 27, 1993); Quintrex Data Systems Corp. Comments in Support of AT&T's Petition for a Temporary Limited Waiver (Oct. 27, 1993); Sprint Corporation Petition for Limited Waiver (Oct. 27, 1993); United States Telephone Association Comments on Petitions for Waiver and Petition for Limited Extension of Compliance Dates to Match Any Extension Granted to Interexchange Carriers (Oct. 25, 1993); U S West Petition for Reconsideration (Sep. 24, 1993). In addition, on October 27, 1993, the Information Industry Association filed a letter supporting the carriers' requests.

[2] Because the rule change we have adopted herein relieves a restriction, the normal 30 day notice period is not required. 5 U.S.C. 553(d)(1). In any event, because of the emergency nature of our action, there is good cause for immediate effectuation. See 5 U.S.C. 553(d)(3).

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Defense Federal Acquisition Regulation Supplement; Reduction in Progress Payment Rates

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement to reduce the customary progress payment rate for large businesses from 85 percent to 75 percent for solicitations issued on or after November 11, 1993. This includes awards to large businesses under foreign military sales (FMS) contracts.

DATES: *Effective Date:* November 11, 1993.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on or before January 24, 1994, to be considered in formulation of the final rule. Please cite DFARS Case 93–D305 in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, OUSD(A)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8155 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139), requires the Department of Defense to reduce the customary progress payment rate for large businesses from 85 percent to 75 percent for all solicitations issued on or after November 11, 1993.

The language in DFARS 232.501–1 and the clause at 252.232–7004 is revised accordingly. Table 32–1 at DFARS 232.502–1–71 also is revised to preclude use of flexible progress payments in contracts resulting from solicitations issued on or after November 11, 1993.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because the reduction in the customary progress payment rate applies only to large businesses. While the statute, in effect, also placed a ceiling of 75 percent on flexible progress payments, DoD does not expect the ceiling to have a significant economic impact on small entities because the customary progress payment rates for small and small disadvantaged businesses generally are significantly more favorable than a flexible progress payment rate with its associated terms and conditions.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the interim rule does not impose any reporting or recordkeeping requirements

which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. Section 8155 of the FY 1994 Defense Appropriation Act (Pub. L. 103–139), was effective upon enactment on November 11, 1993. Therefore, it is essential that it be implemented as expeditiously as possible.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

PART 232—CONTRACT FINANCING

2. Section 232.501–1(a)(i) is revised to read as follows:

232.501–1 Customary progress payment rates.

(a)(i) The customary uniform progress payment rate for DoD contracts is 75 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses.

* * * * *

3. Section 232.502–1–71 is amended by revising Table 32–1 to read as follows:

232.502–1–71 Customary flexible progress payments.

TABLE 32–1. CUSTOMARY UNIFORM PROGRESS PAYMENT RATES

Contract award date	Uniform rate	Investment percentage	Cash flow model
Prior to May 1, 1985	90	5	CASH–II
May 1, 1985 through October 17, 1986	80	15	CASH–III
October 18, 1986 through September 30, 1988	75	25	CASH–IV
October 1, 1988 through June 30, 1991	80	20	CASH–V
After June 30, 1991*	85	20	CASH–VI**

* Flexible progress payments shall not be used for contracts awarded as a result of solicitations issued on or after November 11, 1993.
** See paragraph (b)(5)(ii) for implementation instructions.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.232–7004 is amended by revising the introductory text, the clause heading, and paragraph (a) to read as follows:

252.232–7004 DoD Progress Payment Rates.

As prescribed in 232.502–4–70 (b) and (c), use the following clause:

DOD Progress Payment Rates (Nov 1993)

(a) If the contractor is a large business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Actions)* to 75 percent.

* * * * *

[FR Doc. 93–28815 Filed 11–23–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for a Florida Plant, Jacquemontia Reclinata

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Jacquemontia reclinata* (beach jacquemontia) pursuant to the Endangered Species Act of 1973 (Act), as amended. This vine is native to coastal barrier islands in southeast Florida from Miami northward to Palm Beach County. The vast majority of the habitat originally occupied by this species has been destroyed by urban development. The protection and recovery provisions afforded by the Act for *Jacquemontia reclinata* are implemented by this final rule.

EFFECTIVE DATE: December 27, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904–232–2580).

SUPPLEMENTARY INFORMATION:

Background

Jacquemontia reclinata was described as a new species by Homer D. House based on specimens collected by John Kunkel Small and Joel J. Carter on "Bull Key, opposite Lemon City, in November, 1903" (Small 1905). Lemon City is in the City of Miami, on Biscayne Bay 3 miles north of downtown; Bull Key was located at northern Miami Beach. House's treatment of this taxon as a distinct species was upheld by Robertson (1971). Although Small (1933) considered this plant's range to extend into the West Indies, Austin (1979) considers it endemic to the east coast of Florida.

Jacquemontia reclinata is a perennial vine whose stems are about 1 meter (3 feet) long and usually sprawl on the ground (i.e, are reclinate), though the stems may twine on other plants. The leaves are fleshy, with smooth margins and are elliptic to rounded egg-shaped, 1–3 centimeters (0.4–1 inch) long, with the leaf tips blunt or indented. Younger leaves and stems are pubescent enough to appear whitish. The flowers are in the

axils of the leaves, in groups or solitary. The flower's outer sepals have tiny hairs along their margins—a character that separates this species from *Jacquemontia curtissii*. The white corolla is shaped like a broad funnel or is nearly flat, 2.5–3 centimeters (1–1.2 inches) in diameter, with five broad lobes. The fruit is a capsule. This is the only species of *Jacquemontia* found near the beaches of southeastern Florida (Austin 1979). The other species of *Jacquemontia* on the mainland of southern Florida is *Jacquemontia curtissii*, which inhabits pinelands and has hairless sepals and narrower leaves that are not fleshy. Two more species of *Jacquemontia* occur in the Florida Keys (Small 1933).

Jacquemontia reclinata is restricted to the barrier islands of the southeastern Florida coast. Information on its distribution has been assembled from the Florida Natural Areas Inventory (FNAI) database, a careful recent survey of Florida's coastal upland vegetation communities (Johnson et al. 1990), a subsequent survey by Daniel Austin (1991), and reports to the Florida Natural Area Inventory by Carol Lippincott (Fairchild Tropical Garden) and Theodore O. Hendrickson (Fort Lauderdale).

A specimen identified as *Jacquemontia reclinata* was collected in a cypress swamp 10 miles west of the town of Hobe Sound; the specimen is probably *Stylisma villosa* (Austin 1991). Olga Lakela and others made numerous collections of *Jacquemontia reclinata* from Jupiter Island in Palm Beach and Martin Counties, but the species can no longer be found there. Austin (1991) confirmed that local naturalists have not seen the plant on Jupiter Island, which is largely a manicured residential area, and that it is not known to occur at Blowing Rocks Preserve or at Hobe Sound National Wildlife Refuge. *Jacquemontia reclinata* was collected at South Coral Cove Park, Jupiter Island, Palm Beach County, in 1962 but was not found in 1990; the park had suffered severe beach erosion and had a large number of Australian pines (*Casuarina equisetifolia*) that could shade out native species (Johnson et al. 1990).

Jacquemontia reclinata is presently known to occur at 12 sites, 11 of them publicly owned, in the following counties: Palm Beach (8 sites), Broward (2 sites), Dade (2 sites). All but one of the sites are public parks or recreation areas operated by State, county, or local governments. The only site in private ownership is in Broward County, and had just one plant (Johnson et al. 1990; Austin 1991; T. Hendrickson, Fort Lauderdale, *in litt.* to Florida Natural Areas Inventory, 1991; P. McVety, Fla. Dept. Natural Res,, *in litt.* 1993).

Jacquemontia reclinata is an inhabitant of disturbed or sunny areas in the tropical maritime hammock (hardwood forest) or the coastal strand vegetation, typically with sea grape (*Coccoloba uvifera*) and other shrubs and dwarfed trees. It usually occurs with more or less weedy plants such as Madagascar periwinkle (*Catharanthus roseus*) and sand spurs (*Cenchrus* spp.). It occasionally occurs in the beach dune community with sea oats (*Uniola paniculata*) (Johnson et al. 1990; A. Johnson, FNAI, *in litt.*, 1990; Austin 1991; Lippincott 1990).

The historic role of hurricanes in creating bare sites for *Jacquemontia reclinata* to colonize can be surmised from the effects of human-induced disturbances and the effects of the August 1992 hurricane (Andrew) on natural populations at Key Biscayne and Virginia Key and introduced populations at Miami Beach. The Virginia Key population was thriving after the hurricane (McVety, *in litt.* 1993). The remnants of south Florida's strand vegetation have been heavily affected by invading exotic plants, including Australian pine (*Casuarina equisetifolia*), carrotwood (*Colubrina asiatica*), and Brazilian pepper (*Schinus terebinthifolius*). Native understory plants generally do not persist beneath these invaders.

Jacquemontia reclinata has been propagated from seed at Fairchild Tropical Garden and is thriving in cultivation at the Garden despite the hurricane. It appears that reintroductions of this species can be conducted relatively easily, as shown by a pilot project in Dade County (C. Lippincott, Fairchild Tropical Garden, *in litt.*, 1990, 1991).

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. *Jacquemontia reclinata* was included in these documents as a threatened species. On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Jacquemontia reclinata* as a category 1 candidate (a taxon for which the Service has on file substantial data on biological vulnerability and threats to support proposing to list it as an endangered or threatened species). A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed this species to a category 2 candidate (a taxon for which data in the Service's possession indicates listing is possibly appropriate); the species retained category 2 status in a notices of review published September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Jacquemontia reclinata* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1989, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of the proposal to list this species on March 18, 1993, constituted the final petition finding.

Summary of Comments and Recommendations

In the March 18 proposed rule (58 FR 25746) 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. A newspaper notice that invited general public comment was published in the *Sun-Sentinel* (Fort Lauderdale, Broward County, Florida; Boca Raton, Palm Beach County, Florida; Miami, Dade County, Florida) on April 6, 1993, and in the *Palm Beach Post* (West Palm Beach, Palm Beach County, Florida) on April 4, 1993. Three comments were received from two State agencies and one local government. All three comments supported the proposal, and a comment from the Florida Department of Natural Resources pointed out the discovery of a population in Dade County after Hurricane Andrew.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Jacquemontia reclinata* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Jacquemontia reclinata* (beach jacquemontia) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The barrier islands of the Florida east coast in the range of *Jacquemontia reclinata* from Jupiter Island to Key Biscayne (a distance of 85 miles) are entirely urbanized, except for a few small parks and private estates. Johnson et al. (1990) inventoried all tracts of coastal vegetation of 10 or more acres in southeast Florida. They found only 24 such tracts in the known range of *Jacquemontia reclinata*, 5 of them entirely or mostly in private ownership. These tracts have approximately 214 acres of beach strand vegetation in public ownership, 26 acres in private ownership, as well as 66 acres of maritime hammock, all in public ownership. The beach strand and maritime hammock vegetation is the primary habitat of *Jacquemontia reclinata*; the destruction of the vast majority of this habitat and modifications to the remnants (for parking lots, pedestrian routes, picnic areas, and other park uses) as well as loss to beach erosion at some sites (Johnson et al. 1990, Pilkey et al. 1984) seriously threatens the continued existence of the species.

Habitat degradation due to invasion of exotic plant species, including Australian pine, Brazilian pepper, and carrotwood has adversely affected *Jacquemontia reclinata*. A site in northern Palm Beach County is being overgrown by Brazilian pepper; another *Jacquemontia* colony was nearly destroyed between 1970 and 1991 by the expansion of a large stand of carrotwood (Austin 1991). Mowing, possible herbicide use, and other park maintenance practices also threaten *Jacquemontia reclinata*, especially because it occurs with weedy herbaceous plants and grasses.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None known.

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

Jacquemontia reclinata is listed as an endangered species on the Florida Regulated Plant Index (Florida Department of Agriculture and Consumer Services Rule Chapter 5B–40). The list was formerly part of the Preservation of Native Flora of Florida law (section 581.185–187, Florida Statutes). The Regulated Plant Index regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act provides further protection through section 7, recovery planning, and the Act's additional penalties for taking of plants in violation of Florida law.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The limited geographic distribution, the fragmentation of remaining habitat into small segments isolated from each other, and the small sizes of *Jacquemontia reclinata* populations make it doubtful that any of the existing populations are viable (for an example of a population viability analysis for a plant, see Menges (1990)). Typically, only a few *Jacquemontia* plants are present at a given site (Johnson et al. 1990; D. Austin, Florida Atlantic Univ., pers. comm., 1991). As a result, germplasm conservation (seed storage or a garden population) appears essential. Additionally, the southeast Florida coast is subject to frequent hurricanes.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Jacquemontia reclinata* as an endangered species. As discussed under Factor E, this species is likely to become extinct throughout its range within the foreseeable future, meeting the Act's requirements for listing as an endangered species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. Title 50, part 424 of the Code of Federal Regulations, § 424.12(1) states that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. Both situations apply to *Jacquemontia reclinata*.

All of the populations of *Jacquemontia reclinata* are very small and localized, typically only several plants. All but one are in public parks. If critical habitat were designated, it would need to be described in great detail, specifying precise locations of populations so as to exclude park facilities and vegetation unsuited to this species. Although unauthorized removal of *Jacquemontia reclinata* plants from parks is subject to Federal penalties under the Endangered Species Act, in addition to those provided in Florida law, such prohibitions are difficult to enforce, and publication of critical habitat descriptions and maps would only add to the threats faced by this species.

Critical habitat designation also would not be beneficial in terms of adding additional protection for the species under section 7 of the Act beyond that already available through listing the species. Regulations promulgated for the implementation of section 7 provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Because of the highly limited distribution of *Jacquemontia reclinata* and its precarious status, any Federal action that would destroy or have any significant adverse affect on its habitat would likely result in a jeopardy biological opinion under Section 7. Under these conditions, no additional benefits would accrue from designation of critical habitat that would not be available through listing alone.

All involved parties have been notified of the location and importance of protecting this species' habitat. In the case of public parks, the Service's experience with other endangered plants such as *Amorpha crenulata* (crenulate lead-plant) in Dade County, and *Asimina tetramera* (four-petal pawpaw) in Palm Beach County, shows that the affected park managers are informed and responsive to the needs of endangered plants without the designation of critical habitat.

Because *Jacquemontia reclinata* occurs primarily in public parks, the Service will work directly with park managers and other public officials to ensure the conservation of this species.

The only privately owned, otherwise unprotected tract known to be inhabited by *Jacquemontia reclinata* is protected in the Coastal Barrier Resource System (designated pursuant to the Coastal Barrier Resources Act, Pub. L. 97–348). The existing protection provided for *Jacquemontia reclinata* habitat, combined with the potential for problems with take, leads to the conclusion that designating critical habitat would provide no benefit to the plant beyond listing, and might increase threats to it. For this reason, the Service considers designation of critical habitat not to be prudent. The Service will address protection of this species' habitat through the recovery process, and through the section 7 jeopardy standard in the event of Federal involvement.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The populations of *Jacquemontia reclinata* on public lands in its range will require careful management and a carefully managed program of propagation, germplasm conservation and augmentation of existing populations. Fairchild Tropical Garden and the Center for Plant Conservation have begun such a program. Control or extirpation of exotic pest plants such as Australian pine and Brazilian pepper may be necessary or desirable to protect existing populations of *Jacquemontia reclinata* or to restore former habitat.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 for endangered plants, set forth a series of general prohibitions and exceptions for all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale listed species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits will be sought or issued because *Jacquemontia reclinata* is currently not sold or traded across state lines. Sale or distribution of cultivated specimens within Florida does not require a Federal permit. Trade within Florida could occur because this species is desirable for use in oceanfront parks and may be useful in oceanfront landscaping. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington VA 22203 (703/358–2104).

National Environmental Policy Act

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

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Author

The primary author of this rule is Mr. David Martin (see **ADDRESSES** section).

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 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.

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Convolvulaceae, to the List of

Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

(h) * * *

* * * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Convolvulaceae—Morning-glory family:						
*	*	*	*	*	*	*
Jacquemontia reclinata	Beach jacquemontia	U.S.A. (FL)	E	523	NA	NA
*	*	*	*	*	*	*

Dated: September 29, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–28867 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930615–3215; I.D. 111793A]

Summer Flounder Fishery

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

ACTION: Notification of commercial quota transfer.

SUMMARY: NMFS issues this notification to announce that 125,000 pounds (56,700 kg) of summer flounder commercial quota available to the State of North Carolina has been transferred to the Commonwealth of Virginia. This transfer allows Federally permitted summer flounder vessels to land in Virginia until the total adjusted state quota is attained. This notification advises the public that a quota adjustment has been made and the adjusted commercial quota for the State of North Carolina is 3,131,750 pounds (1,420,552 kg), and for the Commonwealth of Virginia is 2,882,623 pounds (1,307,549 kg).

DATES: Effective November 19, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 625 (December 4, 1992, 57 FR 57358). The regulations require an annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20.

The commercial quota for summer flounder for the 1993 calendar year was set equal to 12.35 million pounds (5.6 million kg) (January 22, 1993, 58 FR 5658). The percent allocated to each state was adjusted by Amendment 4 to the Fishery Management Plan for the Summer Flounder Fishery (September 24, 1993, 58 FR 49937) with 21.31676 percent or 2,632,623 pounds (1,194,150 kg) allocated to Virginia, and 27.44584 percent, or 3,389,565 pounds (1,537,497 kg) allocated to North Carolina.

An emergency interim rule published August 26, 1993, (58 FR 45075) allows two or more states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1) in the evaluation of requests for quota transfers or combinations.

Further, the Regional Director is required to publish a notification in the **Federal Register** advising a state, and notifying Federal vessel and dealer permit holders that, effective upon a specific date, a portion of a state's commercial quota has been transferred to or combined with the commercial quota of another state.

North Carolina and Virginia have agreed to transfer 125,000 pounds (56,700 kg) of North Carolina's commercial quota to Virginia. This transfer is in addition to the transfer of 125,000 pounds (56,000 kg) from North Carolina to Virginia on November 3, 1993 (November 8, 1993, 58 FR 59196), and 7,815 pounds (3,545 kg) which were transferred from North Carolina to New Jersey on November 18, 1993.

The Regional Director has determined that the criteria set forth in § 625.20 have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 1993 are: North Carolina—3,131,750 pounds (1,420,552 kg); Virginia—2,882,623 pounds (1,307,549 kg).

Classification

This action is authorized by 50 CFR part 625.

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

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: November 18, 1993.

Joe P. Clem,

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

[FR Doc. 93–28851 Filed 11–19–93; 1:20 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 225
Wednesday, November 24, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–90; Notice No. SC–93–6–NM]

Special Conditions: Cessna Aircraft Company, Model 560 Block Point Change, S.N. 560–0260 and on, Airplanes, Lightning and High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company (Cessna), Model 560 Block Point Change, S.N. 560–0260 and on, airplanes. These new airplanes will utilize new avionics/electronic systems that perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–90, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–90. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–90." The postcard will be date stamped and returned to the commenter.

Background

On December 2, 1992, Cessna Aircraft Company (Cessna), applied for an amended type certificate in the transport airplane category for the Model 560 Block Point Change, S.N. 560–0260 and on, airplanes. The Cessna Model 560 Block Point Change is a modified Cessna Model 560. The two Pratt and Whitney, Canada, JT15D–5A engines will be replaced with JT15D–5D turbo fans which will have an increase of approximately 5 percent thrust. Two 8×7-inch primary flight instrument displays (PFD) at the pilot's station and an 8×7-inch Multifunction Display (MFD) (without engine indication and crew alerting system (EICAS)) will be installed in the center panel as standard equipment. Copilot's standard instruments will be an electro-mechanical attitude system driven by the VG–14 gyro and an electro-mechanical horizontal situation indicator (HSI) driven by the C–14D gyro. An option is offered to replace these copilot instruments with a copilot's 8×7-inch display. A Honeywell Primus 1000, digital autopilot/flight director system will be installed. This system will operate in conjunction with a suite of Collins radios (dual Com, Dual Nav, dual distance measuring equipment (DME), dual Mode S Transponder, and automatic direction finder (ADF)). Optional available avionics will be a second ADF, emergency locator transmitter (ELT) and cockpit voice recorder (CVR).

The Cessna 560 Block Point Change will also include adhesive bonded cabin side stringers, rather than riveting. Other structural, thermal and acoustic improvements will be installed. The zero fuel weight will increase from 11,200 pounds (lbs.) to 11,700 lbs., the ramp weight will increase from 16,100 lbs. to 16,500 lbs., and the takeoff weight will increase from 15,900 lbs. to 16,300 lbs.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, except as provided in § 25.2, the certification basis of the Model 560 Block Point Change, S.N. 560–0260 and on, will include the applicable provisions of part 25, as amended by Amendments 25–1 through 25–17; §§ 25.251(e), 25.934, and 25.1091(d)(2) as amended through Amendment 25–23; § 25.1401 as amended through Amendment 25–27; § 25.1387 as amended through Amendment 25–30; §§ 25.787, 25.789, 25.791, 25.853, 25.855, 25.857, and 25.1359 as amended through Amendment 25–32; §§ 25.1303(a)(2) and 25.1385(c) as amended through Amendment 25–38; § 25.305 as amended through Amendment 25–54; § 25.1001 as amended through Amendment 25–57; part 34 of the FAR; part 36 of the FAR as amended by Amendments 36–1 through 36–18. Also included in the certification basis are Special Conditions 25–25–CE–4 and 25–ANM–21. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis.

For the Honeywell Primus 1000, compliance will be shown with the following regulations: §§ 25.1301, 25.1303(b), 25.1322 as amended through Amendment 25–38, §§ 25.1309, 25.25.1321(a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335 as amended through Amendment 25–41.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 560 Block Point Change because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Model 560 Block Point Change, S.N. 560–0260 and on, incorporates new avionic/electronic installations, including two 8x7-inch PFD at the pilot's station, an 8x7-inch MFD (without EICAS) in the center panel, an optional copilot's 8x7-inch display, a Honeywell Primus 1000 digital autopilot/flight director system to operate in conjunction with a suite of Collins radios (dual Com, Dual Nav, dual DME, and ADF) and optional second ADF. These systems may be vulnerable to lightning and high-intensity radiated fields external to the airplane.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Cessna Model 560 Block Point Change, S.N. 560–0260 and on, which would require that new technology electronic systems, such as the primary instrument flight displays, multifunction display, digital autopilot/flight director, etc., be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these proposed special conditions, clarification of the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment, which has been changed to agree with the latest recommendation from the Society of Automotive Engineers (SAE) AE4L lightning committee.

The lightning current waveforms (Components, A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard that is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses that represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists or repetitive Component H waveforms in 3 sets of 20 pulses each. The

minimum time between individual Component H pulses within a burst in 50 microseconds, the maximum is 1,000 microseconds. The 3 bursts are distributed according to the following constraints: (1) The minimum period between subsequent bursts is 30ms, and (2) the maximum period between subsequent bursts is 300ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst (Component H).

These components are defined by the following double exponential equation:

$i(t)=I_o (e^{-at} - e^{-bt})$

where:

t=time in seconds,

i=current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and,					
$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5µs	1.0×10^{11} @t=.25µs	0.5×10^{11} @t=.25µs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	0.625×10^6	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 KHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Cessna Model 560 Block Point Change, S.N. 560–0260 and on, series airplanes.

1. *Lightning Protection:* (a) Each new or modified electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of new or modified electronic systems or installations must be protected to ensure that the essential function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* (a) Each new or modified electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. For the purpose of these special conditions, the following definitions apply:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a

failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on November 12, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 93-28834 Filed 11-23-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ASW-52]

Proposed Establishment of Class D and Class E Airspace: Fort Sill, OK

AGENCY: Federal Aviation Administration (FAA), Dot.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to maintain Class D airspace and establish Class E airspace at Fort Sill, OK. This proposal is initiated in response to a request by local aircraft operators to divide the current Lawton, OK, Class D airspace between Lawton Municipal Airport, Lawton, OK., and Henry Post Army Air Field (AAG), Fort Sill, OK. Controlled airspace from the surface is needed at Fort Sill on a continuous basis to contain instrument flight rules (IFR) operations at Henry Post AAF. Therefore, during the hours the Fort Sill air traffic control tower is in operation, Class D airspace will be in effect, and during nonoperational hours, Class E airspace, will be in effect. The intended effect of this proposal is to provide adequate controlled airspace to contain IFR operations at Fort Sill, OK.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93-ASW-52, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: 817-624-5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, as self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93-ASW-52." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to maintain Class D airspace during tower operations and establish Class E airspace during non-tower operations at Fort Sill, OK. This proposal would separate the current Lawton, OK, Class D airspace into two sections, thus creating independent Class D airspace for Fort Sill, OK, and also establishing Class E airspace, i.e., controlled airspace from the surface when the Fort Sill control tower is closed. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zones" and replaced it with the designation "Class D airspace." Controlled airspace from the surface without an operating control tower is designated as Class E surface areas. The intended effect of this proposal is to provide adequate controlled airspace to contain IFR operations at Fort Sill, OK.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 and Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: General

* * * * *

ASW OK D Fort Sill, OK [New]

Henry Post Army Air Field, OK
(lat. 34°39′00″ N., long. 98°24′07″ W.)
Trail NDB
(lat. 34°46′53″ N., long. 98°24′08″ W.)
Lawton VOR/DME
(lat. 34°29′46″ N., long. 98°24′47″ W.)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4-mile radius of Henry Post AAF and within 1.3 miles each side of the 181° bearing from the Trail NDB extending from the 4-mile radius to 6.2 miles north of the Henry Post AAF and within 1.2 miles each side of the 003° radial of the Lawton VOR/DME extending from the 4-mile radius to 4.7 miles north of the Henry Post AAF excluding that airspace within Restricted Areas R–5601A and R–5601B when these restricted areas are activated and excluding that airspace south of a line between lat. 34°36′18″ N., long. 98°20′33″ W. and lat. 34°37′16″ N., long. 98°28′29″ W. This Class D surface area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

ASW OK E2 Fort Sill, OK [New]

Henry Post AAF, OK
(lat. 34°39′00″ N., long. 98°24′08″ W.)
Trail NDB
(lat. 34°46′53″ N., long. 98°24′08″ W.)
Lawton VOR/DME
(lat. 34°29′46″ N., long. 98°24′47″ W.)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4-mile radius of Henry Post AAF and within 1.3 miles each side of the 181° bearing from the Trail NDB extending from the 4-mile radius to 6.2 miles north of the Henry Post AAF and within 1.2 miles each side of the 003° radial of the Lawton VOR/DME extending from the 4-mile radius to 4.7 miles north of the Henry Post AAF excluding that airspace within Restricted Areas R–5601A and R–5601B when these restricted areas are activated and excluding that airspace south of a line between lat. 34°36′18″ N., long. 98°20′33″ W. and lat. 34°37′16″ N., long. 98°28′29″ W.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28835 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–45]

Proposed Modification of Class E Airspace: Chickasha, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Chickasha, OK. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed for the Chickasha Municipal Airport. Controlled airspace extending upward from 700 feet above ground level is needed for aircraft executing the SIAP. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rule (IFR) operators executing the established SIAP.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–45, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit,with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–45." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief, Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace located at Chickasha, OK. A standard instrument approach procedure (SIAP) based on the Chickasha nondirectional radio beacon (NDB) has been established. Controlled

airspace extending upward from 700 feet or more above the ground is needed for IFR operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace from 700 feet above ground level is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rule (IFR) operators executing the NDB SIAP at Chickasha Municipal Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above ground are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedure and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW OK E Chickasha, OK [Revised]

Chickasha Municipal Airport, OK
(lat. 35°05'46" N., long. 97°57'58" W.)
Chickasha NDB
(lat. 35°06'27" N., long. 97°58'30" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Chickasha Municipal Airport and within 2.5 miles each side of the 017 bearing from the Chickasha NDB extending from the 6.5-mile radius to 7.5 miles north east of the airport.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffice Division, Southwest Region.

[FR Doc. 93–28833 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–53]

Proposed Modification of Class D Airspace: Clinton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class D airspace at Clinton-Sherman Airport, Clinton, OK. The proposed modification would increase the vertical limits of the Class D airspace because the primary users of the airport are military jet trainers that need higher traffic pattern altitude to properly conduct their training. The intended effect of this proposal is to provide adequate Class D airspace to contain all instrument flight rules (IFR) operations at Clinton-Sherman Airport, Clinton, OK.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–53, Department of Transportation, Federal Aviation Administration, Fort Worth TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3: p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participated in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–53." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530. Communications must

identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment of part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace at Clinton-Sherman Airport, Clinton, OK. The proposed modification would expand the vertical limits of the airport traffic area. Currently the upper limit is 4000 feet MSL and 4500 feet is required to adequately contain all operations at the airport. The primary users of this airport are military jet trainers, that need a higher traffic pattern altitude to properly conduct their training. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "airport traffic area" for controlled airspace at an airport with an operating control tower and replaced it with the designation "Class D airspace." The intended effect of this proposal is a provide adequate Class D airspace to contain IFR operations and to require two-way radio communications at Clinton-Sherman Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 15, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: Class D Airspace

* * * * *

ASW OK D Clinton-Sherman, OK [Modify]

Clinton-Sherman Airport, OK
(Lat. 35°20′23″ N., long. 99°12′02″ W.)
Burns Flat VORTAC
(Lat. 35°14′13″ N., long. 99°12′22″ W.)

That airspace extending upward from the surface to and including 4,500 feet MSL within a 4.7-mile radius of the Clinton-Sherman Airport and within 1.1 miles each side of the 003° radial of the Burns Flat VORTAC extending from the 4.7-mile radius to 6.1 miles south of the airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28841 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–51]

Proposed Modification of Class D Airspace: Lawton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the current Class D airspace at Lawton, OK. This proposal is initiated in response to a request by local aircraft operators to separate the current Class D airspace encompassing both Lawton Municipal Airport, Lawton, OK and Henry Post Army Airfield, Fort Sill, OK, into two separate areas of Class D airspace. The intended effect of this proposal is to allow more flexibility in reclassifying each individual area of airspace, particularly during times when the towers are nonoperational, by separating the Lawton, OK, Class D airspace into two areas of Class D airspace; one area covering Lawton Municipal Airport, Lawton, OK, and the other area covering Henry Post Army Airfield, Fort Sill, OK.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–51, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a

self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93-ASW-51." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace at Lawton, OK. The proposal would separate the Class D airspace at Lawton Municipal Airport, Lawton, OK, formally the Lawton control zone, from the Class D airspace at Henry Post Army Airfield, formally the Fort Sill control zone Fort Sill, OK. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone" and replaced it with the designation "Class D airspace." The intended effect of this proposal is to allow more flexibility in reclassifying each individual area of airspace, particularly during times when the towers are nonoperational, by separating the Lawton, OK, Class D airspace into two areas of Class D airspace; one area covering Lawton Municipal Airport, Lawton, OK, and the other area covering Henry Post Army Airfield, Fort Sill, OK. A similar action concurrently is being proposed for the airspace surrounding Henry Post Army Airfield.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact if so minimal. Since this is a routine matter that will only affect air traffic procedures and an navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: Class D Airspace

* * * * *

ASW OK D Lawton, OK [Modify]

Lawton Municipal Airport, OK
(lat. 34°34'04" N., long. 98°25'00" W.)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4.3-mile radius of the Lawton Municipal Airport excluding that airspace north of a line between lat. 34°36'18" N., long. 98°20'33" W. and lat. 34°37'16" N., long. 98°28'29" W. This Class D surface area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93-28844 Filed 11-23-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ASW-44]

Proposed Establishment of Class E Airspace: Bentonville, AR and Rogers, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Bentonville, AR, and Rogers,AR. In response to user request to enhance safety and increase services, such as standard instrument departure (SID) procedures, controlled airspace to the surface, a control zone, is needed to contain instrument flight rules (IFR) operations at the airports. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone." Airspace extending upward from the surface of an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing established standard instrument approach procedures (SIAP) and SID's at these airports.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93-ASW-44, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal

Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "**ADDRESSES.**" Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–44." The postcard will be dated and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Bentonville, AR, and Rogers, AR. In response to numerous user requests to enhance safety and services, airspace extending upward from the surface of an airport without an operating control tower, a control zone, is needed to contain IFR operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone." Airspace extending upward from the surface, including any arrival extensions, of an airport without an operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing established SIAP.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002: Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASW AR E Bentonville, AR, and Rogers, AR [NEW]

Bentonville Municipal/Louise M. Thadden Field, AR
(lat. 36°20′74″ N., long. 94°13′16″ W.)
Razorback VOR
(lat. 36°14′79″ N., long. 94°07′28″ W.)

That airspace within a 3.9-mile radius of Bentonville Municipal Airport and within 2.2 miles each side of the 322 radial of the Razorback VOR extending from the 3.9-mile radius to 6.0 miles southeast of the airport excluding that airspace east of a line (lat. 36°24′25″ N., long. 94°10′55″ W.) and lat. 36°16′50″ N., long. 94°08′00″ W.)

Rogers Municipal/Carter Field, AR
(lat. 36°22′34″ N., long. 94°19′17″ W.)
Razorback VOR
(lat. 36°14′79″ N., long. 94°07′28″ W.)

That airspace within a 4.0-mile radius of Rogers Municipal/Carter Field and within 2.2 miles each side of the 005 radial of the Razorback VOR extending from the 4.0-mile radius to 5.7 miles south of the airport excluding that airspace west of a line (lat. 36°24′25″ N., long. 94°10′55″ W.) and (lat. 36°16′50″ N., long. 94°08′00″ W.).

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28836 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–39]

Proposed Revision of Class E Airspace: DeRidder, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the 700 feet above ground level (AGL) Class E Airspace at DeRidder, LA. An

airport surveillance approach (ASR) standard instrument approach procedure (SIAP) has been developed for Beauregard Parish Airport, and controlled airspace extending upward from 700 feet (AGL), a transition area, is needed to contain instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet AGL at an airport where there is no operating control tower is now designated Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the newly established SIAP.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–39, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "ADDRESSES." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–39." The postcard will be dated and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at DeRidder, LA. A standard instrument approach procedure (SIAP) has been developed for Beauregard Parish Airport and controlled airspace extending upward from 700 feet AGL is needed to contain instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace designated from 700 feet AGL, including any arrival extensions, for an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the ASR SIAP at Beauregard Parish Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulation that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * * *

ASW LA DeRidder, LA [Revised]

Beauregard Parish Airport, LA
(Lat. 30°50′02″ N., Long. 93°20′22″ W.)
Runway 36
(Lat. 30°49′22″ N., Long. 93°20′15″.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Beauregard Parish Airport and within 3.1-miles each side of the 179 bearing

from the approach end of Runway 36 extending from the 6.7-mile radius to 6.9-miles south of the airport.

* * * * *

Issued in Fort Worth, TX on November 8, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93-28837 Filed 11-23-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ASW-37]

Proposed Revision of Class E Airspace: Venice, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class E airspace extending upward from 700 feet above ground level (AGL), a transition area, at Venice, LA. A Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed at Tiger Pass Seaplane Base, and controlled airspace extending from 700 feet above ground level (AGL), a transition area, is needed to contain aircraft executing the approach. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending from 700 feet or more AGL is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Tiger Pass Seaplane Base, Venice, LA.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93-ASW-38, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: 817-624-5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93-ASW-37." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace extending upward from 700 feet above ground level, a transition area, located at Venice, LA. A Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed for Tiger Pass Seaplane Base. Controlled airspace extending from 700 feet above ground level (AGL), a transition area, is needed to contain instrument flight rule (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above ground level is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Tiger Pass Seaplane Base, Venice, LA.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas for airports extending from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 21

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows;

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW Louisiana E5 Venice, LA [Revised]

Tiger Pass Seaplane Base, LA
(latitude 29°15′22″ N., longitude 89°21′18″ W.)
Venice RBN
(latitude 29°07′07″ N., longitude 89°12′20″ W.)
Garden Island Bay Seaplane Base, LA
(latitude 29°05′46″ N., longitude 89°11′53″ W.)
Tiger Pass NDB
(latitude 29°16′18″ N., longitude 89°21′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Garden Island Bay Seaplane Base, within 6.7-mile radius of Tiger Pass Seaplane Base, and within 2 miles each side of the 344 bearing from the Venice RBN extending from the 6-mile radius to 8.4 miles northwest of the seaplane base.

* * * * *

Issued in Fort Worth, TX on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28843 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–48]

Proposed Establishment of Class E Airspace: Claremore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Claremore, OK. Two standard instrument approach procedures (SIAP) have been developed for Claremore Municipal Airport, and controlled airspace extending upward from 700 feet above the surface, a transition area, is needed to contain instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet above ground level will use the term "Class E airspace" for general controlled airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Claremore, OK.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–48, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76 193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "**ADDRESSES.**" Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–48." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76 193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Claremore, OK. Two very high frequency omnidirectional range/distance measuring equipment (VOR/DME) SIAP's have been developed for Claremore Municipal Airport and controlled airspace extending upward from 700 feet above the surface, a transition area, is needed to contain IFR operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR executing the VOR/DME SIAP's at Claremore Municipal Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW OK 5 Claremore, OK [New]

Claremore Municipal Airport, OK
(lat. 36°17'40" N., long. 95°26'46" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Claremore Municipal Airport.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28845 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN Number: 1215–AA

Claims for Medical Benefits Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor proposes revisions to the rules establishing the procedure for submitting medical bills for reimbursement. These procedures include a fee schedule for medical procedures and services provided to injured federal employees under the Federal Employee's Compensation Act (FECA). The fee schedule was established in 1986 and in devising the standards used, the Department relied heavily on the system already established by the State of Washington, which at that time was one of the few comprehensive fee schedules in use that employed a nationally recognized coding scheme. The regulations specifically require the use of the relative value units (RVUs) and other factors developed by Washington State. Effective September 1, 1993, however, Washington State adopted a version of those devised by the Department of Health and Human Services, Health Care Financing Administration (HCFA). See Medicare Program: Fee Schedule for Physicians's Service for Calendar Year 1993, published November 25, 1992 (57 FR 55914). The Office of Workers' Compensation Programs (OWCP) proposes to change its regulations to: adopt the HCFA RVUs where applicable; eliminate the requirement to use the Washington State conversion factors; and allow the use of Geographic Practice Cost Indices (GPCIs) developed by the Urban Institute for HCFA to determine geographic adjustment factors. The rules also eliminate the requirement for original signatures on the bill.

DATES: Written comments must be submitted on or before January 24, 1994.

ADDRESSES: Send written comments to Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, room S–3229, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 219–7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Telephone (202) 219–7552.

SUPPLEMENTARY INFORMATION: The Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* establishes the workers' compensation system for Federal workers and provides in part that the United States shall furnish:

> * * * The services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation * * *.

The expenses for such services, when authorized and approved by the Secretary, are paid out of the Employees' Compensation Fund. In March, 1986 the Office of Workers' Compensation Programs (OWCP), which administers the FECA under the authority granted by the Secretary, implemented a schedule of maximum allowable charges for most medical services provided to injured workers.

See 51 FR 8276, for a complete explanation of the background and purpose of the schedule. Under this system individual procedures are assigned a descriptor code using the Physicians's Current Procedural Terminology (CPT) scheme developed by the American Medical Association (AMA). Each code is then assigned a relative value unit (RVU) reflecting the relative skill, effort, risk, and time required to perform the procedure. The maximum allowable amount payable for a given service is calculated by multiplying the RVU by a conversion factor (CF). This product is in turn multiplied by a geographic index (GI) which allows for regional variations in medical costs. The fee schedule formula is:

RVU X CF X GI=Maximum allowable charge

As originally formulated, the schedule relied on elements devised by the State of Washington's Division of Labor and Industry, which in 1986 had one of the first comprehensive fee schedules. The existing rules reflect that reliance by specifying that the Department of Labor will adopt the Washington State RVUs, as well using the conversion factors. See 20 CFR 10.411(d)(3). (The geographic index, however, is devised by OWCP using its own analysis).

The components of the fee schedule have served OWCP well since 1986, with some updating from time to time. For example, the RVUs have had to be updated annually consistent with revisions published by the State of

Washington and the current edition of the CPT. In 1991, however, when Washington State delayed the adoption of new CPT codes for evaluation and management, OWCP developed its own values for these commonly used procedures. Additionally, the Department modified the conversion factors established by Washington, using the Medicare Economic Index (MEI) to adjust the conversion factors. See notice published at 57 FR 5189 (February 12, 1992).

In 1991 the nation's largest medical payment system, the Health Care Financing Administration (HCFA), published its own fee schedule which, like FECA, is truly nationwide in scope (56 FR 59502). Furthermore, the State of Washington announced on July 1, 1993, that it was adopting a new fee schedule based on HCFA's RVUs for physicians' services. It has, however, adapted that HCFA system to meet the limited geographic scope and other factors peculiar to the Washington State workers' compensation program.

The Department now has rules requiring it to use the Washington State RVUs and conversion factors that are now peculiar modifications of the NCFA system. The Department proposes to adopt elements of the HCFA fee schedule directly. This decision is based on the following:

(1) The HCFA fee schedule was developed with the assistance of a number of experts inside and outside the government;

(2) Like the existing OWCP system, this fee schedule is national in scope and includes geographic adjustment factors;

(3) Updates to the HCFA fee schedule are published on a yearly basis;

(4) The use of the HCFA relative value units furthers standardization among federal agencies; and

(5) The HCFA fee schedule is familiar to health care providers. The specific elements of the HCFA schedule that the Department would adopt are the RVUs and the geographic adjustment factors.

Relative Value Units

The Department will assign HCFA's RVUs to all those services for which there are published RVUs. These include physician's evaluation and management services, surgical and medical procedures, radiology services and some professional pathology services.

HCFA, however, has not published RVUs for all physicians services, because the procedures are reimbursed according to a different mechanism, such as anesthesia and clinical pathology services, or because HCFA does not reimburse for the particular services at all. Where there is no HCFA RVU, (particularly when the services involved are billed frequently in the FECA program), the Department proposes to develop RVUs based on internal data or external information such as the Medicare revised Clinical Laboratory Fee Schedule, National Limits.

Geographic Adjustment Factors

The present geographic indices will be replaced by the Geographic Practice Cost Indices (GPCIs) developed by the Urban Institute under a HCFA-sponsored research effort (Cooperative Agreement No. 17–C–99222/3–01, 3839–03–1, February 1991, Refining the Malpractice Geographic Practice Cost Index). The GPCIs adjust each of the three components of the RVUs (Physician work, practice expense and malpractice costs) for each CPT. These GPCIs were developed for three geographic localities: state, MSA and rural area, and Medicare pricing localities. The Department will continue to use geographic localities designated by MSAs for application of GPCIs, since Medicare pricing localities are career specific. In accordance with HCFA's rule, however, the Department will use values reflecting one-quarter of the difference in the cost of physicians' own time across geographic areas.

Finally, the conversion factors described in the **Federal Register** (see 57 FR 5186) will be changed to accommodate the change in scale of the relative unit values. As noted earlier, the conversion factors used by Washington State have already been modified by OWCP, as described in that notice. The rules, which provide that OWCP use the Washington State conversion factor, have been changed to eliminate this requirement.

Signature Authority

The proposed rules also change the provision requiring that the medical provider sign the billing form. Technological changes since this rule was established have resulted in the practice of electronic transmission of medical bills and other similar practices and as a result, signatures do not appear on many bills submitted. The signature requirement is therefore being eliminated. The fact that a signature is not required, however, in no way lessens the responsibility of the provider to ensure that services for which reimbursement is claimed were provided as described, were necessary, and that the amount claimed is otherwise proper. Submission of the bill and/or acceptance of payment constitute agreement by the provider to comply with all aspects of the FECA-related rules relating to billing and services.

Statutory Authority

5 U.S.C. 8149 provides the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Federal Employees' Compensation Act.

5. U.S.C. 8145 provides that the Secretary of Labor shall administer the Act, may appoint employees to administer it, and may delegate powers conferred by the Act to any employee of the Department of Labor.

5 U.S.C. 8103 (a) and (b) specifies that the Secretary may approve or authorize "necessary and reasonable" expenses to be paid from the Employees' Compensation Fund; may issue regulations governing the provision of services, appliances and supplies; and may prescribe the form and content of the authorization certificate.

Classification

The Department of Labor has concluded that this proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866.

Paperwork Reduction Act

The information collection requirements entailed by the proposed regulations have previously been approved by OMB.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). Although this rule will be applicable to small entities it should not result in or cause any significant economic impact, since the changes in the method of calculating the maximum allowable payments will not result in a significant difference in the outcome from that in the present method. The Secretary has so certified to the Chief Counsel for Advocacy of the Small Business Administration. Accordingly no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Labor, Workers Compensation.

For the reasons set out in the preamble, it is proposed that part 10 of Chapter I of title 20 of the Code of Federal Regulations be amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

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

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8149; Secretary's Order 1–93. 58 FR 21190.

2. Section 10.411 is amended by revising paragraphs (b) and (d)(3) to read as follows:

§10.411 Submission of bills for medical services, appliances and supplies; limitation on payment for services.

* * * * *

(b) By submitting a bill and/or accepting a payment, the physician or other medical provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the physician or other provider thereby agrees to comply with all rules and regulations set forth in this subchapter concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

* * * * *

(d) * * *

(3) The Director shall assign the relative value units (RVUs) published by the Health Care Financing Administration (HCFA) to all services for HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may and assign that he/she considers to be appropriate RVUs. The Director will also devise conversion factors for each category of service, and in devising such factors the Director may adapt the HCFA conversion factors as appropriate using OWCP processing experience and internal data. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA by the Urban Institute and published February 1, 1991, as *Refining the Malpractice Geographic Cost Index*, as updated or revised from time to time.

* * * * *

Signed at Washington, DC, this 18th day of November 1993.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 93–28771 Filed 11–23–93; 8:45 am]

BILLING CODE 4510–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD23–1–5897; A–1–FRL–4805–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery at Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking action to propose approval of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, as a revision to the Maryland State Implementation Plan (SIP) for ozone. On January 18, 1993, the State of Maryland submitted a SIP revision request to EPA to satisfy the requirements of the Clean Air Act (the Act), which requires all ozone nonattainment areas classified as moderate or worse to require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment to control volatile organic compound (VOC) emissions from vehicle refueling. This revision applies to the Maryland portion of the Philadelphia and Washington, DC ozone nonattainment areas and to the Baltimore ozone nonattainment area. This action is being taken in accordance with the SIP submittal and revision provisions of the Act.

DATES: Comments must be received by December 27, 1993.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, at (215) 597–9337.

SUPPLEMENTARY INFORMATION: Under section 182(b)(3) of the Act, EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement.[1] In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

In Maryland, there are three ozone nonattainment areas, the Baltimore, Philadelphia, and Washington, DC nonattainment areas. The Baltimore nonattainment area is classified as severe, and includes Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties. The Philadelphia nonattainment area is also classified as severe, and contains only one county in Maryland, Cecil County. The Washington, DC nonattainment area is classified as serious, and includes Calvert, Charles, Frederick, Montgomery, and Prince George's Counties. Maryland has no moderate ozone nonattainment areas. See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.347. Under section 182(b)(3) of the Act, Maryland was required to submit Stage II vapor recovery rules for these areas by November 15, 1992.

On January 18, 1993, the Maryland Department of the Environment submitted to EPA Stage II vapor recovery rules for the Baltimore nonattainment area, and the Maryland portion of the Philadelphia and Washington, DC nonattainment areas. These rules were adopted by the State on January 18, 1993 and became effective on February 15, 1993. By today's action, EPA is proposing to approve this submittal as meeting the requirements of section 182(b)(3) of the Act. EPA has reviewed Maryland's submittal against the statutory requirements and for consistency with EPA guidance. A summary of EPA's analysis is provided below. A more detailed analysis of Maryland's January 18, 1993 submittal is contained in a technical support document prepared for this revision, which is available from the Regional office, identified in the ADDRESSES section.

I. Applicability

Under section 182(b)(3) of the Act, states were required by November 15, 1992 to adopt regulations requiring

[1] These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Maryland has adopted Stage II measures for the Baltimore nonattainment area, and the Maryland portion of the Philadelphia and Washington, DC nonattainment areas, as required by the Act (COMAR 26.11.24.02A).

Section 182(b)(3)(A) of the Act specifies that Stage II controls must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the Act defines an ISBM. Maryland has adopted a general applicability requirement for gasoline dispensing facilities with an average throughput of over 10,000 gallons per month and has provided an applicability requirement of 50,000 gallons per month for ISBMs (COMAR 26.11.24.02).

As more fully discussed in EPA's Enforcement Guidance and the General Preamble (57 FR 13514), Maryland has provided thatthe gallons of gasoline dispensed per month will be calculated as the average volume dispensed per month for the 2-year period prior to state adoption of the regulation, excluding any time periods when the facility was shut down (COMAR 26.11.24.01B(9) and 26.11.24.03)). Maryland has specified that the Stage II requirement apply to all gasoline dispensing facilities, including retail outlets and fleet fueling facilities (COMAR 26.11.24.01B(7)). In addition, Maryland's regulations cover all new facilities, regardless of gasoline throughput or ISBM ownership, which have a total storage tank capacity of at least 2000 gallons (COMAR 26.11.24.01B(10) and 26.11.24.02C(2)). This covers virtually all new facilities. Furthermore, Maryland requires any existing facility which was exempted because its average monthly throughput fell below the appropriate applicability threshold in COMAR 26.11.24.02 to install and operate Stage II within one year after any calendar year in which its throughput exceeds the applicability threshold (COMAR 26.11.24.07D).

Section 324(c) of the Act establishes a statutory definition of an ISBM. Maryland has adopted the statutory definition of an ISBM in its regulations (COMAR 26.11.24.01B(8)).

II. Implementation of Stage II

The Act specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an ISBM, these times, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990, (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) 2 years for all other facilities. For ISBMs, section 324(a) of the Act provides that the time periods may be: (1) 33 percent of the facilities owned by an ISBM by the end of the first year after the regulations take effect, (2) 66 percent of such facilities by the end of the second year, and (3) 100 percent of such facilities after the third year.

Maryland's regulations are consistent with these requirements, even though Maryland did not adopt its regulations until January 18, 1993. Compliance dates are established as specified above, as if the regulations were adopted on November 15, 1992. The submitted regulation provides that facilities must install and operate Stage II by: (1) May 15, 1993 for facilities for which construction began after November 15, 1990, (2) November 15, 1993 for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) November 15, 1994 for all other facilities. For ISBMs, Maryland's regulations require compliance by: (1) November 15, 1994 for ISBMs who own 1 or 2 facilities and (2) November 15, 1995 for ISBMs who own 3 or more facilities, if at least one third are in compliance by November 15, 1993, and two thirds are in compliance by November 15, 1994 (COMAR 26.11.24.03).

III. Additional Program Requirements

Maryland's regulation does not explicitly require that Stage II equipment be tested and certified to meet a 95 percent emission reduction efficiency. However, this is required implicitly, because Maryland's regulation requires Stage II systems to be certified by the California Air Resources Board (COMAR 26.11.24.01B(1)). This is consistent with EPA guidance.

Maryland requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification (i.e. replacement of at least 75 percent more of an approved system) of a facility (COMAR 26.11.24.04).

With respect to recordkeeping, Maryland has adopted those items recommended in EPA's guidance, and specifies that sources subject to Stage II must make the following documents available upon request: (1) A license or permit to install and operate a Stage II system, (2) results of verification tests, (3) equipment maintenance and compliance file logs indicating compliance with manufacturer's specifications and requirements, (4) training certification files, and (5) inspection and compliance records issued by the State. In addition, Maryland requires facilities that are not subject to Stage II to maintain files containing the gasoline throughput of the facility (COMAR 26.11.24.07).

Maryland has also established an inspection function consistent with that described in EPA's guidance. Maryland plans to conduct inspections of facilities including a visual inspection of the Stage II equipment and of the required records and a functional test of the Stage II equipment. Maryland has indicated that it plans to inspect each facility at least 1 time per year with follow-up inspections at non-complying facilities. Finally, Maryland has established procedures for enforcing violations of the Stage II requirements, including a penalty schedule. These provisions are outlined in the supporting documentation which Maryland prepared for this SIP revision submittal.

Proposed Action

Because EPA believes that Maryland has adopted a Stage II regulation in accordance with section 182(b)(3) of the Act, as interpreted in EPA's guidance, EPA is proposing approval of the addition of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, as a revision to Maryland's SIP.

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

Regulatory Process

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.

SIP approvals under section 110 and subchapter I, part D of the Act do not

create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)-(K) and 110(a)(3), and Part D of the Act, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations; Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 21, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 93–28902 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN27–1–5749; FRL–4806–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes approval of a State Implementation Plan (SIP) request for Vermillion County, Indiana. The request was submitted by the State of Indiana for the purpose of attaining the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). The request was submitted by the State to satisfy Clean Air Act (Act) requirements for an approvable nonattainment area PM SIP for Vermillion County, Indiana.

DATES: Comments on this proposed action must be received in writing by December 27, 1993.

ADDRESSES: Copies of the State's submittal and other materials relating to this proposed action are available at the following address for review: (It is recommended that you telephone David Pohlman at (312) 886–3299, before visiting the Region 5 office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 1, 1987 (52 FR 24634), the U.S. EPA revised the NAAQS for particulate matter (40 CFR 50.6). U.S. EPA replaced Total Suspended Particulate (TSP) as an indicator for the particulate matter ambient standard with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The 24-hour primary TSP standard was replaced by a 24-hour PM standard of 150 micrograms per cubic meter (μ/g^3), with no more than one expected exceedance per year. The annual primary TSP standard was replaced by a PM standard of 50 μ/g^3 expected annual arithmetic mean. The secondary TSP standards were replaced by 24-hour and annual PM standards that are identical to the primary standards. These standards were promulgated pursuant to sections 108 and 109 of the Act, 42 U.S.C. 7408, 7409. Section 110 of the Act requires that a state have an approved SIP to achieve federal air quality standards (42 U.S.C. 7410).

Section 107(d)(A)(B) of the Act, as amended on November 15, 1990 (amended Act), designated certain areas ("initial areas") nonattainment for particulate matter. Section 188 of the amended Act classified these initial areas as "moderate". The initial areas include the Vermillion County, Indiana nonattainment area. See 56 FR 56752 (November 6, 1991) or 40 CFR 81.315 for a complete description of these nonattainment areas. Section 189 of the amended Act required State submission of a PM SIP for the initial areas by November 15, 1991.

These moderate area PM SIPs are required to contain, among other things, the following provisions:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonable available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM also apply to major sources of PM precursors except where the Administrator determines that such sources do not contribute significantly to PM levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Section 179(a) of the amended Act states that if the Administrator finds that a State has failed to make a required submission, finds that a SIP or SIP revision submitted by the State does not

satisfy the minimum criteria established under section 110(k) of the amended Act, or disapproves a SIP submission in whole or in part, unless the deficiency has been corrected within 18 months after the finding, one of the sanctions referred to in section 179(b) of the amended Act (selected by the Administrator) shall apply until the Administrator determines that the State has come into compliance. If the deficiency has not been corrected within 6 months of the selection of the first sanction, the second sanction under section 179(b) shall also apply. In addition, section 110(c) of the Act requires promulgation of a Federal Implementation Plan (FIP) within 2 years after the finding or disapproval, as discussed above, unless the State corrects the deficiency and the SIP is approved before the FIP is promulgated.

History of the Nonattainment Area

In 1988, several exceedances of the ambient air quality standard for PM were recorded in Vermillion County at monitoring sites located downwind of Peabody Coal Company's Universal Mine, Blanford East Area. As a result of these exceedances, part of Clinton Township, in Vermillion County, was classified as moderate nonattainment for PM.

On December 17, 1991, a letter was sent to the Governor of Indiana notifying him that the U.S. EPA was making a finding that the State of Indiana had failed to submit a PM SIP for the Vermillion County nonattainment area. This letter triggered both the sanctions and FIP processes as explained above. Indiana submitted a PM SIP revision for the Vermillion County nonattainment area on January 13, 1993, and supplemented the submittal on February 22, 1993, and April 8, 1993. A letter dated April 30, 1993, was sent to the State indicating that U.S. EPA had determined the SIP to be complete. Therefore, the deficiency which started the sanctions and FIP processes has been corrected, and the sanctions process has ended. The FIP process, however, is not stopped by the correction of the deficiency and U.S. EPA is required to promulgate a FIP within 2 years of the failure-to-submit letter, unless a PM SIP for the Vermillion County nonattainment area is finally approved before then.

On January 13, 1993, Indiana submitted a PM SIP revision for Vermillion County. Additional information in support of the request was submitted on February 22, 1993 and April 8, 1993. In these materials, the Indiana Department of Environmental Management (IDEM) has stated that mining operations at the Blanford mining area ceased permanently in early 1992. The only activity now taking place in the nonattainment area is land reclamation. The reclamation process has already been completed on a large part of the nonattainment area, and all reclamation will be completed by November 1, 1993. After the reclamation is complete, the entire nonattainment area will be used exclusively for agricultural purposes.

IDEM has also stated that the operating permit issued to Peabody Coal Company for this mining operation expired on April 1, 1992, and will not be renewed. These sources have been deleted from the State's emissions inventory, and there are no other permitted or registered PM sources located in the Vermillion County nonattainment area.

Analysis of State Submittal

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to U.S. EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the amended Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The State of Indiana held a public hearing on February 17, 1993, to accept public comment on the implementation plan for Vermillion County. Following the public hearing the plan was adopted by the State and submitted to U.S. EPA.

The U.S. EPA also must determine whether a submittal is complete and therefore warrants further U.S. EPA review and action (see section 110(k)(1) of the amended Act and the April 16, 1992, General Preamble for the Implementation of Title I of the Amended Act at 57 FR 13565). The U.S. EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The U.S. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by U.S. EPA 6 months after receipt of the submission. The SIP revision was reviewed by U.S. EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated April 30, 1993, was sent to the State indicating the completeness of the submittal and the next steps to be taken in the review process.

Section 172(c)(3) of the amended Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of pollutants for which the area is nonattainment. The emissions inventory should include a comprehensive, accurate, and current inventory of allowable emissions from all sources of such pollutants in the nonattainment area. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see the April 16, 1992, General Preamble at 57 FR 13539). This requirement does not apply to the Vermillion County nonattainment area, because there are no longer any permitted or registered PM sources in the nonattainment area.

As noted, for initial moderate PM nonattainment areas, the State must submit provisions to assure that Reasonably Available Control Measures (RACM) including Reasonable Available Control Technology (RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C) of the amended Act). The April 16, 1992, General Preamble contains a detailed discussion of U.S. EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561). This requirement also has no bearing on the Vermillion County nonattainment area now that mining operations have ceased. There are no PM sources in the nonattainment area to which RACM must be applied.

As noted, the initial moderate PM nonattainment areas must submit a demonstration showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the amended Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. The State submitted, for purpose of demonstrating attainment of the NAAQS, a summary of air quality data for the two air quality monitoring sites located near the nonattainment area covering the period 1988–1992. The table below shows the data from the Vermillion County PM monitor. This data shows that there have been no violations of the NAAQS since 1988,

and that ambient air quality has generally improved over the last 4 years. It can be seen that the annual average PM concentration has decreased significantly from 45 μg/m³ in 1988 to 29 μg/m³ in 1992 (the NAAQS is 50 μg/m³). The monitored 24 hour PM concentrations have also decreased greatly in the last 5 years. The highest monitored concentration in 1988 was 202 μg/m³ compared to 84 in 1992 (the NAAQS is 150 μg/m³). The most significant improvement is seen between the years 1991 and 1992 when mining operations in the nonattainment area ceased. Since there are no existing point or area PM sources in the area, this monitoring data is an acceptable attainment demonstration, and no air quality modeling is required to demonstrate attainment of the NAAQS for the Vermillion County nonattainment area.

MONITORED PM CONCENTRATIONS (μ/g³)

County	Year	Annual average	First high	Second high	Third high	Fourth high
Vermillion	88	45	202	180	120	119
	89	37	136	115	95	90
	90	36	110	108	103	103
	91	33	132	100	97	95
	92	29	84	81	66	66

Section 172(c)(9) of the amended Act requires each PM nonattainment area to adopt contingency measures that will take effect without further action by the State or U.S. EPA upon determination by U.S. EPA that an area has failed to make RFP or to timely attain the standards. Pursuant to section 172(b) of the amended Act, the Administrator has established that states shall submit SIP revisions containing contingency measures no later than November 15, 1993. The Vermillion County PM plan does not contain contingency measures. The State must submit a SIP revision containing approvable contingency measures by November 15, 1993. Since contingency measures are not currently due, U.S. EPA will address this issue in a future rulemaking action.

Section 189(c) of the amended Act provides that the SIP must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress as defined in section 171(1) of the amended Act. As stated in the General Preamble, attainment plans for moderate areas which demonstrate attainment by December 31, 1994, will meet the initial quantitative milestone requirement. The attainment demonstration for Vermillion County therefore satisfies the quantitative milestone requirement and RFP.

Section 189(e) of the amended Act provides that the control requirements for major stationary sources of PM shall also apply to major stationary sources of PM precursors, except where the Administrator determines that such sources do not contribute significantly to PM levels which exceed the standard in the area. Particulate matter precursors are pollutants emitted as gases that undergo chemical transformations to become particulate, and principally include sulfates and nitrates. There are no major stationary sources of PM precursors in the Vermillion County nonattainment area.

Proposed Rulemaking Action

U.S. EPA is proposing to approve the requested Vermillion County nonattainment area PM SIP revision which was submitted on January 13, 1993, as supplemented on February 22, 1993, and April 8, 1993. Among other things, the State of Indiana has demonstrated, as cited above, that the Vermillion County moderate PM nonattainment area will attain the PM NAAQS by December 31, 1994. As noted, additional submittals for the initial moderate PM nonattainment areas are due at later dates. U.S. EPA will determine the adequacy of any such submittal as appropriate, in future rulemaking actions.

Public comment is solicited on the requested SIP revision and on U.S. EPA's proposed rulemaking action. Comments received by December 27, 1993 will be considered in the development of U.S. EPA's final rulemaking action.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, U.S. 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, U.S. 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.

SIP approvals under section 110 and subchapter I, part D of the Act 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401–7671(q).

Dated: August 19, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–28901 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300309; FRL–4649–7]

RIN No. 2070–AC18

Acrylonitrile-Styrene-Hydroxypropyl Methacrylate Copolymer Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of acrylonitrile-styrene-hydroxypropyl

methacrylate copolymer when used as an inert ingredient (pigment carrier) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Day-Glo Color Corp.

DATES: Comments, identified by the document control number [OPP-300309], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Building #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 will be included in the public docket by EPA without prior notice. The public docket is 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: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Day-Glo Color Corp., 4515 St. Clair Ave., Cleveland, OH 44103, has submitted pesticide petition (PP) 3E04181 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of acrylonitrile-styrene-hydroxypropyl methacrylate copolymer when used as an inert ingredient (pigment carrier) in pesticide formulations applied to growing crops only.

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

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for acrylonitrile-styrene-hydroxypropyl methacrylate copolymer will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Acrylonitrile-styrene-hydroxypropyl methacrylate copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum number-average molecular weight of the above-mentioned copolymer is 447,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned copolymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

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

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300309]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from

8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

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 effect 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

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

Dated: November 15, 1993.

Stephen L. Johnson,

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 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* *
Acrylonitrile-styrene-hydroxypropyl methacrylate copolymer; minimum number-average molecular weight 447,000.	.....	Pigment carrier
* * *	* * *	* *

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[FR Doc. 93-28906 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300306; FRL-4649-4]

RIN No. 2070-AC18

Trimethylolpropane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of trimethylolpropane (CAS Reg. No. 77-99-6) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only. This regulation is proposed by the Agency on its own initiative.

DATES: Comments, identified by the document control number [OPP-300306], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall, Building #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 12, 1993 (58 FR 27972), EPA issued a proposal to exempt trimethylolpropane (CAS Reg. No. 77-99-6) from the requirement of a tolerance when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only with a limitation that it will not exceed 5% of the pesticide formulation. The Agency received a comment in response to the proposed rule, requesting that the Administrator expand the proposed tolerance exemption for trimethylolpropane. The commenter requested that the limit be raised to 10%.

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

The information submitted in the original petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

In the proposed rule of May 12, 1993, EPA noted that the Office of Pollution Prevention and Toxics (OPPT) Structure Activity Team (SAT) determined that trimethylolpropane could raise low-to-moderate concern for developmental toxicity because of structural similarity to branched-chain alcohols. However, the Agency developed a worst-case analysis which showed that a limit for trimethylolpropane of 5% posed no appreciable risk to humans.

As a result of the comment received, and because trimethylolpropane is currently being used in polyvinyl alcohol water-soluble films at levels up to approximately 15%, the Agency reevaluated the potential risk of trimethylolpropane using information obtained from the OPPT Chemical Screening and Risk Assessment Division concerning branched-chain alcohols. The Agency has assessed the risk of other branched-chain alcohols using a no-observable-adverse-effects-level (NOAEL) of 65 mg/kg (developmental toxicity in rats) for valproic acid (Food and Drug Administration; Internal Report of January 16, 1974). Using this NOAEL and assuming levels of 15% trimethylolpropane in the film and representative worst-case application scenarios, the Agency calculated a margin of exposure of 6,500 and concluded that trimethylolpropane will not pose a risk to human health at this level. Therefore, the Agency has raised the limit for trimethylolpropane to 15%.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient does not pose a risk to human health or the environment. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

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

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300306]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: November 16, 1993.

Stephen L. Johnson,

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 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Trimethylolpropane (CAS Reg. No. 77-66-9)	Not more than 15% of the pesticide formulation.	Component of water-soluble film
* * *	* * *	* * *

* * * * *

[FR Doc. 93-28905 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300312; FRL-4741-8]

RIN No. 2070-AC18

Vinyl Acetate-Ethylene Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of vinyl acetate-ethylene copolymer (CAS Reg. No. 24937-78-8) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Air Products and Chemicals, Inc.

DATES: Comments, identified by the document control number [OPP-300312], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public

docket is 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: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Air Products and Chemicals, Inc., 7201 Hamilton Blvd., Allentown, PA 18195-1501, has submitted pesticide petition (PP) 3E4275 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of vinyl acetate-ethylene copolymer (CAS Reg. No. 24937-78-8) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only.

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

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for vinyl acetate-ethylene copolymer will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Vinyl acetate-ethylene copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum number average molecular weight of the above-mentioned copolymer is 69,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250 (d)(3)(ii).

6. The above-mentioned copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

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

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300312]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

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 effect 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

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

Dated: November 15, 1993.

Stephen L. Johnson,

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 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Vinyl acetate-ethylene copolymer (CAS Reg. No. 24937-78-8); minimum number average molecular weight 69,000.	.....	Component of water-soluble film
* * * * * * *		

* * * * *

[FR Doc. 93-28909 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300313/FRL-4741-8]

RIN No. 2070-AC18

Definitions and Interpretations; Sorghum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended by adding definitions of the commodity terms "sorghum grain" and "sorghum fodder and forage." The proposed amendment to 40 CFR 180.1(h) is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [OPP-300313], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), 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 (7505W), 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: Section 180.1(h) (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 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 as follows: (1) To add the commodity term "sorghum (grain)" to the general category of commodities in column A and to add the corresponding specific commodities "*Sorghum* spp. [sorghum (grain), sudangrass (seed crop), and hybrids of these grown for its seed]" to column B; and (2) to add the commodity term "sorghum (fodder, forage)" to the general category of commodities in column A and to add the corresponding specific commodities "*Sorghum* spp. [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage]" to column B.

EPA has completed an evaluation of the proposed amendment and concludes that tolerances established for the raw agricultural commodities sorghum (grain) and sorghum (fodder, forage) are adequate to cover pesticide residues in or on *Sorghum* spp. grain/seed [sorghum (grain), sudangrass (seed crop), and hybrids of these grown for seed] and *Sorghum* spp. fodder and forage [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage], respectively.

Because of differences in glumes covering seeds, residues in sudangrass seeds are expected to be equal to or less than residues found in grain sorghum. Residues in or on foliage are expected to be comparable in all sorghums because of similarities in cultural practices, crop uses, pest problems, morphology, and growth stages.

Both sorghums and sudangrass share common weed, insect, nematode, and disease problems. Sudangrass is only harvested for its seeds when producing the seed crop. When utilized for livestock feed, sudangrass is not allowed to set seed because the forage quality will be poor.

To obtain tolerances on sorghum grain, residue data should be generated using grain sorghum (as opposed to sudangrass grown for seed), considering the much larger acreage for the former and the differences in glumes of sudangrass and grain sorghum.

With regard to obtaining tolerances on sorghum forage and fodder, several options exist with respect to how residue data should be generated. One option is to generate the data on forage or grassy-type sorghums, including sudangrass and sorghum sudangrass hybrids. The second option takes into account that the total acreage of sorghum grown for silage, greenchop, hay, and dry forage is only a small percentage of that grown for grain. In this second option, most forage and fodder residue data may be obtained using grain sorghum provided some forage or grassy-type sorghums are also included.

Based on the above information, the Agency concludes that it is appropriate to establish the general commodities sorghum (grain) and sorghum (fodder, forage) with the corresponding specific commodities *Sorghum* spp. grain/seed [sorghum (grain), sudangrass (seed crop), and hybrids of these grown for seed] and *Sorghum* spp. fodder and forage [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage], respectively.

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-300313]. 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

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

Dated: November 4, 1993.

Stephanie R. Irene,

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 in the table therein by adding and alphabetically inserting the following commodities listings, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * *	* * *
Sorghum (grain)	*Sorghum* spp. [sorghum (grain), sudangrass (seed crop), and hybrids of these grown for its seed].
Sorghum (fodder, forage)	*Sorghum* spp. [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage].
* * *	* * *

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[FR Doc. 93-28732 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Parts 180 and 186

[PP 9F3743 and FAP 1H5614/P570; FRL-4743-4]

RIN No. 2070-AC18

Pesticide Tolerances and Food Additive Regulations for Clethodim

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: These regulations propose to establish permanent tolerances for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) in or on various raw agricultural commodities and feed additive commodities. These regulations were requested by Valent U.S.A. Corp. and would establish maximum permissible levels for residues of the herbicide in or on the commodities.

DATES: Written comments, identified by the document control number [PP 9F3743 and FAP 1H5614/P570], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM-23), Registration Division (7505C), 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 Hwy., Arlington, VA 22202, 703-305-7830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 29, 1992 (57 FR 3296), EPA established interim tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on soybeans at 10 ppm; cottonseed at 1 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.2 ppm; milk at

0.05 ppm; and eggs at 0.2 ppm. In addition, EPA established interim tolerances under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA)(21 U.S.C. 348) of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety on the feed commodities soybean soapstock at 15 ppm and cottonseed meal at 2 ppm. These tolerances were requested by Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 95496, and establish the maximum permissible level for residues of the herbicide on these raw agricultural commodities (RAC).

These tolerances were issued as tolerances with an expiration date because EPA required submission of a rewritten analytical method (Valent's compound- specific method) for tolerance enforcement and subsequent validation. The tolerances will expire on January 29, 1994.

A common moiety analytical method for tolerance enforcement (gas chromatography with a flame photometric detector in the sulfur mode) was satisfactorily tested and is available for tolerance enforcement. This method, however, cannot distinguish between clethodim and sethoxydim, a closely related herbicide with tolerances established under 40 CFR 180.412. A compound-specific confirmatory method (HPLC with a UV detector) that can distinguish between derivatives of clethodim and sethoxydim was tested in the Agency laboratory. Considerable revisions were made by the Agency laboratory in order to obtain satisfactory analytical results. EPA's revised specific method was returned to Valent to be rewritten and to be validated by an independent laboratory. An independent validation was deemed useful to confirm that the revisions made by EPA are adequately explained.

A revised compound-specific method was submitted by Valent on August 30, 1993, and included new independent laboratory validation data. EPA concludes that the compound-specific method has been rewritten as recommended, including additional modifications from current method development, and is suitable to enforce the total clethodim tolerances in crops and animal tissues and to distinguish between residues of clethodim and sethoxydim. In addition, EPA concludes that the independent laboratory validation for the rewritten analytical method is adequate. The revised method is suitable to be a quantitative procedure to enforce the total clethodim tolerances in crops and animal tissues and a qualitative confirmatory method for total clethodim tolerances in milk.

The compound-specific method is not quantitative for milk and is not suitable for enforcing the total clethodim tolerance in milk. The common moiety method is quantitative for milk and is the enforcement method for milk. Therefore, the compound-specific method will serve as the primary tolerance enforcement procedure for cottonseed, soybeans, and animal tissues. Confirmation of total clethodim residues in cottonseed, soybeans, and animal tissues is to be with the common moiety method. To enforce the total clethodim tolerance in milk, the common moiety method will be used. Confirmation of total clethodim residues in milk is to be with the compound-specific method.

Based on the information cited above and in the document establishing the interim tolerance (57 FR 3296, Jan. 29, 1992), EPA has determined that the establishment of permanent tolerances by amending 40 CFR part 180 will protect the public health and that use of the pesticide in accordance with the proposed amendment of 40 CFR part 186 will be safe. Therefore, it is proposed that the tolerances be established as set forth below.

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

Interested persons are invited to submit written comments on the proposed regulations. Documents relied upon by EPA in issuing this proposal are available to the public in the Office of Pesticide Programs docket at the Public Response and Program Resources Branch, at the address given above. Comments must bear a notation indicating the document control number, [PP 9F3743 and FAP 1H5614/P570]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

The Office of Management and Budget has exempted these rules from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act of 1980 (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 Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 10, 1993.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 186 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. By revising § 180.458, to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

Tolerances are established for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following agricultural commodities.

Commodity	Parts per million
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, mbyp	0.2
Cottonseed	1.0
Eggs	0.2
Goats, fat	0.2
Goats, meat	0.2
Goats, mbyp	0.2
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, mbyp	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, mbyp	0.2
Milk	0.05

Commodity	Parts per million
Poultry, fat	0.2
Poultry, meat	0.2
Poultry, mbyp	0.2
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, mbyp	0.2
Soybeans	10.0

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.1075, to read as follows:

§ 186.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

Tolerances are established for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following feeds.

Feed	Parts per million
Cottonseed meal	2.0
Soybean soapstock	15.0

[FR Doc. 93-28730 Filed 11-23-93; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580 and 581

[Docket No. 93-22]

Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the current coloading requirements by redefining the term "coloading" to limit it to the combining of cargo performed pursuant to an agreement between or among non-vessel-operating common carriers ("NVOCCs"). Coloading would not include cargo for which the receiving NVOCC issues its own bill of lading. Comments are also solicited on a possible alternative definition which would further limit the term coloading to exclude full containerload cargo. The proposed rule also requires that coloading agreements be in writing, and be made available to the Commission. The existence of coloading agreements, including the identity of coloading parties thereto, would be required to be listed in an NVOCC's tariff. The proposed rule would prohibit coloaded cargo from being carried under a service contract, and also limit the affiliates that may take advantage of service contracts. The proposed rule would continue to require that tendering NVOCCs annotate the identity of receiving NVOCCs on their bills of lading and the fact that specific cargo was coloaded, that NVOCC tariffs shall not offer special coloading rates for the exclusive use of other NVOCCs, and that shipments not fitting the coloading definition must be rated and carried pursuant to the tariff. Although no rule language on these matters is proposed at this time, comment is solicited as well on whether further restrictions should be imposed regarding coloaded cargo applicability to time-volume rates, and on the more fundamental issue of whether coloading should be prohibited altogether. The revisions to the existing coloading rules are deemed necessary to clarify ambiguities and to address current practices resulting in the increased application of untariffed NVOCC charges.

DATES: Comments due on or before January 24, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573., (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Wm. Jarrel Smith, Jr., Director, Bureau of Investigations, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523-5860.

SUPPLEMENTARY INFORMATION: Experience under the Federal Maritime Commission's ("Commission") coloading rules at 46 CFR 580.5(d) since their promulgation in 1985 has demonstrated that parts of those rules are less than satisfactory. The rules define coloading relatively broadly, and then proceed to impose varying regulatory requirements, depending on whether the particular coloading arrangement establishes a "carrier-to-carrier" or a "carrier-to-shipper" relationship. This regulatory regimen has been found to be unworkable in two general respects.

First, considerable confusion appears to have resulted from the requirement that the nature of the NVOCC–NVOCC coloading relationship determines the concomitant regulatory responsibilities. The criteria for defining those relationships are not clear. A presumption of a shipper-to-carrier relationship is created when a bill of lading is issued by a receiving NVOCC to the tendering NVOCC, but there are no adequate guidelines on how that presumption may be rebutted.

Second, even if the nature of the NVOCC–NVOCC relationship has been determined, the attendant regulatory requirements are ambiguous, particularly with respect to the NVOCC tariffs required to be filed pursuant to section 8 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1707. Where there is a carrier-to-carrier arrangement, each NVOCC must report the "existence of such agreement" in its tariff. 46 CFR 580.5(d)(14)(ii)(B). While it could be argued that this provision anticipates that NVOCC tariffs actually list the parties to these agreements, the view apparently embraced by most NVOCCs is that NVOCCs need only note without further elucidation that a coloading arrangement exists or that coloading practices are possible. This view finds some support in the explanatory language which accompanied the promulgation of the rule. Similarly, the current requirement that the tendering NVOCC "shall describe in its tariff its co-loading practices," *id.* 580.5(d)(14)(ii)(C), is somewhat vague.

These ambiguities appear to encourage many NVOCCs to conclude that a larger percentage of their NVOCC activity constitutes coloading services pursuant to a "carrier-to-carrier" arrangement than was intended by the present rules. They also foster the belief that the Commission's regulatory requirements are satisfied by the vaguest suggestion in an NVOCC tariff that coloading services may be provided. As a result, the rates applicable to a substantial amount of NVOCC shipments may be eluding both the general shipping public's and the Commission's scrutiny.

The proposed rule revises the current rule by redefining and narrowing the scope of activity regarded as coloading. Coloading would be defined at proposed § 580.5(d)(14)(i) as the combining of cargo pursuant to an agreement between or among NVOCCs, for tendering to an ocean carrier under the name of one of the NVOCC agreement parties, wherein the receiving NVOCC does not issue its own bill of lading to the tendering NVOCC. When such a bill of lading is issued, the tendering NVOCC would continue to rate the cargo according to its tariff; the receiving NVOCC likewise would rate the cargo according to its tariff rates applicable to all shippers. Thus, coloading would be identified

without resorting to preliminary determinations as to whether the participating NVOCCs have a carrier-to-carrier or a carrier-to-shipper relationship.

The Commission is also soliciting comment on a possible alternative definition to coloading which would limit such activity to less-than-containerload ("LCL") cargo only. The Commission is particularly desirous of ascertaining the extent and impact of current coloading practices involving full containerloads ("FCL"), and is interested in industry views on whether the coloading regulations should be confined to LCL applicability.* This alternative proposal is reflected in the bracketed words "less-than-containerload" at § 580.5(d)(14)(i) of the proposed rule. Consistent with this alternative approach is the bracketed language at proposed § 580.5(d)(14)(iv), governing coloading rates, which would clarify, should the Commission adopt this course, that coloading agreements do not pertain to FCL cargo, which must be rated under the tariffed charges. Although not presented as alternative language at this time, the Commission additionally seeks comment on whether all coloading, for which non-tariffed rates are assessed, should be proscribed.

Proposed § 580.5(d)(14)(ii) prescribes the tariff-filing requirements for NVOCCs with respect to coloading activity or inactivity. Where the NVOCC does not tender cargo for coloading, it would continue to be required to so indicate, pursuant to § 580.5(d)(14)(ii)(A). Section 580.5(d)(14)(ii)(B) would dictate that where coloading takes place, the underlying coloading agreement must be made available to the Commission (or authorized Commission personnel) upon request. Coloading agreements must be in writing, dated and signed by all parties, and must contain all the applicable rates, charges, financial arrangements and terms.

The proposed rule also resolves the ambiguity in the current rule by requiring that each NVOCC party to a coloading agreement must note in its tariff not only the existence of such agreement but also the name and address of each NVOCC with whom it has such an arrangement. Furthermore, this proposed paragraph would affirmatively prohibit the coloading of cargo until the tariff of each participating NVOCC reflects the existence of and the names and addresses of the parties to the applicable coloading agreement.

While the documentation or annotation requirements of current § 580.5(d)(14)(iii) appear sufficiently clear, they have been modified slightly to emphasize the obligation of tendering NVOCCs to annotate unambiguously on each bill of lading that cargo is being coloaded and the identity of the receiving NVOCC. Where a decision to coload cargo is made after a bill of lading is issued, compliance with this provision can be achieved by issuing an amended bill of lading or an annotated copy of the bill of lading. Section 580.5(d)(14)(iv) of the proposed rule contains minor modifications but continues to prohibit NVOCCs from offering rates for the exclusive use of other NVOCCs, and to require that all non-coloaded cargo be rated and carried pursuant to the NVOCCs' tariffs. Alternative language has also been added to § 580.5(d)(14)(iv), as noted *supra*, which would state that FCL cargo cannot be coloaded and must be rated and carried pursuant to the tariff.

Section 580.5(d)(14)(v) makes reference to the prohibition codified in the proposed amendment to section 581.1 to the effect that coloaded cargo cannot be carried under a service contract.

The Commission also solicits comment on whether existing regulations governing time-volume rates, 46 CFR 580.12, should be amended to expressly proscribe the applicability of such rates to coloaded cargo. For example, it would appear inappropriate to permit NVOCCs to use coloaded cargo to satisfy time-volume rate requirements if other shippers are precluded from combining their cargoes to obtain such rates.

Parallel regulations are proposed for the Tariff Rules provisions of § 514.15(b)(14), including the alternative language regarding LCL and FCL cargo, for which comment is sought.

The Commission is also proposing that an NVOCC that is a signatory to a service contract cannot tender coloaded cargo under a service contract. The 1984 Act contemplates that service contract rates are available only to a shipper that enters into a service contract. See 1984 Act sections 3(21) and 8(c). It follows, therefore, that only the contract signatory shipper's cargo can be used to fulfill the shipper's commitment. Coloaded cargo, as defined by § 580.5(d)(14), is not the cargo of the contract shipper, but rather that of some other NVOCC with whom the contract NVOCC has a coloading relationship. If two or more NVOCCs wish to combine their cargo to obtain a service contract, Congress has provided them the means to do so by joining or forming a shippers' association as defined in section 3(24) of the 1984 Act.

The Commission's service contract rules presently permit an affiliate of a contract party to take advantage of the services under the contract if specifically named in the contract. See 46 CFR 581.4(a)(1)(v). The rules, in essence, impute contract shipper status to direct or indirect affiliates of the contract signatory. This provision, however, requires more than a loose combination of like-minded shippers. It was intended to encompass only those affiliates having a corporate relationship between them, such as entities which own or are owned by contract signatories, or which share common owners with signatories. The Commission is, accordingly, taking this opportunity to amend this provision to make clear that non-affiliated shippers cannot join together to obtain service contract rates except through a shippers' association.

The proposed amendment to existing service contract rules would define the term "affiliate" to mean a company that shares an ownership interest with another company. This would preclude two unrelated entities from unlawfully sharing the benefits of a service contract by claiming that one is an affiliate of the other. The Commission welcomes comment on whether such ownership interest should be limited to a specified percentage or whether a company should be otherwise effectively controlled by the contract signatory, or vice versa, before it can be considered to be an affiliate.

In summary, the Commission is seeking comment on the following:

1. A proposal to redefine the term "coloading" to mean the combining of cargo pursuant to an agreement, which agreement must be in writing and made available to the Commission;

2. An alternative proposal limiting coloading to less-than-containerload cargo;

3. A proposal to prohibit coloaded cargo from being carried under a service contract; and

4. A proposal to define an "affiliate" having access to service contracts.

Although no specific proposal on the following issues is being made at this time, the Commission also seeks comment on:

5. Whether restrictions should be imposed regarding applicability of time-volume rates to coloaded cargo; and

* The current rule reflects the determination made in 1985 that NVOCCs should not be restricted to coload only LCL cargo. The Commission at the time concluded that coloading FCLs was less prevalent and less likely than coloading LCL cargo. Different industry practices appear to have evolved since that time, however, raising the issue whether the current coloading regulations are inappropriately facilitating the circumvention of NVOCC tariffs.

6. Whether coloading should be proscribed altogether.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions. The proposal does not impose substantial new requirements or proscriptions, but primarily would establish that rates for common carrier services must be contained either in coloading agreements or in carrier tariffs. To the extent the proposal's new recordkeeping and availability requirements create new obligations, they are only marginally more intrusive than the current regulations, and any resulting impact on small entities would be minimal. Moreover, the proposal's main purpose and effect is to clarify existing regulations and to further ensure compliance with the underlying statutory requirements of the 1984 Act with respect to tariffs and service contracts.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Public reporting burden for this collection of information is estimated to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Parts 514, 580 and 581

Cargo; Cargo vessels; Exports; Harbors; Imports; Maritime carriers; Rates and fares; Reporting and recordkeeping requirements; Water carriers; Water transportation.

Therefore, pursuant to 5 U.S.C. 553 and sections 8 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707 and 1716, the Federal Maritime Commission proposes to amend title 46, Code of Federal Regulations, parts 514, 580 and 581 as follows:

PART 514—[AMENDED]

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

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

2. Section 514.15(b)(14) is revised to read as follows:

§ 514.15 Tariff Rules.

* * * * *

(b) * * *

(14) *Coloading in foreign commerce.* Tariff Rule 14 governs coloading by NVOCCs in foreign commerce. For the purpose of this section, *coloading* means the combining of (less-than-containerload) cargo in the import or export foreign commerce of the United States, by two or more NVOCCs pursuant to the rates, charges and terms of an agreement, for delivery to an ocean carrier under the name of one or more of the NVOCCs, wherein the receiving NVOCC does not issue its own bill of lading to the tendering NVOCC(s) for carriage of the coloaded cargo. Tariff Rule 14 shall contain the following provisions:

(i) *Filing requirements.*

(A) If an NVOCC does not tender cargo for coloading, Tariff Rule 14 shall so indicate. If an NVOCC does tender cargo for coloading, Tariff Rule 14 must comply with § 514.15(b)(14)(i)(B).

(B) Each NVOCC must have and make available to the Commission or authorized Commission personnel upon request a true copy of every agreement entered into with one or more NVOCCs to coload cargo. Coloading agreements must be in writing, dated and signed by all parties, and include all applicable rates, charges, financial arrangements and terms. Each NVOCC party to a coloading agreement must note in Tariff Rule 14 the existence of such agreement, including the name(s) and address(es) of the NVOCC(s) with whom it has such an agreement. Cargo may not be coloaded by NVOCCs until Tariff Rule 14 appropriately reflects the existence of and the names of the parties to the coloading agreement.

(ii) *Documentation requirements.* NVOCCs which tender cargo to another NVOCC for coloading shall annotate in a clear and legible manner, on the face of each applicable bill of lading, the identity of the receiving NVOCC and the fact that the cargo was tendered to that NVOCC for coloading.

(iii) *NVOCC Specific Rates.* No NVOCC shall offer in its tariffs rates which are specifically stated as for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC other than pursuant to a coloading agreement, such cargo must be rated and carried under tariff provisions which are applicable to all shippers. (As full containerload cargo does not meet the definition of coloading, coloading agreements do not pertain to such cargo, which consequently must be rated under the tariffed charges.)

(iv) *Service contracts.* Coloaded cargo may not be tendered under a service contract.

* * * * *

PART 580—[AMENDED]

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

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

2. Section 580.5(d)(14) is revised to read as follows:

§ 580.5 Tariff Contents.

* * * * *

(d) * * *

(14) *Special rules and regulations applicable to coloading activities of non-vessel-operating common carriers (NVOCCs)*—(i) *Definition.* For the purpose of this section, *coloading* means the combining of (less-than-containerload) cargo in the import or export foreign commerce of the United States, by two or more NVOCCs pursuant to the rates, charges and terms of an agreement, for delivery to an ocean carrier under the name of one or more of the NVOCCs, wherein the receiving NVOCC does not issue its own bill of lading to the tendering NVOCC(s) for carriage of the coloaded cargo.

(ii) *Filing requirements.* (A) If an NVOCC does not tender cargo for coloading, its tariff(s) shall so indicate. If an NVOCC does tender cargo for coloading, its tariff(s) must comply with § 580.5(d)(14)(ii)(B).

(B) Each NVOCC must have and make available to the Commission or authorized Commission personnel upon request a true copy of every agreement entered into with one or more NVOCCs to coload cargo. Coloading agreements must be in writing, dated and signed by all parties, and include all the applicable rates, charges, financial arrangements and terms. Each NVOCC party to a coloading agreement must note in its tariff the existence of such agreement, including the name(s) and address(es) of the NVOCC(s) with whom

it has an agreement. Cargo may not be coloaded by NVOCCs until their tariffs appropriately reflect the existence of and the names of the parties to the coloading agreement.

(iii) *Documentation requirements.* NVOCCs which tender cargo to another NVOCC for coloading shall annotate in a clear and legible manner, on the face of each applicable bill of lading, the identity of the receiving NVOCC and the fact that the cargo was tendered to that NVOCC for coloading.

(iv) *NVOCC Specific Rates.* No NVOCC shall offer in its tariffs rates which are specifically stated as for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC other than pursuant to a coloading agreement, such cargo must be rated and carried under tariff provisions which are applicable to all shippers. (As full containerload cargo does not meet the definition of coloading, coloading agreements do not pertain to such cargo, which consequently must be rated under the tariffed charges.)

(v) *Service contracts.* Coloaded cargo may not be tendered under a service contract.

* * * * *

PART 581—[AMENDED]

1. The authority citation for part 581 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716, 1718, and 1721.

2. Section 581.1 is amended by redesignating paragraphs (b) through (u) as (c) through (v) and by adding a new paragraph (b) reading as follows:

§ 581.1 Definitions.

* * * * *

(b) *Affiliate* means a company which owns or is owned by a contract party or which shares a common owner with a contract party.

* * * * *

3. Section 581.3 is amended by redesignating the text of paragraph (e) as paragraph (e)(1) and by adding a new paragraph (e)(2) reading as follows:

§ 581.3 Filing and maintenance of service contract materials.

* * * * *

(e) * * *

(1) * * *

(2) An NVOCC that enters into a service contract cannot tender coloaded cargo, as defined in §§ 580.5(d)(14) and 514.15(b)(14) of this chapter, to be carried under the contract.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–28763 Filed 11–23–93; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 64

[Common Carrier Docket No. 93–251; FCC 93–453]

Transactions Between Carriers and Their Nonregulated Affiliates

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission ("FCC" or "Commission") has adopted a Notice of Proposed Rulemaking ("*Notice*") proposing to amend its affiliate transactions rules. The *Notice* also proposes specific procedures for telephone companies to use in implementing the proposed rules. The FCC issued this *Notice* to enhance its ability to keep telephone companies from imposing the costs of nonregulated activities on interstate ratepayers, and to keep ratepayers from being harmed by the telephone companies' imprudence.

DATES: Comments are due December 10, 1993. Reply comments are due January 10, 1994.

ADDRESSES: All comments should be filed with the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. A copy should be sent to William A. Kehoe III, Accounting and Audits Division, 2000 L Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William A. Kehoe III, telephone number 202–632–7500.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the FCC's Notice of Proposed Rulemaking ("*Notice*") in amendment of parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, FCC No. 93–453, CC Docket No. 93–251, adopted September 23, 1993 and released October 20, 1993. The full text of the *Notice* is available for inspection and copying during normal business hours in the FCC Reference center, 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, the International Transcription Service, 202–857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

2. In the *Notice*, the Commission proposes to amend the valuation methods that the affiliate transactions rules require telephone companies to use in recording their transactions with their nonregulated affiliates in the accounts maintained under the Commission's Uniform System of Accounts, 47 CFR part 32. To reflect distinctions the marketplace draws between arm's length and affiliate transactions, we propose to reduce the affiliate transactions rules' reliance on the prices the providing affiliate charges non-affiliates for similar transactions. The affiliate transactions rules presently require telephone companies to record affiliate transactions at those prices whenever the providing affiliate also provides substantial quantities of the asset or service to non-affiliates. We propose to limit this valuation method (referred to as prevailing company pricing) to affiliate transactions in which the nonregulated affiliate in the transaction sells at least 75 percent of its output to non-affiliates. We also invite comment on whether we should abandon prevailing company pricing as a valuation method for all affiliate transactions if we find no workable test for determining when prevailing company prices provide reliable measures of how affiliate transactions should be valued.

3. To keep carriers from imposing the costs of nonregulated activities on interstate ratepayers and to keep ratepayers from being harmed by carrier imprudence, the Commission also proposes to change the valuation methods for affiliate transactions that are neither tariffed nor eligible for prevailing company pricing. We propose that all such transactions be recorded at the lower of cost and estimated fair market value when the telephone company is the buyer, and at the higher of cost and estimated fair market value when the telephone company is the seller. Under the present rules, those valuation methods are used only for non-tariffed asset transfers that are ineligible for prevailing company pricing. When affiliate transactions involve the provision of non-tariffed services that are ineligible for prevailing company pricing, the existing rules require the transactions to be recorded at the providing affiliates' fully distributed costs.

4. In the *Notice*, we tentatively conclude that any changes we make in the valuation methods for affiliate transactions should be exogenous for price cap purposes. Although we believe that deviations from the valuation methods specified in the rules generally should be prohibited, we

tentatively conclude that we should allow alternative valuation methods that reduce regulated costs. We ask the commenters to address how we can avoid "subsidy" arrangements that increase regulated costs while allowing alternative valuation methods that reduce those costs.

5. We propose, in addition, specific methods for implementing the proposed valuation methods. For those affiliate transactions that would be recorded at cost, we propose methods similar to those we require carriers to use in calculating interstate costs, while inviting comment on alternatives. We are proposing this approach because we believe that compliance with our rules for calculating affiliate costs should not be dependent on the corporate structures through which carriers choose to conduct their operations.

6. Under our proposals, carriers would calculate the costs of resources transferred in or used to provide affiliate transactions at the costs to the affiliate group, whenever the provider had obtained from the resources from an affiliate. We propose that except as otherwise ordered by the FCC, all accounting related to affiliate transactions comply with generally accepted accounting principles. We also propose specific requirements with regard to the calculation of accumulated depreciation and other reserves, and the apportionment of costs between regulated and nonregulated activities. We propose to specify rate base and expense methodologies that all carriers subject to the affiliate transactions rules would have to apply in calculating the costs of those affiliate transactions that would be recorded at cost. We propose to require carriers to use the prescribed interstate rates of return in determining the return component of affiliate transactions costs, while inviting comment on alternatives to that proposal. We propose, in addition, estimating, monitoring, and true-up procedures for affiliate transactions costs and to use the one-year period covered by the carrier's books to measure compliance with our affiliate transactions rules.

7. We propose two alternatives for measuring the nonregulated affiliates' output for purposes of the 75 percent test. The first would require carriers to measure each nonregulated affiliate's output using its actual revenues during the year for which affiliate transactions are to be valued. The second would require carriers to measure output using the nonregulated affiliate's revenues from the immediately preceding year. We also invite comment on the other potential conditions of eligibility for prevailing company pricing, and, in particular, whether we should provide for prevailing company pricing on a product line, line of business, or total company basis.

8. Instead of proposing to specify the precise steps carriers should use to estimate the fair market value of affiliate transactions, we propose to require carriers to attempt in good faith to determine whether fair market value exceeds cost when they provide assets or services to nonregulated affiliates and whether cost exceeds fair market value when they receive assets or services from nonregulated affiliates. If these attempts indicate that assets or services should be recorded at fair market value, we propose to require carriers to make additional efforts to define that value. We invite comment, however, on whether there are classes of affiliate transactions that lend themselves to a set of prescribed procedures for estimating fair market value. For instance, if companies making certain kinds of purchases routinely solicit competitive bids, survey potential suppliers, or obtain independent appraisals, we may require carriers to adopt identical procedures.

9. We propose to make clear that the American Telephone and Telegraph Company (AT&T) and LECs with annual revenues of $100 million or more to include in their cost allocation manuals information regarding nonregulated operations within carriers that do not use resources jointly or in common with regulated operations comparable to that which we require for other affiliate transactions. We propose to require carriers to state in their cost manuals which of their affiliates sell at least 75 percent of their output to non-affiliates. These statements would have to be updated quarterly. We propose to require that each cost manual state the rate of return the subject carrier will use to calculate affiliate transactions costs if we do not require carriers to use the prescribed interstate rates of return in determining the return component of affiliate transactions costs. We propose to require that cost manuals describe the procedures carriers propose to use to estimate fair market value.

10. We propose to amend § 64.904(a) of our rules to make clear that the scope of the independent audit must encompass compliance with any requirements we adopt in this proceeding. We propose to amend our rules to require carriers to maintain a complete audit trail of all cost allocations and affiliate transactions.

11. In the *Notice*, we invite comment on whether AT&T should be subject to each aspect of the system we propose for affiliate transactions. We propose to require Alascom, Inc. (Alascom) to apply the valuation methods we propose in this proceeding. To ensure Alascom's compliance with those methods and with our cost apportionment requirements, we also propose to require Alascom to submit a cost allocation manual for Commission approval and to obtain an attestation audit.

12. We propose to amend the affiliate transactions rules to make clear that they apply to transactions between nonregulated affiliates and nonregulated operations within carriers that record their costs in regulated accounts. To facilitate the development of a complete record in this proceeding, we hereby delegate to the Bureau our power to require carriers to quantify the potential effect of our proposals in this *Notice*.

13. In the *Notice*, the Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposals in this proceeding are adopted, 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.[1] Those proposals concern the methods dominant interexchange carriers and LECs use to account for affiliate transactions. These carriers are generally large corporations or affiliates of large corporations, are dominant in their fields of operation, and therefore are not "small entities" as defined by that act.[2] The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of that act.[3]

14. The following collections of information contained in these proposed rules have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act.[14] Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, 202–857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037. Persons wishing to comment on these collections of information should direct their comments to Timothy Fain, 202–395–3561, Office of Management and Budget, Room 3235 NEOB, Washington,

[1] 5 U.S.C. 601(3).

[2] See MTS and WATS Market Structure, 93 FCC 2d 241, 336–39 (1983).

[3] 5 U.S.C. 605(b).

[4] 44 U.S.C. 3504(h).

DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554. For further information, contact Judy Boley, 202–632–7513.

Title: Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions between Carriers and Their Nonregulated Affiliates, CC Docket No. 93–251.

OMB Number: None.

Action: Proposed new and revised collections.

Respondents: Businesses or other for profit.

Frequency of Response: On occasion, quarterly, and annually.

Estimated Annual Burden as follows:

	No. of responses	Hours per response	Total
Reporting requirements:			
Proposed § 64.903	5	400	38,000
Proposed § 64.904	1	500	500
	No. of recordkeepers	**Hours per response**	**Total**
Recordkeeping requirements:			
Audit Trail and Cost Estimation and True-up Requirements	69	4,080	281,520
Total Hours			320,020

Needs and Uses: The *Notice* invites public comment on the Commission's proposals to amend its affiliate transactions rules and on the specific procedures telephone companies would use in implementing the proposed rules. The FCC proposed these measures to enhance its ability to keep telephone companies from imposing the costs of nonregulated activities on interstate ratepayers, and to keep ratepayers from being harmed by the telephone companies imprudence. The *Notice* proposes new and modified information requirements that would help ensure that carriers adhere to the proposed affiliate transactions rule amendments.

Ordering Clauses

1. Accordingly, *it is ordered,* that, pursuant to Sections 1, 4(i), 201–205, 218–220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 218–220, and 403, notice is hereby given of proposed amendments to parts 32 and 64 of the Commission's rules, 47 CFR parts 32 and 64, described in this Notice of Proposed Rulemaking.

2. *It is further ordered that* the Chief, Common Carrier Bureau, shall have delegated authority to require carriers to quantify the potential effect of our proposals in this *Notice.*

List of Subjects

47 CFR Part 32

Communications common carriers, uniform system of accounts.

47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Parts 32 and 64 of chapter I, title 47, of the Code of Federal Regulations are proposed to be amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 is revised to read as follows:

Authority: Secs. 4 and 220, 48 Stat. 1066, as amended; 47 U.S.C. 154 and 220, unless otherwise noted. Interpret or apply secs. 1, 201–205, 218–220, and 403, as amended, 47 U.S.C. 151, 201–205, 218–220, and 403, unless otherwise noted.

2. Section 32.23 is amended by revising paragraph (b) to read as follows:

§ 32.23 Nonregulated activities.

* * * * *

(b) When a nonregulated activity does not involve the joint or common use of assets or resources in the provision of both regulated and nonregulated products and services, carriers shall account for these activities on a separate set of books consistent with instructions set forth in §§ 32.1406 and 32.7990. Transactions between an activity for which a separate set of books is maintained and an activity for which a separate set of books is not maintained shall be accounted for in accordance with § 32.27. In the separate set of books, carriers may establish whatever detail they deem appropriate beyond what is necessary to provide this Commission with the information required in §§ 32.1406 and 32.7990.

* * * * *

3. Section 32.27 is amended by revising paragraphs (a) through (d) to read as follows:

§ 32.27 Transactions with affiliates.

(a) Unless otherwise approved by the Chief, Common Carrier Bureau, transactions with nonregulated affiliates involving transfers into or out of the regulated accounts shall be recorded by the carrier as provided in paragraphs (b) through (f) of this section.

(b) Affiliate transactions provided pursuant to tariffs that are generally available, on file with a federal or state agency, and in effect shall be recorded at tariffed rates.

(c) Affiliate transactions that are not required to be recorded at tariffed rates shall be recorded at prevailing company prices if and only if:

(1) The transactions are with nonregulated affiliates that sell at least 75 percent of their output to non-affiliates; and

(2) Any other conditions specified by Commission order are met.

(d) All other affiliate transactions shall be recorded at either cost or estimated fair market value in accordance with the following conditions:

(1) Sales to nonregulated affiliates shall be recorded at the higher of cost and estimated fair market value.

(2) Purchases from nonregulated affiliates shall be recorded at the lower of cost and estimated fair market value.

(3) In calculating the costs of affiliate transactions, carriers shall comply with the procedures specified by Commission order.

(4) In estimating the fair market value of affiliate transactions, carriers required to file cost allocation manuals shall

comply with the procedures set forth in those manuals.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

4. The authority citation for part 64 is revised to read as follows:

Authority: Secs. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 1, 201–205, 218–220. 225–227, and 403, 48 Stat. 1070, as amended, 47 U.S.C. 151, 201–205, 218–220, 225–227, and 403, unless otherwise noted.

5. Section 64.903 is amended by revising paragraphs (a)(3) and (a)(4), redesignating paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7) and republishing them, adding new paragraph (a)(5), and revising paragraphs (b) and (c) to read as follows:

§ 64.903 Cost allocation manuals.

(a) * * *

(3) A chart showing all of the carrier's corporate affiliates including any operations within the carrier that engage in nonregulated activity that does not involve the joint or common use of assets or resources in the provision of both regulated and nonregulated products and services;

(4) A statement listing each affiliate that engages in or will engage in transactions with the carrier, identifying which, if any, of the listed affiliates sells at least 75 percent of its output to non-affiliates, and describing the nature, terms and frequency of each transaction;

(5) A description of the carrier's procedures for estimating the fair market value of affiliate transactions;

(6) A cost apportionment table showing, for each account containing costs incurred in providing regulated services, the cost pools within that account, the procedures used to place costs into each cost pool, and the method used to apportion the costs within each cost pool between regulated and nonregulated activities; and

(7) A description of the time reporting procedures that the carrier uses, including the methods or studies designed to measure and allocate nonproductive time.

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their manuals at least quarterly, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 60 days before the carrier plans to implement the changes. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Chief, Common Carrier Bureau, may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure.

(c) The Commission may by order require any other communications common carrier to file and maintain a cost allocation manual as provided in this section.

6. Section 64.904 is amended by revising paragraph (a) to read as follows:

§ 64.904 Independent audits.

(a) Each local exchange carrier required by this part or by Commission order to file a cost allocation manual shall have performed annually, by an independent auditor, an audit that provides a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(f)(2) of this chapter presents fairly, in all material respects, the information of the carrier required to be set forth therein in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111 and Affiliate Transactions Orders issued in conjunction with CC Docket No. 93–251, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter as well as §§ 64.901 and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau.

* * * * *

[FR Doc. 93–28770 Filed 11–23–93; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 43

[CC Docket No. 92–296; FCC 93–492]

Simplification of the Depreciation Prescription Process

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted an Order Inviting Comments on selected accounts and proposed projection life and future net salvage ranges for use by local exchange carriers (LECs) regulated under its price cap regulatory scheme. The Order Inviting Comments identifies 17 full and three partial accounts for which the Commission proposes to establish ranges for use beginning in 1994. The rule change is intended to lessen the depreciation prescription burden on price cap LECs in light of regulatory and market changes without sacrificing protection for consumers.

DATES: Comments are due on December 17, 1993. Reply comments are due on January 21, 1994.

ADDRESSES: All comments should be filed with the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. A copy should be sent to Fatina K. Franklin, Accounting and Audits Division, 2000 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Fatina K. Franklin, Common Carrier Bureau, Accounting and Audits Division, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order Inviting Comments on Simplification of the Depreciation Prescription Process, CC Docket No. 92–296, FCC 93–492, adopted November 8, 1993 and released November 12, 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, International Transcription Services, room 246, 1919 M Street, NW., Washington, DC 20554.

Summary

1. On September 23, 1993, this Commission adopted streamlined depreciation prescription procedures for American Telephone and Telegraph Company (AT&T) and those local exchange carriers (LECs) regulated under the Commission's price cap incentive regulatory model (price cap LECs).[1] The streamlining approach we selected for the price cap LECs requires us to establish ranges of projection life and future net salvage factors for as many plant accounts as feasible, beginning in 1994. By this order, we invite comment on the selected

[1] Simplification of the Depreciation Prescription Process, Report and Order, CC Docket 92–296, FCC 93–452 (adopted September 23, 1993) (Depreciation Simplification Order).

accounts and the proposed projection life and future net salvage ranges set forth in the appendix below.

2. Prior to adoption of the Depreciation Simplification Order, the depreciation prescription process required carriers to submit extensive date to support their future net salvage, projection life, and survivor curve estimates (basic factors) underlying proposed depreciation rates. These date requirements often resulted in voluminous submissions, numbering 20–25 pages of analyses for each plant account. In recognition of the regulatory, technological, and market changes that price cap LECs face today, we concluded that the process could and should be simplified. Thus, we determined that ranges could be established for the future net salvage and projection life estimates. Under our new process, if a carrier meeting the requisite criteria proposes to use future net salvage and projection life estimates from within established ranges, it will not need to submit the detailed supporting data now required.

3. We determined that the new, streamlined procedures should be implemented in phases, beginning with the accounts most readily adaptable to the range approach. We now identify accounts for which we propose to establish ranges for use beginning in 1994. We solicit public comment on these proposals.

4. In the Depreciation Simplification Order, we concluded that ranges should be established for all plant accounts if feasible. We also expressed our desire to establish ranges for as many accounts as practicable for use in 1994. However, we acknowledged that technical problems make it difficult to establish ranges for certain accounts, Given our current resources, we concluded that we would be unable to resolve these technical problems so that ranges for all accounts could be used beginning in 1994. After detailed review of current depreciation data, we tentatively conclude that the plant categories listed in the appendix meet the range criteria established by the Depreciation Simplification Order, and thus should be selected for the use of ranges in 1994.

5. As set forth in the appendix below, we propose to establish ranges for twenty-two plant categories. We direct the Bureau to recommend ranges for the remaining accounts if feasible as soon as possible. For the most part we are proposing to establish ranges at the plant account level. For four accounts, however, we are proposing to establish ranges for homogeneous subdivisions of accounts, which are referred to as "rate categories." For these accounts we currently prescribe rates at the rate category level when carriers so request, because it enables the carriers to simplify their analyses and its results in more accurate estimates for the accounts as a whole. We invited comment on this proposal.

6. If we implement these proposals, only those carriers seeking depreciation rates at the rate category level will be able to avail themselves of the streamlined procedures for the Circuit Equipment, Aerial Cable, Underground Cable, and Buried Cable accounts. We encourage the carriers who do not currently subdivide these accounts to do so because it will result in more accurate rates and it will enable them to take advantage of the streamlined procedures. We do not believe it will be difficult or expensive for these carriers to change to the rate category procedure because our accounting rules already require them to maintain the subsidiary records necessary to accomplish this.

7. In the Depreciation Simplification Order, we set forth a number of specific data that should be considered in establishing the projection life and future net salvage ranges. These data include, but are not limited to: A range of +/− one standard deviation around an industry-wide mean of basic factors underlying currently prescribed rates; the number of carriers encompassed by this range; and any trends of LEC plant retirement and modernization plans that are not fully reflected in current basic factors. However, we recognized that these specific data must be considered in light of our obligation to prescribe reasonable depreciation rates:

> * * * we wish to make the ranges wide enough to accommodate a significant number, if not all, of the LECs. On the other hand, we must not make the ranges so wide that they would no longer enable us to exercise effective oversight of depreciation rates.

Thus, in setting ranges, we considered both the specific data enumerated in the Depreciation Simplification Order and our obligation to prescribe reasonable depreciation rates. In the Appendix, we set forth our proposed projection life and future net salvage ranges for the proposed range accounts. We invite comment on the proposed ranges.

8. This is a non-restricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

9. We certify that the Regulatory Flexibility Act of 1980 does not apply to this proceeding because if the proposals in this Order Inviting Comments are adopted, 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. 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 Order Inviting Comments, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of that act.

10. We invite comment on the proposals set forth above. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 17, 1993, and reply comments on or before January 21, 1994. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, room 246, 1919 M Street, NW., Washington, DC 20554. We also ask that parties send a courtesy copy of their comments to the Accounting and Audits Division, 2000 L Street, NW., Washington, DC 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

11. Accordingly, *it is ordered,* Pursuant to sections 1, 4(i), 4(j), and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 220(b), that notice is hereby given of proposed plant accounts for which basic factor ranges should be established and the ranges proposed for those accounts to be used in the depreciation prescription process as described in *Simplication of the Depreciation Prescription Process, CC Docket No. 92–296, FCC No. 93–452.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

APPENDIX—PROPOSED ACCOUNTS AND RANGES FOR INITIAL IMPLEMENTATION

Account number	Account name	Depreciation rate category	Projection life range (years)		Future net salvage range (percent)	
			Low	High	Low	High
2112	Motor Vehicles	Motor Vehicles	7.5	9.5	10	20
2113	Aircraft	Aircraft	7	10	30	60
2114	Special Purpose Vehicles	Special Purpose Vehicles	12	18	0	10
2115	Garage Work Equipment	Garage Work Equipment	12	18	0	10
2116	Other Work Equipment	Other Work Equipment	12	18	0	10
2122	Furniture	Furniture	15	20	0	10
2123.1	Office Support Equip	Office Support Equip	10	15	0	10
2123.2	Co. Communications Equip	Co. Communications Equip	7	10	−5	10
2124	General Purpose Computers	General Purpose Computers	6	8	0	5
2231	Radio Systems	Radio Systems	9	15	−5	5
2232	Circuit Equipment	Digital Data Service	7	11	−5	10
2232	Circuit Equipment	Analog	8	11	−5	0
2311	Station Apparatus	Station Apparatus	5	8	−5	5
2341	Large PBX	Large PBX	5	8	−5	5
2351	Public Telephone	Public Telephone	7	10	0	10
2362	Other Term Equipment	Other Term Equipment	5	8	−5	5
2421	Aerial Cable	Non-Metallic	25	30	−25	−10
2422	Underground Cable	Non-Metallic	25	30	−20	−5
2422	Underground Cable	Metallic	25	30	−30	−5
2423	Buried Cable	Non-Metallic	25	30	−10	0
2424	Submarine Cable	Submarine Cable	25	30	−5	0
2441	Conduit Systems	Conduit Systems	50	60	−10	0

[FR Doc. 93-28769 Filed 11-23-93; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket No. 93-290; DA 93-1349]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by requests filed by Mountain Broadcasting Corporation and WLIG-TV, Inc., to amend § 76.51 of the Commission's Rules to change the designation of the New York, New York-Linden-Paterson-Newark, New Jersey television market to include the communities of Newton, New Jersey and Riverhead, New York. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before December 20, 1993, and reply comments are due on or before January 4, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-290, adopted November 4, 1993, and released November 16, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission in response to a Petition for Rulemaking filed by Mountain Broadcasting Corporation, licensee of WMBC-TV, Channel 63, Newton, New Jersey, proposed to amend § 76.51 of the Rules to change the designation of the New York, New York-Linden-Paterson-Newark, New Jersey television market to include the community of Newton, New Jersey. Further, in response to a Petition for Rulemaking filed by WLIG-TV, Inc., licensee of WLIG-TV, Channel 55, Riverhead, New York, the Commission also proposed to amend § 76.51 of the Rules to include the community of Riverhead, New York, in the same television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the fact presented, the Commission believes that sufficient cases for redesignation of the subject market have been set forth so that these proposals should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that Stations WMBC-TV and WLIG-TV and stations licensed to communities in the New York, New York-Linden-Paterson-Newark, New Jersey television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed communities to be added to a market designation and the market as a whole. Moreover, the petitioners' proposals appear to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

4. The Commission also recognized that the proposed adjustments under consideration involve two communities geographically distant within a particularly large and complex television market such that it may be useful to consider several alternative possibilities. In this regard, the Commission noted the impact that amendment of Section 76.51, which also is used to determine the extent of program exclusivity protections §§ 73.658(m); 76.92–97; 76.151–161 of the Rules). Accordingly, the Commission seeks comment on other mechanisms short of market hyphenation that might address some of the competition issues raised herein concerning stations operating in large and complex markets under existing rules, such as the possibility of rule waivers if it is determined that market hyphenation is inappropriate. Further, although no specific petitions have been filed, the Commission seeks comment on whether there are additional communities in the market to which stations are licensed that may warrant hyphenation along with Newton and/or Riverhead. Such comment is sought to address potential anomalies associated with having some but not all of the stations in an Area of Dominant Influence (ADI) market (as defined by Arbitron) included as hyphenated "designated" communities in the market. The Commission specifically requested comment on whether one or more of the following communities, which are included in the subject ADI, should also be included in § 76.51 of the Rules as designated communities: Secaucus, New Jersey; Bridgeport, Connecticut; and Poughkeepsie, Kingston and Smithtown, New York. The Commission also requested comment on the possibility of only partially "hyphenating" the market so that, for example, Riverhead might be included in a common market with New York City, and Newton included in a common market with New York City, but Riverhead and Newton not joined as part of a common market designation. Such an approach, the Commission stated, might be potential means of including stations truly competitive with each other so treating stations at the opposite ends of a large ADI market area.

Initial Regulatory Flexibility Analysis

5. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. section 601 et seq. (1981).

Ex Parte

6. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, provided they are disclosed as provided in the Commission's Rule. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

7. Pursuant to application procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 20, 1993, and reply comments on or before January 4, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

8. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–28848 Filed 11–23–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC03

Endangered and Threatened Wildlife and Plants; Proposed Revision of the Special Rule for Nonessential Experimental Populations of Red Wolves in North Carolina and Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise the special rule for the nonessential experimental populations of red wolves (*Canis rufus*) in North Carolina and Tennessee to revise and clarify the incidental take provision; apply the incidental take provision to both reintroduced populations; clarify the livestock owner take provision; apply the livestock owner harassment and take provisions to both reintroduced populations; add harassment and take provisions for red wolves in close proximity to private residences; add Martin and Bertie Counties, North Carolina, to the list of nearby counties where the experimental population designation will apply; and apply the same taking (including harassment) provisions to red wolves outside the experimental population area, except for reporting requirements.

DATES: Comments from all interested parties must be received by January 10, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

Requests for the summary report on the 5-year experimental reintroduction at the Alligator River National Wildlife Refuge (Alligator River) should be sent to the Alligator River National Wildlife Refuge, P.O. Box 1969, Manteo, North Carolina 27954.

FOR FURTHER INFORMATION CONTACT: Mr. V. Gary Henry, Red Wolf Coordinator, at the above Asheville, North Carolina, address (Telephone 704/665–1195, Ext. 226).

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to introduce red wolves into Alligator River National

Wildlife Refuge (Alligator River), Dare County, North Carolina, was published in the **Federal Register** July 24, 1986 (51 FR 26564). A final rule making a determination to implement the proposed action with some modifications was published November 19, 1986 (51 FR 41790). The red wolf population in Dare County and adjacent Tyrrell, Hyde, and Washington Counties was determined to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended (Act). A revision added Beaufort County to the list of counties where the experimental population designation would apply (56 FR 56325). The status of the population was to be reevaluated within 5 years, and it was to include public meetings.

A proposed rule to introduce red wolves into the Great Smoky Mountains National Park (Park), Haywood and Swain Counties, North Carolina; and Blount, Cocke, and Sevier Counties, Tennessee, was published in the **Federal Register** August 7, 1991 (56 FR 37513). A final rule making a determination to implement the proposed action with some modifications was published November 4, 1991 (56 FR 56325). This population was also determined to be a nonessential experimental population according to section 10(j) of the Act. Graham, Jackson, and Madison Counties, North Carolina; and Monroe County, Tennessee, were also included in the experimental designation because of the close proximity of these counties to the Park boundary. The reintroduction potential of the Park was to be assessed after a 10- to 12-month experimental phase. A positive assessment would result in initiation of a permanent reintroduction attempt.

The red wolf is an endangered species that is currently found in the wild only as experimental populations on the Service's Alligator River and adjacent private lands in Dare, Hyde, Tyrrell, and Washington Counties, North Carolina; and in the Park in Swain County, North Carolina, and Blount and Sevier Counties, Tennessee; and as an endangered species in three small island propagation projects located on Bulls Island, South Carolina; Horn Island, Mississippi; and St. Vincent Island, Florida. These five carefully managed wild populations contain a total of approximately 46 animals. The remaining red wolves are located in 28 captive-breeding facilities in the United States. The captive population presently numbers approximately 148 animals.

Following are summaries of the results from the two experimental reintroductions. A more detailed summary for Alligator River is available (see "**ADDRESSES**" section) as Progress Report No. 6, entitled "Reestablishment of Red Wolves in the Alligator River National Wildlife Refuge, North Carolina, 14 September 1987 to 30 September 1992."

Alligator River 5-Year Summary

The 5-year experiment to reestablish a population of red wolves in Alligator River in northeastern North Carolina ended October 1, 1992.

From September 14, 1987, through September 30, 1992, 42 wolves (adults—10 males, 9 females; yearlings—1 female; pups—12 males, 10 females) were initially released on 15 occasions. Four releases were conducted in 1987, two in 1988, five in 1989, two in 1990, one in 1991, and one in 1992. As of September 30, 1992, there were at least 30 free-ranging wolves in northeastern North Carolina.

Animals were initially released as members of seven adult pairs, an adult and a yearling, an adult and a pup, five families, and one sibling pair. Adults are defined as animals ≤ 24 months of age, yearlings are between 12 and 24 months of age, and pups are ≤ 12 months of age. Released adults ranged in age from 2.25 years to 7.33 years.

Wide-ranging movements that created management situations or led to the death of some animals soon after release were common. Of the 31 releases of adults and 22 releases of pups, 18 adults and 10 pups either had to be returned to captivity or died within 2 months. Length of acclimation, release area, location of resident wolves, and type of social group released all affected a wolf's probability of successfully establishing itself in the wild.

Of the 42 wolves released, 22 died; 7 were returned to captivity for management reasons; 11 were free-ranging through September 30, 1992; and the fates of 2 are unknown. Length of time in the wild varied from 16 days to 3.5 years.

Reintroduced wolves were killed by one of at least seven mortality factors. Vehicles (n = 8), intraspecific aggression (n = 5), and drownings (n = 4) were the most significant sources of mortality. It is a measure of the program's success that all but two of the deaths were natural or accidental, not as a result of any irresponsible action by a private citizen.

A minimum of 22 wolves were born in the wild. These animals were members of eight litters produced by 11 adults (6 males, 5 females). Two litters were produced in 1988, at least one in 1990, four in 1991, and at least one in 1992. No pups were born in the wild during 1989 because there were no adult pairs together during the breeding season.

Only two wild-born wolves died, and the fate of one is unknown. As of September 30, 1992, wild-born wolves accounted for 63 percent of the known population (19 of 30).

Of the 11 adults that bred in the wild, 1 was wild-born and 10 were captive-born. Wild-born offspring are evidence that captive-born-and-reared adults can make the transition from captivity to life in the wild.

As expected, wild-born pups exhibited wide-ranging movements as they dispersed from natal home ranges. These animals, with the exception of one female, traveled up to 192 km before establishing new home ranges on private land south or west of Alligator River. One female was killed by a vehicle before she established a new home range. Dispersal age ranged between 7 and 22 months. The youngest dispersers were siblings that left their natal home range after their parents were returned to captivity. Likewise, another female dispersed at a young age after her mother was returned to captivity. It is likely that some or all of these pups would not have dispersed had their families remained intact.

Twenty-four of the released wolves were recaptured 63 times, and 17 of the wild-born wolves were recaptured 39 times. Most recaptures were necessary in order to meet program objectives (replace radio collars, place a specific wolf with a mate, translocate an animal to a suitable site, etc.). Every management problem was resolved without inflicting significant long-term damage to animals and with little or no inconvenience to residents of the area.

Captive breeding was an integral component of the reintroduction. Since 1986, 79 wolves have been held in captivity at Alligator River for varying periods of time. As of September 30, 1992, ten wolves were in captivity. During the 5-year experiment, 20 captive adult pairs produced 34 pups. With access to 12 pens, Alligator River will continue to be an important component of the red wolf captive-breeding program.

By almost every measure, the reintroduction experiment was successful and generated benefits that extended beyond the immediate preservation of red wolves to positively affect local citizens and communities, larger conservation efforts, and other imperiled species. During the last 5 years, four important points surfaced:

1. Since every management problem was resolved without inflicting long-term damage to animals and with little

inconvenience to residents of the area, it is evident that wolves can be restored in a controlled manner.

2. Significant land-use restrictions were not necessary in order for wolves to survive. Indeed, hunting and trapping regulations for Alligator River remained unchanged or were further relaxed during the experiment. Additionally, no restrictions were needed in order for wolves to survive on private land.

3. Red wolves and sportsmen can coexist. Many hunters and trappers expressed support, while others actively contributed to the success of the experiment by reporting sightings of red wolves.

4. The reintroduction area, which encompasses about 250,000 acres (111,750 hectares), probably cannot support 30 wolves for an extended period of time. Dispersal outside the reintroduction area by wild-born wolves has occurred and will continue. In addition to dispersal, the future of the wolf population is threatened by its smallness; many events (e.g., disease outbreaks) can cause extinction of small populations.

Increasing the size of the wolf population minimizes threats to its survival. The primary factor limiting population size is the size of the reintroduction area. A larger reintroduction area would provide habitat for dispersing wolves and provide the Service with opportunities to release additional wolves. Fortunately, the reintroduction area can easily be enlarged by adding to the project the 112,000-acre (45,327-hectare) Pocosin Lakes National Wildlife Refuge (Pocosin Lakes). Purchased in 1990 and located in Washington, Tyrrell, and Hyde Counties, North Carolina, Pocosin Lakes is ideal for probably 15 to 25 wolves because of its large size, remoteness, abundant prey populations, and proximity to Alligator River.

Meetings with the public and local governments were held to present the results of the first 5 years and to solicit input on a proposal to maintain the current population and expand the reintroduction westward to encompass Pocosin Lakes beginning in 1993. The seven public meetings were held in the communities of Engelhard, Manteo, Stumpy Point, East Lake, Columbia, Swanquarter, Washington, and Plymouth. Attendance at these meetings ranged from 7 to 90 people at each and totaled 146 at all locations. Meetings were also held with the county commissioners in Washington, Dare, Beaufort, Tyrrell, and Hyde Counties.

Reintroductions are generally supported by local, State, and Federal agencies; elected officials; and the general public. Most people who commented supported the restoration project, although some expressed concern about the effect of red wolves on activities on private land. The Service assured them that, because free-ranging wolves are legally classified as members of an experimental nonessential population, the wolves would not negatively impact legal activities on private or Federal land.

Some citizens used the meetings to express frustration about other matters involving the Service. No significant complaints were voiced specifically about the red wolf reintroduction experiment. However, Hyde and Washington Counties did pass resolutions opposing red wolf project expansion. These resolutions seemed to be based on anti-government sentiment and an unwarranted fear of prohibitions on private land use.

After consideration of the results from the 5-year experimental reintroduction and public input received in public meetings and meetings with State and local governments and agencies, the Service has determined that it will maintain the present populations at Alligator River and expand this population with reintroductions at Pocosin Lakes beginning in 1993. The proposed reintroductions at Pocosin Lakes will be within counties previously designated for the experimental population and will require no changes in the existing rule. However, although no red wolves will be reintroduced into Martin and Bertie Counties, North Carolina, the Service proposes to add these counties to the list of counties where the experimental population designation will apply. This will provide a buffer zone where dispersing red wolves will be managed under the same provisions as established for the core area.

Park 1–Year Summary

On November 12, 1991, the Service, in cooperation with the National Park Service (Park Service), experimentally released a single family group of red wolves into the Cades Cove area of the Park. This release was designed to assess the feasibility of eventually establishing a self-sustaining red wolf population on Park Service and surrounding National Forest Service property. The experimental period ended in late September 1992 with the capture of the remaining three members of the release group.

Specific technical objectives of the experimental release were to document and respond to movements and activities of the wolves in mountainous terrain and in the presence of high human activity, livestock interests, and an increasing coyote population. However, a more important objective was to establish an informative and cooperative relationship with the involved agencies and local citizens. Through continuous telemetric contact, direct and relayed sightings, and the dedicated efforts of project personnel, valuable information was gathered with respect to all of these categories; some problems were encountered as well.

Cades Cove is unique within the Park; it possesses a great diversity and abundance of prey species, making it highly attractive to a large predator. As a result, the average home range for the four released wolves was 15 km^2 (3,700 acres), scarcely larger than Cades Cove itself. As yet, an accurate prediction of red wolf home ranges for habitat typical of the other 99.3 percent of the Park cannot be made. Wolves made exploratory movements up to 16 km (10 miles) from the release site. Individuals strayed off Park property (<5 miles or <8 km) four times. Twice they were recaptured within several hours, and twice they returned of their own accord within 24 hours. The primary prey species taken by the wolves were deer, rabbit, ground-hog, and raccoon. Samples are currently being analyzed for percentages and seasonal variation.

Wolves were sighted on numerous occasions by visitors and project personnel throughout the experiment. This was somewhat expected in an area where prey species are extremely visible and comfortable with the intense attention of as many as 15,000 visitors daily. However, the two adult wolves, especially the male, repeatedly tolerated people at close distances. This was attributed to the amount of time (e.g., 6 years for the male) that the adults had spent in captivity. The male was eventually recaptured and removed from the experiment in late January 1992. The female tolerated human presence to a lesser degree, but she presented no problems and was allowed to roam free for the duration of the experimental period. The two female pups were often sighted crossing roads or, at a distance, hunting in pastures. They developed an increasing wariness to human activity as they spent more time in the wild. The behaviors of these wolves support the theory that younger wolves, with minimal exposure to human contact, make better release candidates.

The private land surrounding the Park and throughout the Southern Appalachians supports a variety of livestock interests. The perceived potential economic threat of a large predator is perhaps the single greatest

political barrier to establishing a self-sustaining red wolf population in the Southern Appalachians. The documentation and management of the wolves' interaction with domestic livestock is likely to be a major factor in deciding whether to expand the project. Thus, a $25,000 depredation account was established to compensate livestock owners for losses.

Throughout the experiment, the adult male was responsible for taking one chicken and three domestic turkeys in two separate incidents. The remaining three wolves took one of five injured or missing newborn calves. One additional depredation attempt occurred but did not result in injury to the calf. Reimbursements for the chicken and the calf totaled $253. Offers to reimburse for the turkeys were declined by the owner.

Cades Cove supports a 300-head black angus cattle-breeding operation, leased to a private stock owner. During the 6-month calving season, the wolves and calving operation were intensely monitored. The wolves were located disjunct from five of the six attempted depredations. Day and night (using night-vision equipment) visual observations revealed cooperative hunting by small groups of coyotes. Nightly spotlight observations by the stock owner revealed continuous coyote activity in calving pastures. Accurate records of lost calves prior to the experimental release of wolves were not kept. Estimates by the stock owner indicated approximately five to ten calves per year were lost to bears, coyotes, and other predators/scavengers.

Of significance is that all six of the depredation attempts on calves that occurred during the experimental release involved calves less than one week old, and all of the events occurred along wood lines away from the main herd of cattle. Project personnel began assisting the stock owner in moving newborn calves into the main herd, and no further depredations by coyotes or wolves occurred.

Prior to the red wolf release, the Service contracted the University of Tennessee to conduct a census of coyotes in the Park and to study interactions between resident coyotes and released wolves. Seven coyotes were outfitted with telemetry collars and were monitored for 18 months, or until they permanently left the study area. Only one coyote remained "on the air" in Cades Cove by the time the wolves were released. This collar expired 3 months later. Interaction data was then gathered by direct observation.

Initial information indicated aggressive behavior between the adult wolves and resident coyotes, with the wolves apparently dominating. After the removal of the adult male wolf, greater numbers determined the dominating species.

In preparation for the experimental release, project and Park personnel met with area business, citizenry, and natural resource organizations for comment on the proposal. Modifications to the release plans included the addition of a "non-injurious harassment clause" to the experimental rule package, prevention of reproduction in the wild, immediate recapture of wolves straying off Park property, and recapture of all wolves at the end of the experiment.

To facilitate information exchange, an information committee (composed of representatives from Federal and State wildlife resource agencies, Farm Bureau Federations, and conservation organizations) was established. The Heartland Series, a local television environmental program, produced a documentary entitled "Front Runner," focusing on the reestablishment effort in the Southern Appalachians. The "Front Runner" video, a teacher's guide, and an activity poster were distributed free to all requesting educational institutions. The project gained national television exposure on "Zoo Life with Jack Hanna," a weekly public education broadcast. Presentations and workshops were given at wildlife exhibitions and to a variety of groups from elementary to college students and to senior citizens. Other media contact included interviews with local and regional newspapers, popular magazines, free-lance writers, and television news teams.

During the final weeks of the experimental period, the Service reviewed and presented their findings to the Park Service and members of the information committee. The decision was made to proceed with a full reintroduction effort at a very conservative pace, with two releases in the fall of 1992.

On October 9, 1992, a family of six red wolves (two adults, four pups) were released into Cades Cove. To date, these wolves have shown restricted movements and food habits very similar to the experimental group. Within several weeks after release, the adult pair had taken a large European wild hog—an exotic species in the Park.

On December 9, 1992, a second group of six wolves (two adults, four pups) was released from a remote backcountry site several miles east of Cades Cove. It is expected that these animals will be more difficult to track. However, they will provide needed information about the home range requirements of red wolves in habitat that is typical of the vast majority of the Park and surrounding Federal lands.

All released wolves will wear transmitters and will be monitored as closely as the experimental group. There are no scheduled plans to recapture these animals, except to replace aging transmitters in approximately 2 to 3 years.

The possibility of expanding the Park reintroduction to include adjacent national forest lands within the Nantahala and Pisgah National Forests in North Carolina, the Cherokee National Forest in Tennessee, and the Chattahoochee National Forest in Georgia will be evaluated over the next few years. This evaluation will include meetings with congressional representatives, State wildlife and agriculture agencies, Farm Bureau Federations, local agriculture and hunting interests, conservation organizations, county commissioners, and a variety of local organizations. A final decision will be made after public meetings in the local areas where reintroductions are proposed.

Special Rule Changes for Both Reintroductions

In the period since publication of the special rules for the experimental population introduced on Alligator River and the Park (51 FR 41796 and 56 FR 56333), it has become apparent that changes are needed in the rule for these populations. These proposed changes will also provide consistency by treating both reintroductions the same.

The provision for taking red wolves incidental to lawful recreational activities needs revision and clarification. Current policy at Alligator River applies this provision to all lawful activities, not just to recreational activities. For example, eight wolves have been killed by vehicles not involved in recreational pursuits but certainly otherwise lawful. No problems have been encountered at Alligator River in the application of a more liberalized provision. Therefore, the Service proposes to delete the word "recreational." In addition, incidental take is defined in the policy at Alligator River as unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care. This definition provides needed clarification and is proposed for inclusion into the incidental take provision of the special rule.

The Service revised the proposed rule for the Park reintroduction, based on input by the North Carolina Farm Bureau Federation that stated that livestock owners should be allowed to

take red wolves engaged in livestock depredation. The Tennessee Citizens for Wilderness Planning supported the revision. The final rule permitted private livestock owners to harass red wolves actually engaged in the pursuit or killing of livestock on private lands. Such conflicts must be reported to the superintendent of the Park. Service or State officials will respond to these conflicts by live-capturing the offending animals. If an early response by the Service or State officials results in a failure to capture offending animals, the livestock owner will be permitted to take the offending animal.

These provisions worked well in all five depredation incidents recorded the first year. All offending animals were recaptured. In at least two of the instances, private landowners did harass the animals away but did not take offending animals. However, experience with offending animals has indicated a potential problem. There may be a time lapse before offending animals settle into a predictable pattern whereby they can be recaptured. During this time period, private livestock owners should not attempt to take the animals themselves. However, the special rule does not establish a definitive time when Service or State attempts to recapture the animal are deemed unsuccessful and the private livestock owner is then permitted to take the offending animals. This is a decision that must be made by the Service project leader or biologist in the field at the depredation location. Therefore, a rule revision is proposed to provide that private livestock owners will be permitted to take offending animals upon written approval by the Service project leader or biologist.

Experience at Alligator River and the Park indicates a need to extend the harassment and take provisions now in place for private livestock owners to include private individuals around private residences. Wolves that come in close proximity to private residences may cause property damage by killing pets or removing and/or physically defacing small property items. In addition, private individuals may not want the animals close to their residences because they fear them or consider them a nuisance. Although currently not covered by such rule provisions, these stipulations have been implemented as reasonable law enforcement procedures. To date, there have been at least 15 incidents where animals were harassed, but in no case were they taken, by private individuals. This proposed rule revision will provide the legal basis for a provision now being implemented as a reasonable procedure.

Currently, there are at least five red wolves, once present at Alligator River, whose fate is unknown. Two of these wolves were observed but never captured. Transmitters malfunctioned on the other three wolves. One animal, whose transmitter malfunctioned in December 1989, would now be 5 years old. The remaining four animals were pups or yearlings, and contact with them was lost in 1991 or 1992. As wolves are great wanderers, it is possible that some of these five animals may have dispersed outside the experimental population boundaries (which could also happen with future animals). There is no possibility of such dispersing wolves mixing with populations of red wolves that have been classified as endangered, because the only existing red wolves in the wild are those introduced as experimental populations or those introduced onto isolated islands for propagation purposes. As a result, dispersing animals will not contribute to the conservation of the species.

As resident wild canid populations are hunted and trapped, it is possible for a dispersing red wolf to be taken incidental to such lawful activities. Dispersing red wolves could also come within close proximity to private residences or attempt to kill livestock. Providing greater protection for dispersing red wolves than that provided for red wolves within the experimental population boundaries would seriously erode the public support that is so essential for the success of reintroductions. Therefore, the Service proposes to apply the same taking provisions to red wolves outside the experimental population boundaries as within, with one exception. This exception is that taking does not need to be reported to the refuge manager or Park superintendent immediately. Such reporting will be encouraged to the degree possible, but it will not be required. It is impractical to inform the general population of such requirements outside the localized experimental population boundaries, and red wolves taken are not likely to be recognized as red wolves, even after such taking occurs and an animal is in hand.

Special Rule Changes for Alligator River

The proposed rule for Alligator River provided for any person to take red wolves incidental to lawful recreational activities (51 FR 26564). Objections to this provision from the Defenders of Wildlife, the National Audubon Society, the Humane Society of the United States, and the National Wildlife Federation, based on lack of necessity and risk of misinterpretation, resulted in its deletion from the final rule. Instead, the enforcement policy of the Service was clarified in the preamble to the final rule to the effect that there would be no penalty for taking incidental to otherwise lawful activity that was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, provided the taking was immediately reported to the refuge manager. Experience at Alligator River did detect a need for this provision and did not detect any misinterpretation of the policy. Several red wolves were killed by vehicles; one wolf was killed in a trapping incident; and one was shot close to a private residence. The vehicle deaths were interpreted as incidental to lawful activity, which required little investigation. The trapping and shooting incidents were investigated and settlements were reached. In addition, the incidental take provision originally proposed and then deleted at Alligator River was included in the final rule for the Park. No taking of red wolves has occurred despite several instances of wolves visiting and having been seen on private lands. Therefore, this is additional evidence that the provision is not being misinterpreted by private individuals in order to take red wolves indiscriminately. As now implemented on Alligator River, incidental taking provisions are a Service law enforcement policy that is subject to change or misinterpretation with changes in personnel. Therefore, the Service proposes to apply the incidental take provisions now implemented in the Park to the Alligator River population as well.

Experiences at Alligator River indicate that a need exists for application of the private livestock owner harassment and take provisions to this population as well. Two depredation incidents were encountered where the provisions could have been utilized and may have altered the final outcome in a positive manner with regard to reducing depredation and increasing public support. As these provisions have worked well in five incidents in the Park population, with no difficulties encountered in their interpretation or application, this proposed rule will extend these provisions to the Alligator River population.

Additionally, based on experience gained to date, it now appears that there is some possibility that introduced wolves may wander into Martin and Bertie Counties, North Carolina, which are in close proximity to the Alligator River project area. In order to assure that in such an eventuality the wolves would

be completely covered under the special rule provisions, the Service proposes to add Martin and Bertie Counties, North Carolina, to the experimental population area.

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby solicited (see "ADDRESSES" section) from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

A decision on this proposed action will take into consideration any comments or additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

Environmental assessments were prepared under the authority of the National Environmental Policy Act of 1969 and are available for inspection by the public at the Service's Asheville Field Office (see "Addresses" section). These assessments formed the basis for a decision that these actions are not major Federal actions that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (implemented at 40 CFR parts 1500–1508). These minor rule changes do not require revision of the environmental assessments.

Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act

The Fish and Wildlife Service has determined that this rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). No private entities will be affected by this action. The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511). This rule has been reviewed under Executive Order 12866.

Author

The principal author of this proposal is V. Gary Henry (see "ADDRESSES" section).

List of Subject in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes 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 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.

2. Amend § 17.84 by revising paragraphs (c)(4) and (c)(9)(i) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) * * *

(4)(i) Any person may take red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section, *Provided* that such taking is incidental to lawful activities or in defense of that person's own life or the lives of others, and that such taking is reported immediately to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)). The term "incidental" is defined as unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care.

(ii) Any livestock owner may harass red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section when the wolves are actually pursuing or killing livestock on private properties, *Provided* that all such harassment is by methods that are not lethal or physically injurious to the red wolf and is reported immediately to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)).

(iii) Any livestock owner may take red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section to protect livestock actually pursued or being killed on private properties after efforts to capture depredating red wolves by project personnel have proven unsuccessful, *Provided* that the Service project leader or biologist has approved such actions in writing and that all such taking shall be immediately reported to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)).

(iv) Any person may harass red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section that are within 100 yards of a private residence, *Provided* that all such harassment is by methods that are not lethal or physically injurious to the red wolf and is immediately reported to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)), as noted in paragraph (c)(6) of this section.

(v) Any person may take red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section that are within 100 yards of a private residence to protect private property, including pets and livestock, after efforts to capture such animals by project personnel have proven unsuccessful, *Provided* that the Service project leader or biologist has approved such actions in writing and all such taking shall be immediately reported to the refuge manager (for the red wolf population defined in paragraph 2(c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)).

(vi) The provisions of paragraphs (c)(4) (i) through (v) of this section apply to red wolves found in areas outside the areas defined in paragraphs (c)(9) (i) and (ii) of this section, with the exception that taking and harassment do not need to be reported to the refuge manager or Park superintendent immediately.

* * * * *

(9)(i) The Alligator River reintroduction site is within the historic range of the species in North Carolina, in Dare, Hyde, Tyrrell, and Washington Counties; because of their proximity and potential conservation value, Beaufort, Martin, and Bertie Counties are also included in the experimental population designation.

* * * * *

Dated: August 12, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–28789 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 225
Wednesday, November 24, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 19, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information: (1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Question about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

• Agricultural Marketing Service
Onions Grown in Certain Designated Counties In Idaho, and Malheur County, Oregon, Marketing Order No. 958
Recordkeeping; On occasion; Annually; Biennially
Farms; Businesses or other for-profit; 1,470 responses; 215 hours
Bob Mathews (202) 690–0464

• Agricultural Marketing Service
Application for Plant Variety Protection Certificate and Objective Description of Variety
SD–470 and SD–470 series
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 779 responses; 1,182 hours
Kenneth H. Evans (301) 504–5518

New Collection

• Food and Nutrition Services
WIC Farmers' Market Nutrition Program (FMNP) Annual Financial Report and the WIC Farmers' Market Nutrition Program Recipient Report
FNS–683 and FNS–203
Annually
State or local governments; 11 responses; 143 hours
Debra Utting (703) 305–2730

Larry K. Roberson,
Department Clearance Officer.

[FR Doc. 93–28865 Filed 11–23–93; 8:45 am]

BILLING CODE 3410–01–M

Farmers Home Administration

Redelegation of Authority Regarding Debt Settlement/Release of Liability Cases in Excess of $1,000,000

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of redelegation of authority.

SUMMARY: All debt settlement/release of liability cases in excess of $1,000,000 (including principal, interest, and other charges) must be submitted to the National Office for approval by the Administrator. The Administrator hereby gives notice of redelegation of authority regarding such cases to the Director, Large Loan Servicing Group.

EFFECTIVE DATE: October 1, 1993 through September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Joe O'Leska, Director, Large Loan Servicing Group, Farmers Home Administration, USDA, room 2905, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. Telephone (202)690–1299.

SUPPLEMENTARY INFORMATION:

PROGRAMS AFFECTED

This action affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.428 Economic Emergency Loans

The notice of the relegation of authority regarding debt settlement/release of liability cases reads as follows:

Pursuant to the authority delegated to me as Administrator of the Farmers Home Administration, I hereby redelegate to the Director, Large Loan Servicing Group, the authority to review all debt settlement/release of liability cases in excess of $1,000,000 (including principal, interest and other charges) referred to the National Office by State Directors, and in connection with such review and at your discretion and in your professional judgment to:

(1) Reject such requests for debt settlements and releases of liability without further review by this office (subject to any Right of Appeal provided under law); or

(2) To return any and all such requests to the respective State Director in the event you determine that additional information is necessary to support such a request.

This authority does not extend to debt settlement of Nonprogram Loans, Economic Opportunity Loans and third party converters. In addition, this authority does not contravene the authority delegated to State Directors to Approve/Reject debt settlements/releases of liability in cases of less than $1,000,000 as contained in § 1956.84(a)(1)(i) of FmHA Instruction 1956–B(available in any FmHA office).

Nothing contained herein shall be construed to grant delegated authority to approve requests for debt settlement/release of liability in cases in excess of $1,000,000.

This redelegation of authority shall be effective through September 30, 1994, unless revoked, extended or otherwise modified in writing prior to such date.

Dated: November 15, 1993

Sharron S. Longino,

Acting Administrator, Farmers Home Administration.

[FR Doc. 93–28866 Filed 11–23–93; 8:45 am]

BILLING CODE 3410–07–U

Forest Service

Hawaii Tropical Forest Recovery Task Force

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hawaii Tropical Forest Recovery Task Force will meet in Hilo, Hawaii, on December 13, 1993, 8 a.m. to 4:30 p.m., for a field trip and a formal meeting on December 14, 1993, from 8 a.m. to 4:30 p.m. The Task Force is composed of 12 members, including the Administrator of the Department of Land and Natural Resources, State of Hawaii, and 11 others appointed by the Governor of Hawaii and the Secretaries of Agriculture and Interior. During these sessions, task force members will discuss relevant topics and review the progress of six working groups which are drafting recommendations to help steward—manage, protect, and use—the tropical forests of Hawaii. Both sessions are open to the public. Persons who wish to bring tropical forest recovery matters to the attention of the Task Force should contact the Task Force Coordinator and preferably file written statements with the Task Force after the meetings. A meeting agenda will be available on request.

DATES: The field trip will be held December 13, 1993, and the meeting will be held December 14, 1993.

ADDRESSES: The field trip will depart from and return to the Hilo Hawaiian Hotel, 71 Banyan Drive, Hilo, Hawaii 96720. The meeting will be held at the Hilo Hawaiian Hotel. If you have an interest in attending either the field trip or the meeting, please confirm your attendance with Jan Lerum by December 6, 1993. Send written comments to Jan Lerum, Coordinator, Hawaii Tropical Forest Recovery Task Force, Forest Service, USDA, 1151 Punchbowl Street, room 323, Honolulu, HI 96813, FAX (808) 528–05576.

FOR FURTHER INFORMATION CONTACT:

Jan Lerum, Coordinator, Hawaii Tropical Forest Recovery Task Force, Forest Service, USDA, (808) 541–2628.

Dated: November 18, 1993.

Michael T. Rains,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 93–28824 Filed 11–23–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 2 p.m. on Saturday, December 11, 1993, at the Westin Hotel, 686 Anton Boulevard, Costa Mesa, California 92636. The purpose of the meeting is to discuss administration of justice issues in Orange County.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael Carney, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 17, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–28774 Filed 11–23–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Logbook Family of Forms.

Agency Form Number: None for the new requirement.

OMB Approval Number: 0648–0214.

Type of Request: Revision of a currently approved collection.

Burden: 2,735 hours — an increase of 141 hours for the new requirement.

Number of Respondents: 200.

Avg Hours Per Response: 2 minutes for notification requirement, 1 hour for making arrangements for observers, and 8 hours for claims.

Needs and Uses: The Fishery Management Plan for Pelagic Fisheries governs the longline fishery based in Hawaii. It has been determined that this fishery takes species of sea turtles that are listed as threatened and endangered under the Endangered Species Act. A mandatory observer program is being established so that statistically valid information can be gathered on the amount of take. These data are necessary to determine the impact of takes on the species and for the development of measures to reduce or prevent the take in the future.

Affected Public: Individuals, businesses or other for–profit organizations, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Form Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 17, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–28808 Filed 11–23–93; 8:45 am]

BILLING CODE 3510–CW–F

1994 DPRB Membership

The Department amends the DPRB membership published in 58 FR 60841 with the addition of Carolyn P. Acree, Deputy Director for Human Resources Management (C).

Dated: November 18, 1993.

Marcia P. Kirksey,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 93–28894 Filed 11–23–93; 8:45 am]

BILLING CODE 3510–BS–M

Bureau of Export Administration

[Docket Nos. 2109–01 and 2109–02]

Doron Rotler Individually and Doing Business as Ram Robotics Ltd. Also Known as Ram Robotic Automation Manufacturing Systems Ltd. Respondents; Final Decision and Order

Respondent Doron Rotler, individually and doing business as Ram Robotics Ltd., also known as Ram Automation Manufacturing Systems Ltd., is charged with one count of violating section 787.2 and one count of violating § 787.4(a) of the Export Administration Regulations (currently codified at 15 CFR 768–799 (1993)) in connection with the attempted export of a Digital Equipment Corporation VAX 8600 computer system from the United States to Hong Kong without the validated export license required by § 772.1(b) of the Regulations. On October 18, 1993, the Administrative Law Judge (ALJ) issued his recommended Decision and Order, a copy of which is attached hereto and made a part hereof.

Having examined the record, including the submissions by the Respondent and by the United States Department of Commerce, and based on the facts of this case, I hereby affirm the Decision and order of the ALJ in all respects except Paragraph II (suspension of denial period) shall be modified by striking the phrase "and shall be remitted at the end of such five year period without further action" and inserting in its stead the phrase "and shall thereafter be waived".

This Order constitutes the final Agency action in this matter.

Dated: November 17, 1993.

Barry E. Carter,

Acting Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: Mr. Doron Rotler, appearing *pro se* individually and doing business as Ram Robotics Ltd., also known as Ram Robotic Automation, Manufacturing Systems Ltd., c/o Trading, Marketing and Financing (T.M.F.), Jan Toorpopplein 1, 2391 GC, Hazerswoude, The Netherlands.

Appearance for Agency: Thomas C. Barbour, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, room H–3839, 14th & Constitution Avenue, NW., Washington, DC 20230.

Preliminary Statement

On May 21, 1992, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (the Department or Agency), issued a charging letter against Doron Rotler, Individually and doing business as Ram Robotics Ltd., also known as Ram Automation Manufacturing Systems Ltd. (herein collectively referred to as the Respondent or Rotler), under the authority of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. Sections 2401–2420 [Pub. L. 103–10, March 27, 1993]) (the Act), and the Export Administration Regulations (currently codified at 15 CFR parts 768–799[1992]) (the Regulations). The charging letter alleges that:

On about June 6, 1987,[1] Rotler caused/facilitated the attempted export of a Digital Equipment Corporation (DEC) VAX 8600 computer system from the United States to Hong Kong without the validated export license Rotler knew, or should have known, was required by § 772.1(b) of the Regulations. In attempting by this conduct to bring about a violation of the Act and Regulations, Rotler violated § 787.2 of the Regulations. By engaging in the aforesaid conduct while knowing that to do so was violative of the Act and Regulations, Rotler also violated § 787.4(a) of the Regulations.

The Respondent filed a timely answer to the charging letter[2] denying violation of the Act and Regulations, but did not request a hearing. After the parties filed arguments and evidentiary testimony in accordance with a schedule issued April 26, 1993, the record closed for decision on August 27, 1993.

Facts

1. Agency Counsel's Evidence

The Department's evidence shows that in early 1987, Rotler, based in The Netherlands, negotiated with Multitronics, Inc., an United States company in West Bridgewater, Massachusetts, for the purchase by Rotler of a DEC VAX 8600 computer system for Emulax AG, a Swiss concern.[3] At the time, that computer system was classified under Export Control Commodity Number (ECCN) 1565a, requiring that, for its export to any country but Canada, a validated export license be issued by the Department.

In correspondence attending these negotiations, Multitronics advised Rotler that a validated license was required for the export of this computer from the United States. Accordingly, in March 10 correspondence to Rotler in The Netherlands, Jeffrey S. Chase of Multitronics advised that:

> In regard to the export license you will need for the equipment we are negotiating on, there are two ways for you to procure the license. You can work with Cambridge Int'l * * * Maidenhead, Berks, United Kingdom (fax and telex numbers). They can provide you with an export license for 2.5–3% of the total sale, and they can provide it within 48 hours. The alternative is that we can provide you with the export license for only 1% of the total sale within 2 weeks—30 days. Please let us know how you would like to proceed.

In March 17 correspondence to Gabriel (Gabi or Gabby) Jaish, director of GCS, a Netherlands company,[4] urging him to immediately complete certain financial arrangements in order to facilitate purchase of the equipment, Chase inquired as to the status of his export license.

In a date-illegible telex to Rotler excepting to certain transaction terms, Frank T. Gangi, president of Multitronics, agreed that Rotler could do whatever he wanted with the equipment so long, *inter alia*, as he agreed to comply with all applicable U.S. export laws and to hold Multitronics harmless for any actions resulting from his having exclusive power over the shipment (Gov't exh. 5). In a late April reply to Gangi, Rotler promised that the "system will be shipped out of USA with valid export-license to our client."

By May 12 correspondence to The Bank of Boston's Letter of Credit Department, Jonathan Usha, vice-president, T.F.S. International Shipping Inc. (TFS), Jamaica, New York, in effect, confirmed that the DEC VAX computer system and invoice-listed components had been received from Multitronics in four wooden cases and were being

[1] All dates hereinafter are within 1987 unless otherwise stated.

[2] On December 10, 1992, Agency Counsel received a letter from the Respondent answering the charging letter and, because the Respondent also had not filed his answer with this office, on December 11 Agency Counsel forwarded a copy of same to me.

[3] Multitronics' May 5, 1987, packing slip showed that the relevant equipment, including components, had been sold to "Doron, Emulax AG, c/o Ram Ltd * * * Ramat Hasharom, Israel."

[4] As described by Rotler, GCS, through Jaish, was to provide the Respondent with the customer and financing for the transaction and pay Rotler's commission to him through his designee, Emulax. The customer identified by GCS was Jetpower Industrial Ltd. (Jetpower), Kowloon, Hong Kong. As reflected in Multitronics' correspondence with Rotler concerning the relevant transaction (Gov't exhs. 3 and 4), that company, in negotiating with Rotler, considered Jaish to be Rotler's agent, an asserted relationship that Rotler never denied in his communications with Multitronics.

stored for TFS at a certain warehouse also in Jamaica. Usha, in conclusion, notified the bank that "All instructions regarding further handling will be solely given by Mr. Doron Rothler (sic)." This notification apparently was given in order to conform to The Bank of Boston's letter of credit covering this transaction where, at Item 4, credit was made contingent, *inter alia*, upon receipt of a letter confirming that the goods had been stored by TFS "under the name of Emulax as and all instructions re further handling will be solely given by Mr. Doron Rothler." Rotler's designee, Emulax, was identified on the letter of credit as applicant.

Jetpower,[5] by John Chan, manager, enclosed with a May 14 letter to Usha a document there-identified as "Import License #17604 of 7 May 1987," which was being sent to Usha at the request of "Mr. J. Gabi of General Commercial Services in Belgium."[6] This import license, issued to Jetpower by the Hong Kong government, covered the import into Hong Kong of a DEC computer, Model: VAX 8600.

In a May 15 cable to Multitronics president Gangi, Rotler advised that the "equipment will be exported from USA under *export* license No: 17604 issued May 7 87 (emphasis supplied)." Although Rotler in that cable stated an intent to export the computer system from the United States under the import certificate issued by the Hong Kong authorities, alluding to that document's number and issuance date, as indicated by Agency Counsel, the Hong Kong import license was not the equivalent of a validated export license issued by the Department of Commerce.

On about May 28, TFS arranged for the computer system to be loaded into a container and moved to a pier in Newark, New Jersey, for eventual loading onto an outbound carrier. The U.S. Customs Service (Customs) seized the computer system on June 9 before it could be shipped because of Emulax' failure in advance of attempted export to obtain the required Department of Commerce validated license. On October 21, Emulax deposited $17,750.00 with Customs to obtain early release of the forfeited computer system. About one year later, Customs, on November 3, 1988, agreed to deduct the sum of $1,750.00 from that deposit as penalty, to clear remittance of the deposit balance to Emulax' representatives and to release the computer system to Emulax.

More specific details concerning this transaction were provided by Usha in an April 18, 1988, interview with agents of the Department's Office of Export Enforcement (OEE). Usha, described himself as an Israeli citizen/permanent resident alien of the United States, and TFS as an international forwarding company dealing in sea, land and air transport, which also warehouses goods prior to shipment. Sixty-five percent of TFS' freight forwarding was to Israel where, in Tel Aviv, TFS coordinated its freight forwarding operations with its agent company, Tavel. Usha's wife, Terri, who signed some of the documents connected with forwarding the relevant DEC VAX computer system for export, also is with TFS as general operations/office manager. Usha admitted to an understanding of export licenses to the extent that he knew that sophisticated computer equipment normally required an export license before it could be shipped from the United States. While TFS did not apply for export licenses, if Usha believed that one was necessary, he would call the matter to the U.S. supplier's attention.

Usha informed OEE that he originally had been contacted by Rotler concerning the Multitronics shipment in early 1987, having been introduced to Rotler by Tavel, TFS' Israeli agent. Rotler advised that his (Israeli) company, Ram Robotics Ltd., was buying a computer from Multitronics, in the U.S., on a local basis. As initially agreed, TFS was to warehouse the computer and also arrange for the freight forwarding and issuance. As Usha understood the transaction, Ram Robotics, because of Israeli currency laws, actually was purchasing the computer through Emulax, in Switzerland, to be shipped to Jetpower in Hong Kong. However, as other parties became involved, a question arose as to who would obtain the export license for the computer system. Since Multitronics considered the sale to be local, it had made no effort to obtain such a license. Usha also exchanged communications with Jaish. An Englishman, Brendan Gammons, too, became involved, somehow linked to the fact that Jetpower had an office in England. Usha became more confused when he learned that Jetpower, through its English connection, had requested that International Bonded Couriers, Inc. (IBC), Jamaica, New York, handle the freight forwarding. From then on, TFS's role was to accept, insure and store the equipment for Rotler and to coordinate with IBC on the shipping.

On May 12, TFS received the equipment from Multitronics. IBC arranged through Cargo Point Ltd., New York, New York, to have the computer equipment placed in a 20 foot container and, on May 28, taken to the Maher Terminal, Newark, New Jersey, intended for later loading onto the Ming Ocean V 39 W, with ultimate discharge at Haniel Transport, Kowloon, Hong Kong. Usha explained that he had operated in belief that IBC and its English connection would be responsible for obtaining the U.S. export license. Also, Rotler had advised him that an export license was in place. After the shipment was sent to the Maher Terminal, Usha received from J. Gabi (Jaish) a copy of the Hong Kong import license. Usha then advised Rotler, that that document was not the necessary U.S. export license. However, as noted, Usha by then no longer had possession of the equipment.

Usha informed OEE that he had received his instructions and commission from Rotler but that he never before had dealt with Gabi, Gammons, IBC, Cargo Point or Jetpower. To his knowledge, Jetpower was the ultimate consignee for the shipment.

2. The Respondent's Evidence

In his July 12, 1993, Submission on the Record, Rotler denied having violated the Act and Regulations and argued that others than himself had assumed the obligation of obtaining the necessary license for the shipment.

Rotler related that in January 1987, he had met by chance with Jaish in Israel. Through his Netherlands company, GCS, Jaish financed commodity transactions. During their meeting, Jaish told Rotler that he had a client who wanted to purchase a second-hand DEC VAX 8600 computer system. Having acquired familiarity with that system through his work, Rotler immediately thought that it might be available at less cost in the U.S. than in Europe. It was agreed that if Rotler located such a system in the U.S. "at a good price," he would receive a commission. Rotler denied having had any responsibility for exporting the computer system out of the U.S. and had been "guaranteed" that the customer, Jetpower, and that the company's shipping agents—IBC, New York, New York, and Portcare Freight Services Ltd. Portcare, Slough, England—would undertake all export responsibilities, including acquisition of the U.S. export license. Rotler asserts that he did not learn until mid-May that Jetpower was to be GCS' customer for the computer.

Rotler described Multitronics as a Boston-based dealer in second-hand computers which, through its president,

[5] *Ibid.*

[6] I find, consistent with other such references contained in the record, that the mention of "J. Gabi of General Commercial Services in Belgium" in the May 14 letter alluded to Gabriel Jaish of GCS, The Netherlands.

Frank T. Gangi, and its other principal, Jeffrey Chase, had quoted the best price on the relevant equipment. Accordingly, Rotler, via Emulax, purchased the DEC VAX 8600 system from Multitronics for $355,000.00 (U.S.) for the purpose of selling it to GCS's customer in return for a commission from GCS. An additional component to the system was to be shipped later at an additional cost to Emulax of $1,500.00. Emulax' total cost, therefore, would be $370,000.00 which it paid by a letter of credit applied for by Emulax and financed by GCS.[7]

The Respondent identified certain companies that participated in the transaction as follows:

Emulax AG was a Swiss corporation that Rotler used solely to acquire and then immediately sell the DEC VAX 8600 computer system. As noted, Emulax applied for the financing letter of credit, brought in TFS as its forwarding/warehousing agent,[8] and Rotler's commission for his role in this transaction was to be paid to him through Emulax.[9]

Protcare is a British-based company which, through its principal, Brendan J. Gammons, acted as Jetpower's shipping and forwarding agent. IBC, as Portcare's New York agent or affiliate, took possession of the computer system from Rotler's agent, TFS, on May 28 and delivered it to the Maher Terminal, Newark, New Jersey. From the foregoing, I find that Portcare was the Jetpower "English connection" referenced above by Usha during his OEE interview.

Summarizing, Rotler's description of the transaction, Multitronics, which he selected as vendor, was to have sold the computer system to GCS' client, Jetpower, as end-user. GCS/Jaish procured the buyer (Jetpower), provided financing to Emulax to enable it to obtain the letter of credit used to pay Multitronics, and was to remit Rotler's commission to Emulax. Rotler's asserted role merely had been to assist these parties in return for a commission. Accordingly, on May 12, Multitronics, having received the letter of credit, forwarded the equipment to TFS which caused it to be stored in a nearby warehouse and which arranged for insurance. On May 28, IBC took possession of the equipment from TFS and had it moved to the Maher Terminal for later loading onto a vessel. There, on June 9, the computer system was seized by Customs.[10]

In support of his contention that it was the acknowledged responsibility of Jetpower and its shipping agents, Portcare and IBC, farther than his own, to obtain the required export license, Rotler submitted several items of correspondence. Chronologically, these include a May 22 telex from Rotler to Usha of TFS; a May 27 telex from Portcare's Gammons to Jaish; a June 1 letter from Terri Usha to Gary Woglom, a principal of IBC; a July 6 letter from Gammons to Customs; and a December 19 fax from Portcare to TFS.

In the May 22 correspondence, Rotler began by informing Usha that the user was insisting that the shipment be made through his agents who "will take care to provide an export license based on the import license issued in hong kong (sic). I understand * * * that they have contacted you already, pls supply them the import license and don't supply any other documents without my confirmation." Later in that telex, Rotler advised that "(M)ultitronics are not involved in shipment and it is buyer responsibility to provide export license as explained."

Gammons for Portcare, in the May 27 telex, notified Jaish that he required $1,500.00 (U.S.) "for export license to Hong Kong."

On June 1, Terri Usha, for TFS, wrote to IBC's Woglom, in effect, that the charge of $632.00 was for the export license being prepared by his office in England, which charge was to be paid by the buyer.

In Gammons' July 6 correspondence to Customs petitioning for relief from forfeiture of the previously-seized computer system, he noted in mitigation that when he earlier had been asked to arrange to ship the computer system to Hong Kong, he contacted Cambridge International Trading (Cambridge)[11] in the United Kingdom which had an associated company in Boston, Massachusetts. His contact at Cambridge advised that they also had an office in Hong Kong which would help to obtain the necessary license. This information was conveyed to Jetpower in Hong Kong. When, more recently, Gammons was advised that the equipment was in the Jamaica, New York, warehouse with the necessary license, TFS was requested to collect the goods for shipment to Hong Kong. By the time Gammons realized that a mistake had been made as to the type of license, it was too late to take remedial action. Promising to pay more attention to detail in the future and noting that he had not been properly instructed concerning the shipment, Gammons asked that his mistake on that occasion be overlooked.

As noted, in early November 1988, Customs agreed that in consideration of a penalty payment to be deducted from Emulax' early release deposit already in hand, the seized equipment would be released to Emulax.

The Parties' Positions

1. Agency Counsel

Agency Counsel asserts that, from the start, Rotler had been central to the purchase/export venture and, accordingly, was required to procure the necessary validated export license from the Commerce Department before attempting shipment.

In this regard, Agency Counsel points to record evidence that Rotler, personally or through Emulax, had located and selected the U.S. seller of the computer system; had placed the purchase order; had applied for and obtained the letter of credit financing the acquisition; had designated TFS as his agent to store, insure and, originally, to ship the computer system; and had provided TFS with the instructions necessary to obtain the release of the equipment to IBC preparatory to shipment abroad. As Agency Counsel indicates, the letter of credit issued by The Bank of Boston in connection with this transaction specified that the available credit, in relevant part, was contingent upon issuance of a letter confirming that the goods had been stored under Emulax' name and that all instructions re further handling be given solely by Rotler. As also noted, Usha of TFS complied with this term in his May 12 letter to the bank.

[7] According to Rotler, the deal for the first such computer system he had located ended because of differences between Gangi and Jaish concerning sales terms. However, after Rotler received a call from Chase in April offering another system at even a better price, he so notified GCS and, from that point, the transaction went forward.

[8] Rotler's assertion that he originally had not intended that TFS, his freight forwarding agency, also ship the computer system abroad conflicts with Usha's account to the OEE agents. According to Usha, TFS, until replaced by IBC and the English connection, was to have served as freight forwarder.

[9] While the record is not clear as to whether Rotler had an ownership interest in Emulax, it does show in the varied ways indicated herein that Emulax acted in connection with the relevant transaction only on Rotler's behalf as his designee and that there were no material distinctions between Rotler's role and stake in this venture and those of Emulax. Accordingly, I refer to Rotler and Emulax interchangeable in this Decision.

[10] Rotler, in his Submission for the Record, did not refer to the fact that Customs, after seizing the equipment, released it to Rotler's designee, Emulax, or did he allude to that company's role in bringing about remittance of the computer system.

[11] Cambridge was referenced above in the March 10 correspondence to Rotler from Chase of Multitronics. There, Chase identified Cambridge as an English company capable of providing Rotler with an export license within 48 hours for a larger percentage of the total sales price than would Multitronics for the same service. However, Multitronics would require two weeks to 30 days to obtain the license.

From above evidence that Rotler had been various advised, in writing, from early in his involvement with this purchase/export transaction of the need for a Department-issued validated license and that he also assured Multitronics, the U.S. seller, that the computer system would be exported with the appropriate license, Agency Counsel argues that Rotler's role in this matter was such that he caused, aided and abetted the attempted export of a DEC VAX 8600 computer system without the validated export license he knew, or should have known, was required by § 772.1(b) of the Regulations. By so doing, he attempted to infract the Act and Regulations in violation of § 787.2 of the Regulations. Agency Counsel contends that Rotler also violated § 787.4(a) of the Regulations by purchasing and attempting to transport the computer system while knowing, or when he should have known, that a violation of the Act and Regulations had occurred, or was about to occur. For these two violations, Agency Counsel seeks entry of an Order denying the Respondent all export privileges for five years.

2. The Respondent

In denying violation of the Act and Regulations, Rotler, from his above-described evidence, asserts that his role in the transaction merely had been to locate and buy a relevant pre-owned computer system in the U.S. at a favorable price for immediate resale to GCS' client in exchange for a commission to be paid by GCS. His involvement had ended when the equipment was delivered f.o.b., New York. After that, IBC, as the purchaser's agent, took possession and control of the equipment and removed it from the Jamaica, New York, warehouse selected by his agent, TFS, to the Newark loading terminal preparatory to export. Arguing that he never was directly involved in the export process, Rotler relies on his above-referenced documentary evidence to support his argument that, at all times, he had been guaranteed that the ultimate purchaser, Jetpower, and the company's designated shipping agents, Portcare and IBC, exclusive of himself, were responsible for all export responsibilities, including the validated license. Rotler explained that he had used TFS merely to provide an address and warehouse for the delivery of the computer from Multitronics and to monitor the provisions of the letter of credit issued in the latter's favor. It had not been intended that TFS ship the computer abroad for Rotler and, in fact, it did not act in that regard.

Rotler explained that no misrepresentation had been intended in his May 15 telex to Multitronics assuring that the equipment would be exported under the asserted export license number of what actually was the Hong Kong-issued import certificate. That communication merely had been based on then-received information that the license was ready. It only was later, when Rotler learned that the reported license was a Hong Kong-issued import license rather than an export license from the Commerce Department, that he suggested to Usha that IBC be advised to obtain an export license. Finally, Rotler contends that he did not then have knowledge of export/import licenses, that he had acted in good faith and that the Department in this proceeding more properly should be pursuing Jetpower, Portcare and IBC, the parties he holds responsible for obtaining the license.

Discussions and Conclusions

1. Liability

From the record as a whole, I find that Rotler, in argument, has understated his role in the relevant transaction to which he, in fact, was so essential. As noted, Rotler had located Multitronics as vendor for the computer system and had negotiated the purchase terms. Through Emulax, Rotler had applied for and arranged the financing letter of credit for the sale;[12] had put the transaction back in place with another computer system unit after the original deal had faltered because of differences between Multitronics and Jaish; and, having made the purchase, had the equipment delivered to his forwarding agent, TFS, to be stored, insured and, as originally intended, to be shipped abroad to the customer.[13] Rotler's role in the transaction did not end after Portcare/IBC, as Jetpower's designated freight forwarding agents, took possession of the shipment since in October, after the June seizure of the computer equipment, he, through Emulax, put up an early release deposit of $17,750.00 with Customs to regain possession. This move later proved successful when, in November 1988, Customs released the computer system to Rotler/Emulax upon payment of a penalty that was less than ten percent of the early release deposit standard (Gov't exh. 18). Accordingly, Rotler's interest and activities in furtherance of this transaction continued well after he was to have relinquished export control of the equipment to Portcare/IBC.

Also contrary to Rotler, his involvement in the transaction was such that he was perceived by Multitronics as the party responsible for obtaining the requisite validated export license. He and Jaish, whom Multitronics considered to be Rotler's agent, were reminded repeatedly in writing by that company of the need to meet this requirement. This is practically significant in defining Rotler's role because, if Rotler had not reassured Multitronics by the late April telex that the system would be shipped out of the U.S.A. with a valid export license (Gov't exh. 6), it is probable, given Multitronics' reiterated concerns in this regard, that the sale would not have gone forward. Even after the purchase had been completed and TFS had taken possession of the equipment, Rotler, in his May 15 communication to Gangi at Multitronics, continued to represent that the computer system would be shipped from the U.S.A. under a specific export license (Gov't exh. 14). Although Rotler explained here that, since he did not learn the details until later, he had not intended to misrepresent in his aforesaid May 15 correspondence that the equipment would be shipped abroad under a validated export license when the license there mentioned actually related only to a Hong Kong-issued import certificate. However, his admittedly short supply of unverified information did not prevent him from transmitting the May 15 statement as fact. Moreover, Rotler's demonstrated need to make any representation at all on the subject to Multitronics after the purchase had been completed and the system moved to TFS' custody illustrated his responsibility for obtaining an export license, at least with respect to that vendor. As stated in that communication, this was because of Rotler's abiding interest in "future continued business" with Multitronics.

While Rotler, as indicated in provided documentation, may have had reason to believe that Jetpower, Portcare and IBC

[12] As noted, the bank's letter of credit, as confirmed by correspondence from TFS, specified that all instructions regarding further handling of the computer system be given solely by Rotler.

[13] Although Portcare/IBC ultimately were the designated freight forwarding agents for the computer equipment, contrary to Rotler's contention that it never had been intended that his agent, TFS, serve in that capacity, Rotler's May 22 telex to Usha advising, apparently for the first time, that the user was insisting that such forwarding be done through its own shipping agents who would provide the export license (Resp. exh. E), supports Usha's statement to OEE agents that it had been Rotler's original intent that TFS not only warehouse the computer and arrange transit insurance, but also handle the freight forwarding (Gov't exh. 17). Accordingly, I find that, had Jetpower as customer not later intervened to name its own freight forwarders, Rotler, through TFS, also would have had direct responsibility for exporting the VAX 8600 computer system from the United States.

had assumed responsibility for obtaining the necessary export license from the Department,[14] as in *MM Technology, et al.*,[15] since Rotler had been so instrumental in causing the unlicensed export of the computer system, he at minimum shared jointly and separately with those three companies the obligation of acquiring the requisite export license. Also consistent with *MM Technology, supra*, Rotler had set into motion a chain of events that resulted in the VAX 8600 computer system being sent to a terminal for export without the required validated license. Although advised that such a license was necessary and although promised that others would take principal responsibility for obtaining the same, Rotler, nonetheless, did not meet his duty of diligence in ensuring that the proper license was in place. Rather, as indicated in his above May 15 correspondence to Multitronics, he there represented that the equipment would be shipped under a specifically-numbered export license when he admittedly had no direct knowledge that an appropriate license had been issued and where there is no evidence that he had inquired as to its existence.

Rotler's contention that he should not be held liable because he had acted in good faith in reliance on documented representations that others would seek the license and because, in any event, he was not knowledgeable with respect to export/import licenses would not be sustainable even if his protestations of "good faith" were acceptable which, considering his misrepresented involvement in this matter, they are not. As to Rotler's asserted lack of knowledge, the U.S. Court of Appeals, District of Columbia Circuit, emphasized in *Iran Air* v. *Kugelman*,[16] that in cases involving violation of § 787.2 of the Regulations, knowledge is not an essential element of proof for imposition of civil penalties. Moreover, knowledge of the Act and Regulations properly may be imputed to a Respondent who, from abroad, was actively engaged in an effort to export an unlicensed controlled commodity from the United States.[17]

Accordingly, by aiding and abetting an intended unlawful export of the VAX 8600 computer system, Rotler committed one violation of § 787.2 of the Regulations and, because he purchased and transported the equipment to aid and abet its export from the United States while knowing that to do so was violative of the licensing requirements of the Act and Regulations, Rotler Committed one violation of § 787.4(a) of the Regulations. Therefore, as alleged in the May 21, 1992 charging letter, the Respondent is responsible for a total of two violations of the Regulations.

2. Remedy

Contrary to Agency Counsel, I do not find from the evidence or from Agency Counsel's generally capable arguments, an adequate rationale for revoking the Respondent's export privileges for the full five year period sought by the Department. A denial period of that duration would be inconsistent with the manner in which this particular transaction until now has been treated by the United States Government, as indicated in Gov't exhibit 18. There, in response to Emulax' October 20, 1987, petition to Customs seeking relief from the forfeiture of the DEC VAX 8600 system seized because of that company's failure to obtain a Department of Commerce-issued validated license prior to attempted export, Customs, in a November 3, 1988, letter to Emulax' representatives advised that its Director, Entry Procedure and Penalties Division, after review, had found:

* * * That a violation occurred as charged. The record shows that petitioner had no previous violation of this nature. Under the established guidelines, the forfeiture would ordinarily be remitted upon payment of no less than 5 percent of the value of the merchandise seized, or the full early release deposit of $17,750.00.[18] However, due to the unique circumstances of this case, a departure from the guidelines is appropriate. Accordingly, the forfeiture is remitted upon the payment of $1,750.00 * * *.

Since the sum of $17,750.00 was deposited with this office on October 21, 1987, to obtain early release, the sum of $1,750.00 will be deducted and a refund of $16,000.00 will be sent to (Emulax' representatives) through the National Finance Center in due course.

Accordingly, for such reasons as may have been provided, Customs, while aware of the instant violations, found justification for departing from its own guidelines and releasing the equipment to Emulax upon payment of slightly less than ten percent of the standard penalty.

In view of the foregoing, noting particularly that Rotler has committed no prior relevant violations of the Act and Regulations; that, from the record as a whole, the stated end use of the equipment does not appear to threaten U.S. national security; that there is no allegation in Agency Counsel's submissions that an end use other than that specified was contemplated; that, as noted by Agency Counsel, collection of a monetary civil penalty in the relevant circumstances would be most unlikely; and that to impose, in the first instance, the full Agency-requested five year denial period would create an unreasonable disparity in the penalties applied by respectively responsible agencies of the United States for the same conduct, I find under the authority of § 788.16(c) of the Regulations that for the two violations found Rotler should be denied all export privileges for a period of five years, but that the final two years and six months should be suspended. This determination of a five year denial period, two years and six months of which should be suspended, as opposed to an outright denial period of just two and one-half years, or even lesser penalty,[19] takes into account

[14] Rotler's contention that he had learned only in mid-May that Jetpower was to be GCS' customer for the computer is inconsistent with his assertion that he, in effect, had been assured that Jetpower and its designated shipping agents in the United States and England would take responsibility for obtaining the necessary U.S. export license. By mid-May, Rotler already had acquired the computer system from Multitronics, had obtained the financing letter of credit and had caused the system to be delivered to TFS for storage and insurance preparatory to final shipment. If Rotler's statement that he did not learn until mid-May that Jetpower was to be the customer is credited, then during the months before May, when Rotler's involvement in the transaction was paramount, he did not know who was guaranteeing that he had no personal duty to obtain the validated license. Rotler's early need for such information is accentuated by the above-described record evidence showing that, prior to May, Rotler had been advised in writing of the need to have such a license in order to export the relevant computer system and had been queried as to the license's status.

[15] 57 FR 19593, 19595 (May 7, 1992).

[16] 996 F.2d 1253 (1993), enfg. in part 57 FR 39178 (August 28, 1992) and remanding in part on other grounds.

[17] See Klaus Westphal, 58 FR 3420, 34242 (June 24, 1993).

[18] Since the November 3 letter noted that the computer system was domestically valued at $355,000.00, application of the five percent guideline would require a payment of $17,750.00, the sum Emulax had submitted to Customs as early release deposit.

[19] In Gunnar Wedell, 58 FR 47113, 47114 fn. 6 (September 7, 1993), addressing the Department's general practice of seeking remedial denial periods in undivided units of five years or multiples thereof, it was recognized that an effectively-enforced denial of all export privileges during even a single year can provide meaningful remedy because of the potential in such time for major income loss to a respondent active in the export industry. In Wedell, where the circumstances differed from the present case, it was found appropriate under the relevant facts to assess the additional five-year denial period there sought in lieu of the also previously-imposed civil monetary remedy that the Respondent had refused to pay. However, in weighing the applicability of a possibly more proportionate lesser period of further denial in Wedell and the remedial significance of same, it was noted that the Respondent's conceivable income loss during even a single year of sanction

Continued

Rotler's lack of candor in submitted representations concerning his role and responsibilities in the matters involved herein. This, in turn, gives rise to concern as to future readiness to comply with the Act and Regulations and warrants a period of extended qualified sanction. Accordingly, I issue the following recommended

Order

It is ordered, That.

I. For a period of five years from the date of final Agency action, the Respondent Doron Rotler, individually and doing business as Ram Robotics Ltd. also known as Ram Robotic Automation Manufacturing Systems, Ltd., c/o Trading Marketing and Financing (T.M.F.), Jan Toorpopplein 1, 2391 GG, Hazerswoude, The Netherlands.

And all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing two years and six months from the date that this Order becomes effective, the denial of export privileges set forth in paragraph I, above, shall be suspended, in accordance with § 788.16(c) of the Regulations, for the remainder of the five year period set forth in paragraph I, above, and shall be remitted at the end of such five year period without further action, provided that the Respondent has committed no further violations of the Act, the Regulations or the Final Order entered in this proceeding. The provisions of paragraphs III, V and VI, below, also are deferred during the two and one-half year suspension period.

III. Participation prohibited in any transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which the Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of the Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity on behalf of or in any association with the Respondent or any related person, or whereby the Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. section 2412(c)(1)).

Dated: October 18, 1993.

Robert M. Schwarzbart,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Acting Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Acting Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Certificate of Mailing

I certify that I have sent the attached document by first class U.S. mail, postage prepaid, to the following persons:

Mr. Doron Rotler, individually and doing business as Ram Robotics Ltd., also known as Ram Robotic Automation, Manufacturing Systems Ltd., c/o Trading Marketing and Financing (T.M.F.), Jan Toorpopplein 1, 2391 GG, Hazerswoude, The Netherlands.

Thomas C. Barbour, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, room H–3839, 14th & Constitution Ave., NW., Washington, DC 20230.

Dated: October 18, 1993.

Williemae Waddell,

Docket Clerk.

[FR Doc. 93–28807 Filed 11–23–93; 8:45 am]

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could well exceed the amount of the unpaid civil remedy. In this context, it is appropriate that rationale for the imposition of extended denial periods be separately expressed.

International Trade Administration

[C–791–801]

Final Negative Countervailing Duty Determinations: Certain Steel Products From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham or Kristin M. Heim, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room

B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4105 or 482–3798, respectively.

FINAL DETERMINATION:

Case History

Since the publication of the notice of preliminary negative countervailing duty determinations in the **Federal Register** (58 FR 47865, September 13, 1993), the following events have occurred.

The Department of Commerce ("the Department") conducted verification from September 20 through 30, 1993. The parties submitted case and rebuttal briefs on October 29 and November 3, 1993, respectively. A public hearing was held on November 8, 1993.

Scope of Investigations

The products covered by these investigations, certain steel products, constitute the following four separate "classes or kinds" of merchandise: (1) Certain hot-rolled carbon steel flat products, (2) certain cold-rolled carbon steel flat products, (3) certain corrosion-resistant carbon steel flat products, and (4) certain cut-to-length carbon steel plate. *See* Appendix A to this notice for a complete description of the merchandise.

Injury Test

South Africa is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930, as amended ("the Act"), and the products covered by these investigations are dutiable. Therefore, the U.S. International Trade Commission is not required to determine whether imports of these products from South Africa materially injure, or threaten material injury to, a U.S. industry.

Analysis of Programs

For purposes of these final determinations, the period for which we are measuring bounties or grants, the period of investigation ("the POI"), is calendar year 1992.

The Government of South Africa ("GOSA") and South African Iron and Steel Industrial Corporation, Ltd. ("Iscor") along with its wholly owned subsidiary, Vantin (Pty) Ltd. ("Vantin"), are respondents for all four classes or kinds of merchandise. Highveld Steel and Vanadium Corporation Ltd. ("Highveld") is a respondent for cut-to-length carbon steel plate.

In determining the benefits received under the programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate is comprised of the *ad valorem* benefit received by each firm weighted by each firm's share of exports, separately for each class or kind of merchandise, to the United States. Because Vantin is a wholly owned subsidiary of Iscor, the benefits received by Iscor and Vantin were combined and weighted by their combined share of exports to the United States. The rates were then summed to arrive at a country-wide rate for each class or kind of merchandise.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Determined To Be Countervailable

A. Export Marketing Allowance

The Export Marketing Allowance program (section 11bis of the Tax Act) was established in 1962 to encourage export trade. The program provides a deduction from taxable income of an additional 75 to 100 percent of export marketing expenditures incurred if exports increase by 10 percent over a specific time period. The program was terminated on April 1, 1992. Therefore, expenses incurred after March 31, 1992, cannot be claimed. However, a portion of the allowance may be carried forward.

Iscor, Vantin and Highveld all claimed tax deductions under this program. All three companies were eligible for a 100 percent allowance. However, while Iscor was able to claim an allowance under this program, the company was otherwise in a tax loss position and, therefore, did not benefit from the program in the POI. Because Iscor's tax liability was not affected by the deductions it claimed under this program during the POI, we determine that this program was not used by Iscor. With respect to Vantin, we verified that its claims under this program did not relate to the U.S. market. We also verified those portions of Highveld's claim that related to the U.S. market. They consisted of travel expenditures of Highveld employees to the United States. Accordingly, we determine that this program was used only by Highveld based on eligible U.S. expenditures.

Because this program is limited to exporters, we determine that it confers an export bounty or grant. To calculate the benefit during the POI, we divided the tax savings attributable to the deductions related to U.S. expenditures by the total value of export sales to the United States of all products. On this basis, we determine the net bounty or grant from this program to be 0.00 percent *ad valorem* for hot-rolled carbon steel products, cold-rolled carbon steel products, and corrosion-resistant carbon steel products; and 0.11 percent *ad valorem* for cut-to-length carbon steel plate.

B. General Export Incentive Scheme ("GEIS")

GEIS is an export promotion scheme under which exporters can receive biannual benefits based on the value of their exports. GEIS regulations prohibit the receipt of GEIS benefits on steel sales to the United States.

Highveld and Iscor did not claim or receive any benefits under the GEIS with respect to their exports of the subject merchandise to the United States in 1992.

Although GEIS regulations prohibit the receipt of benefits on steel sales to the United States, Vantin mistakenly claimed and received GEIS benefits on several shipments of the subject merchandise to the United States. The mistaken claims were made on shipments to Puerto Rico (the company was unaware that Puerto Rico is part of the customs territory of the United States) and on shipments the company thought were going to Mexico and the United Kingdom, but that were actually exported to the United States.

With respect to the "Mexican" sales, the sales were reported in the response as "in bond sales to the United States" which were then to be re-exported to Mexico. In preparing for verification, the company learned that it could not document that the shipments were actually re-exported to Mexico. Therefore, to avoid possible penalties by the GEIS office, the GEIS payments received on those shipments were repaid, with interest.

The Department was able to verify that repayment of the GEIS benefits related to the "Mexican" sales had occurred at both the government and the company. However, because the Department did not verify the repayment of the other GEIS benefits, we have assumed adversely as "best information available" that the company did not repay the benefits on the remaining U.S. sales and have treated those benefits as grants.

Because the GEIS program is limited to exporters, we determine that, to the extent that GEIS payments were received by Vantin on shipments of subject merchandise to the United States, this program has conferred an export bounty or grant. To calculate the benefit during the POI, we divided the amount received in 1992 on U.S sales that had not been repaid by the total steel exports to the United States of

Iscor and Vantin. On this basis, we determine the net bounty or grant to be 0.08 percent *ad valorem* for hot-rolled carbon steel products, cold-rolled carbon steel products, and corrosion-resistant carbon steel products; and 0.05 percent *ad valorem* for cut-to-length carbon steel plate.

II. Programs Determined Not To Be Used

We verified that the following programs were not used by manufacturers, producers or exporters of the subject merchandise in South Africa:

A. *Export Marketing Assistance Schemes*
B. *Beneficiation Allowance*
C. *Industrial Development Corporation Financing*
  1. *Industrial Financing*
  2. *Low Interest-Rate Scheme for Export Promotion*
  3. *Export Finance Scheme*
  4. *Export Capacity Scheme*
  5. *Export Credit Scheme Interest-Rate Subsidy*
  6. *Multi Shift Scheme*
D. *Regional Industrial Development Incentives*
  1. *Incentives Provided Under the 1982 Regional Industrial Development Policy*
  a. *Rebates of Transportation Expense*
  b. *Electricity Rebates*
  c. *Housing Subsidies for Key Personnel*
  d. *Special Tender Preferences*
  e. *Short-Term Financing Incentives*
  f. *Labor Incentives*
  g. *Long-Term Interest and Rent Incentives*
  h. *Cash Training Allowances*
  2. *Incentives Provided Under the 1991 Regional Industrial Development Policy*
  a. *Annual Establishment Grant*
  b. *Profit Based Incentive*
  c. *Relocation Incentive*
E. *Tax Benefits Given to Manufacturers in Economic Development Areas Relating to the Cost of Power, Water and Transport*

Comments

All written comments submitted by the interested parties in these investigations which have not been previously addressed in this notice are addressed below.

Comment 1—Petitioners argue that the entire GEIS program should be found countervailable and the benefit should be calculated by dividing the total amount of GEIS payments received by total exports. Petitioners' argument is based on the following: (1) The mistakes made by Vantin reveal that payments under the program are not adequately monitored by GOSA to ensure that benefits are not provided in connection with steel exports to the United States; (2) the companies under investigation may have benefitted from GEIS on shipments of subject merchandise to the United States either through claims made by related parties or through transshipments through third countries; and (3) the GEIS benefits received on exports to Europe have actually benefitted U.S. exports because certain trade data indicates that the price of the subject merchandise is, on average, lower in the United States than in Europe. Petitioners argue that, taken together, these aspects of the GEIS program indicate that benefits cannot be tied to non-U.S. steel sales and, therefore, the Department must treat these benefits as "untied."

Respondents rebut petitioners' claims with the following arguments: (1) The program is adequately monitored, the Vantin mistakes were due to human error, and with the exception of the Vantin mistakes, the Department verified that benefits were not paid on U.S. exports; (2) GEIS restricts companies from claiming GEIS on exports of steel to the United States regardless of the claimant, and, if a company had ceded its GEIS rights to a related party, the Department would have found evidence of the cession at verification; and (3) the comparison of prices in the United States and Europe does not take into account numerous factors that must be considered, *e.g.*, quality, quantity and transport costs.

DOC Position—We disagree with petitioners that GEIS benefits received by the individual companies for other products or other markets should be treated as export subsidies on shipments of the subject merchandise destined for the United States. In accordance with section 355.47(b) of the Proposed Regulations which codifies Department practice, benefits which the Department has tied to a market other than the United States do not confer a countervailable subsidy.

Clearly, as evidenced by Vantin, errors can occur under the system. Where errors occurred and corrections were not verified, they were countervailed. Nevertheless, this does not mean that benefits are not tied under this system to particular markets. Indeed, other than Vantin's mistakes, we verified that the companies' GEIS claims were tied to non-U.S. shipments. In Vantin's case, we are satisfied with Vantin's explanation that the mistakes were due to human error.

We also find that the possibility of transshipment or transfer of benefits does not render the program "untied." We found no evidence of transshipment. With respect to the transfer of benefits to related parties, we note that GEIS regulations prohibit the GOSA from paying benefits on steel shipments to the United States, regardless of the claimant. Moreover, we examined the claims filed by various related parties at verification and found no evidence that the respondent companies had ceded their rights under GEIS to any of their related parties with respect to shipments of the subject merchandise to the United States.

If we had found that benefits related to exports of the subject merchandise to the United States had been ceded to related parties, we would likely have continued to tie the payments to the relevant merchandise, regardless of the corporate entity which actually received the GEIS payment. Therefore, the possibility of transfer of benefits in and of itself is not sufficient to render the program untied.

Finally, with respect to petitioners' argument that prices in Europe are higher than prices in the United States, the comparison does not take into account other factors such as supply and demand, quality, quantity and transportation costs. Moreover, based on price differences alone, we cannot conclude that subsidies received on European sales somehow flow to U.S. sales.

Comment 2—Vantin argues that because it refunded with interest the GEIS payments it received in error to the Department of Trade and Industry, the company has received no countervailable benefits on its shipments of the subject merchandise to the United States. In support of its contention, Vantin cites Article VI(3) of the General Agreement on Tariffs and Trade ("GATT") and Article 4(2) of the GATT Subsidies Code which state that no countervailing duty can be levied on an imported product in excess of the subsidy found to exist.

Petitioners argue that the Department should not consider Vantin's repayment of the GEIS claim in its final determinations because the repayment occurred after the preliminary determinations.

DOC Position—Vantin identified the erroneous receipt of GEIS benefits on the "Mexican" sales prior to verification and, also, repaid the benefits prior to verification. Due to the unique circumstances surrounding these sales, and because we were able to verify these repayments, we have not countervailed the GEIS payments received on the "Mexican" sales. However, the other GEIS payments were not disclosed to the Department until verification. At that time they had not been repaid and, hence, we were unable to verify repayment. Therefore, we have adversely assumed that Vantin did not refund the GEIS payments on the remaining U.S. sales and have treated them as grants.

Comment 3—Petitioners argue that the provision in the GEIS regulations which states that steel exports to the United States are not eligible for GEIS benefits constitutes a unilateral suspension agreement on the part of the GOSA. Petitioners suggest that, should the Department decide not to countervail all GEIS benefits, the Department should require the GOSA to enter into a formal suspension agreement which would terminate GEIS payments to the entire South African steel industry.

DOC Position—The Department has no basis, either through its statute, regulations, case precedent, or the GATT upon which to require a foreign government to enter into a suspension agreement.

Comment 4—Petitioners argue that the Department should examine the companies' Export Marketing Allowance claims on the income tax returns that relate to the POI rather than the claims on the income tax returns filed during the POI. Petitioners argue that when companies calculate their taxes on an accrual basis, benefits from tax programs should be calculated in the same manner.

Respondents point out that section 355.48 of the Proposed Regulations states that "the Secretary will deem a countervailable benefit to be received at the time that there is a cash flow effect on the firm receiving the benefit" and that the cash flow effect of tax benefits occurs at the time of filing.

DOC Position—The cash flow effect from a tax benefit occurs at the time a firm can calculate that benefit which will normally occur at the time of filing (*see* section 355.48(b)(4) of the Proposed Regulations).

As is evidenced by Iscor's use of this program, a company may not know whether it will benefit from the program (*e.g.*, whether it will be in a tax loss position or not) until it files its income tax return. Therefore, we disagree with petitioners' argument that benefits should be calculated as they accrue.

Comment 5—Petitioners argue that the total amount of the Export Marketing Allowance claim should be countervailed because the companies may have overseas offices which facilitate U.S. sales. Petitioners' claim is based on the assumption that because Vantin sometimes uses an agent based in the United Kingdom for its sales to the United States, Highveld's office in the United Kingdom must also facilitate sales of the subject merchandise to the United States.

Highveld rejects petitioners' argument. Highveld argues that it identified for the Department all the expenses which pertained to the United States. Highveld also states that it does not maintain offices outside of South Africa that promote the sale of the subject merchandise.

DOC Position—As stated above, we determine that only the U.S.-related portion of the Export Marketing Allowance claim is countervailable. Highveld successfully traced all expenses related to the United States to its income tax return. Furthermore, we verified that the only portion of the claim that related to U.S. expenditures was travelling expenses of Highveld officials to the United States. Petitioners' assertion that Highveld has overseas offices which facilitate U.S. sales of the subject merchandise is mere conjecture. They use the sales structure of one company (Vantin) and assume, without any foundation, that the other companies operate similarly.

Comment 6—Petitioners state that the Department inadequately verified that the companies under investigation did not benefit from the Beneficiation Allowance (section 37E) because it did not obtain the names of the companies which have been approved for the program. Petitioners further question the validity of the income tax return for Highveld reviewed by the Department at verification because it does not include section 37E benefits for the Columbus Joint Venture. (Highveld owns one-third of Columbus.)

Petitioners suggest that the Department use the "best information available" and determine the *ad valorem* rate based on capital expenditure for each company in 1992.

Highveld refutes petitioners' claim that its tax return was invalid. According to Highveld, Columbus' use of Section 37E will appear on its 1993 income tax return.

DOC Position—The Beneficiation Allowance is an income tax program. Due to confidentiality laws, government officials could not disclose any information on individual company income tax returns. The government did, however, identify where a section 37E claim would be found on an income tax return. We verified that none of the companies under investigation claimed benefits under this program on their income tax returns filed in the POI. Therefore, the Beneficiation Allowance was not used.

We verified the validity of Highveld's income tax return by tying entries on the income tax return to Highveld's audited financial statements and internal accounting records. Moreover, the income tax return was accompanied by an independent auditor's certificate and the Inland Revenue tax assessment certification.

Comment 7—Petitioners argue that the Department did not adequately address the issue of residual government interest in Iscor at verification. The Industrial Development Corporation ("IDC") holds 16.2 percent ownership interest in Iscor. Petitioners raise two arguments with respect to this issue. First, petitioners claim that there is no explanation as to why the IDC purchased Iscor shares. Second, petitioners state that the long-term loans reported in Iscor's 1992 Annual Report show interest rates lower than the average cost of borrowing in 1992. Petitioners claim that the interest rates on these loans demonstrate that they are either explicitly or implicitly guaranteed by the IDC. Petitioners further claim that the IDC itself provided low-interest rate loans to Iscor.

Iscor rejects petitioners' claim that the Department did not verify whether the GOSA has any residual governmental interest in Iscor through the IDC. Iscor points out that the GOSA verification report states that the IDC decided independently of the GOSA to invest in Iscor. Iscor further states that the only financing from the IDC to Iscor is one loan which was provided to Iscor's Vereeniging Works (a company that does not produce the subject merchandise). Finally, Iscor states that the Iscor verification report clearly shows that the long-term loans reported in Iscor's Annual Report were examined by the Department and were identified as being from private sources.

DOC Position—The Department examined all of Iscor's loans and found no explicit guarantees by the IDC, nor did it find any loans to Iscor from the IDC which benefitted the subject merchandise. The one loan received by Iscor's Vereeniging Works relates only to long products (*i.e.*, non-subject merchandise). With respect to any "implicit" guarantees, as explained in the preamble to section 355.44(c) of the Proposed Regulations, the Department does not regard implicit governmental loan guarantees as giving rise to a benefit.

Summary

Based on the two countervailable programs described above, the *ad valorem* rates are as follows: 0.08 percent for hot-rolled carbon steel products; 0.08 percent for cold-rolled carbon steel products; 0.08 percent for corrosion-resistant carbon steel flat products; and 0.16 percent for cut-to-length carbon steel plate. These rates are *de minimis*, pursuant to 19 CFR 355.7. Therefore, we determine that no benefits

which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters of certain steel products in South Africa.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: November 17, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

Appendix A

Scope of the Investigations

The products covered by these investigations, certain flat-rolled steel products, constitute four separate "classes or kinds" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions and the scope of this proceeding are dispositive.

Certain Hot-Rolled Carbon Steel Flat-Rolled Products

These products include hot-rolled carbon steel flat products, of a width of 0.5 inch or greater, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers), or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0090, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.30.0000, 7214.40.0010, 7214.50.0010, 7214.60.0010, and 7215.90.5000. Excluded from this investigation are certain seat belt retractor spring steel and certain carbon band saw steel, which are defined respectively by the following specifications:

Certain Seat Belt Retractor Spring Steel

Chemical Composition:
- Carbon—0.78%–0.83%
- Manganese—0.35%–0.50%
- Phosphorus—0.020% maximum
- Sulphur—0.008% maximum
- Silicon—0.10%–0.20%
- Aluminum—0.020%–0.060%
- Chromium—0.05%–0.15%
- Copper—0.12% maximum

Non-Metallic Inclusion Rating:
- (1) IPSI 10,000 maximum
- (2) ASTM E45 A: 2 maximum
- B and C: 1 maximum
- D: 1 maximum
- (3) DIN 50602 SS: maximum 3
- OA: maximum 1
- OS: maximum 1
- OG: maximum 2

Banding:
- #1 maximum

Decarburization:
- Complete=0.0005 inch maximum
- Total=0.002 inch maximum

Width:
- 14 inches maximum

Thickness:
- 0.07 to 0.125 inches

Certain Carbon Band Saw Steel

Chemical Composition:
- Carbon—1.21%–1.35%
- Manganese—0.15%–0.35%
- Phosphorus—0.025% maximum
- Sulphur—0.010% maximum
- Silicon—0.10%–0.25%
- Aluminum—0.015% maximum
- Chromium—0.10%–0.30%
- Copper—0.15% maximum

Microstructure:
- Must be full sorbitic with carbide size #1 absolute maximum.

Certain Cold-Rolled Carbon Steel Flat-Rolled Products

These products include cold-rolled (cold-reduced) carbon steel flat products, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Excluded from this investigation is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat-Rolled Products

These products include flat-rolled carbon steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000.

Excluded from this investigation are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this investigation are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in thickness that consist of a carbon steel flat-rolled product clad on both sides with cold-

rolled processed stainless steel flat-rolled products in a 20%–60%–20% ratio.

Certain Cut-to-Length Flat-Rolled Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat products in straight lengths, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Excluded from this investigation is grade X–70 plate.

[FR Doc. 93–28895 Filed 11–23–93; 8:45 am]

BILLING CODE 3510–DS–P

The Consortia of American Businesses in the Newly Independent States Grant Program

ACTION: Notice.

SUMMARY: The Department of Commerce has selected three additional applicants to receive federal funding under the Consortia of American Businesses in the Newly Independent States (CABNIS) grant program. Each of the three applicants is a non-profit consortium formed to assist for-profit U.S. member companies establish a commercial presence in the Newly Independent States and contribute to the privatization process. The grantees will be required to match federal funding. Each consortium will use the funding to help defray the costs of starting and operating a Newly Independent States commercial office. The three new grantees are the American-Russian Technology Association, New York, NY; Port Authority of New York/New Jersey, New York, NY; University of Alaska—Anchorage/World Trade Center of Alaska, Anchorage, AK.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, Trade Development, U.S. Department of Commerce, Tel. (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On July 13, 1992, 57 FR 31044, the Department announced the availability of federal grant funds under the CABNIS program and its intention to select non-profit organizations to participate as grantees under the program.

Dated: November 16, 1993.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–28893 Filed 11–23–93; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 111893B]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ad Hoc Scientific and Statistical Committee review will be held on December 14, 1993. The Council's Demersal Species Committee will meet on December 15, from 9 a.m. until 10:30 a.m., and will be followed by a Coastal Migratory Species Committee meeting from 10:30 a.m. until 11:30 a.m. The Council will begin its regular session on December 15 at 1:30 p.m. with adjournment at approximately noon on December 16. The meetings will be held at the Holiday Inn, 39th and Oceanfront, Virginia Beach, VA 23451; telephone: (804) 428–1711.

In addition to hearing committee reports, the Council may adopt Amendment 6 to the Summer Flounder Fishery Management Plan (FMP), may take action on Amendment 9 to the Surf Clam and Ocean Quahog FMP, and may address other fisheries management matters as deemed necessary. The Council meeting may be lengthened or shortened based on the progress of the agenda. The Council may also go into closed session to discuss personnel or national security matters.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Joanna Davis at least five days prior to the meeting dates, telephone (301) 674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: November 18, 1993.

Joe P. Clem,

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

[FR Doc. 93–28852 Filed 11–23–93; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals

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

ACTION: Modification No. 3 to Permit No. 627.

SUMMARY: Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 627 issued to Horizons West, Ltd., dba Marine Life Aquarium, 6001 South Highway 16, Rapid City, South Dakota 57701, on March 14, 1988 (53 FR 9348), and modified on November 1, 1990 (55 FR 46980) and December 23, 1992 (57 FR 62303) is further modified as follows:

Section A.1 is changed to read:

A.1. One Atlantic bottlenose dolphin (*Tursiops truncatus*) not less than 6'6" of either sex may be taken from the wild; and one male (TT721 Howitz) has been received from the Naval Command, Control and Ocean Surveillance Center, RDT&E Division.

This modification becomes effective upon publication in the Federal Register.

Documents pertaining to the Permit and modification are available for review in the following Offices:

Office of Protected Resources, NMFS, NOAA, 1315 East West Highway, room 13130, Silver Spring, MD 20910;

Director, Southwest Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702; and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE. BIN C15700, Seattle, WA 98115.

Dated: November 18, 1993.

[FR Doc. 93–28812 Filed 11–23–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet December 2, 1993, from 9 a.m. to 3:30 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting will be closed to the public because they concern matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LCDR, D. B. Rich, Pentagon, room 4D534, Washington, DC 20350, Telephone Number: (703) 693-7248.

Dated: November 9, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-28830 Filed 11-23-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: December 10, 1993 from 12 p.m. to 10:30 p.m. and on December 11, 1993 from 7 a.m. to 5 p.m.

ADDRESSES: The Airlie Conference Center, Airlie, Virginia 22186.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202. Telephone: (202) 708-5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education (National Board) is established under section 1003 of the Higher Education Act of 1965, as amended (20 U.S.C. 1135a-1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants submitted to the Fund.

The meeting of the National Board is open to the public. On December 10, 1993 from 12 p.m. to 10:30 p.m. and on December 11, 1993 from 7 a.m. to 5 p.m., the Board will meet to discuss FIPSE program priorities and operations.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the Fund for the Improvement of Postsecondary Education, room 3100, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Dated: November 19, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93-28868 Filed 11-23-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Guidelines for Voluntary Reporting of Greenhouse Gas Emissions and Reductions, and Carbon Sequestration

AGENCY: Office of Policy, Planning, and Program Evaluation DOE.

ACTION: Notice of public meeting.

SUMMARY: Two public workshops and meetings regarding the agriculture/forestry sector and transportation sector will be held by the DOE Office of Policy, Planning and Program Evaluation, to facilitate in the preparation of guidelines for the voluntary reporting of greenhouse gas emissions, reductions and carbon sequestration.

DATES AND ADDRESSES: The agriculture/forestry sector workshop will be held December 9, 1993 at the Westin Peachtree Plaza Hotel, 210 Peachtree Street, Atlanta, GA 30303. The workshop will begin at 8:30 a.m. and adjourn at 5:30 p.m.

The transportation sector workshop will be held on December 10, 1993 at the Westin Peachtree Hotel, 210 Peachtree Street, Atlanta, GA 30303. The workshop will begin at 8:30 a.m. and adjourn at 5 p.m.

FOR FURTHER INFORMATION CONTACT: To obtain more information on the workshops call Ms. Debbie Stowell at (202) 586-7767. To obtain a copy of the Options Identification Document regarding either the agriculture/forestry sector or the transportation sector, call (202) 646-7896. Copies of those documents will be available approximately one week before each workshop.

SUPPLEMENTARY INFORMATION: On July 27, 1993, DOE requested comment on the initial development stage of the guidelines for voluntary reporting, under section 1605(b) of the Energy Policy Act of 1992, of greenhouse gas emissions and their reductions and carbon fixation (58 FR 40116). For a more detailed discussion of issues in the development of the guidelines, the reader is referred to the discussion in the July 27 notice. As part of the guideline development process, DOE is hosting a series of public workshops and meetings.

It is anticipated that the workshop on agriculture/forestry issues will focus on institutional and technical issues related to:

- The reporting of carbon sequestration in forests, including the roles of land conversion to forests, modified forest management and harvest methods and forest preservation;
- The effects of urban forestry on the emission and sequestration of greenhouse gases;
- The potential for secondary negative carbon sequestration from forestry activities (e.g., through activity shifting or market leakage); and
- The effects of agricultural activities on greenhouse gas emissions and sequestration, with specific attention to fossil fuel substitution, efficiency improvements, carbon sequestration in soils and reductions in fertilizer use.

It is anticipated that the workshop on the transportation sector will focus on institutional and technical issues related to:

- Vehicle fuel efficiency improvements by both manufacturers and fleet owners;
- Total vehicle use reduction through both employer and fleet owner programs;
- Fuel switching to lower greenhouse gas emitting fuels; and
- Materials reductions in the infrastructure stage.

For each of the topics in these two workshops, a panel of invited participants will address issues and options identified in the Options Identification Document and discuss these with other workshop participants. There will be opportunities for brief oral statements from the public on the issues under consideration during each day's session.

The goal of the workshops is to develop the fullest information on alternative options, not to reach any consensus of opinion nor to make collective recommendations. Workshops on additional topics will be announced in the **Federal Register**.

Abraham E. Haspel,

Deputy Assistant Secretary, Economic and Environmental Analysis, Office of Policy, Planning and Program Evaluation.

[FR Doc. 93-28887 Filed 11-23-93; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Environmental Restoration and Waste Management

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Restoration and Waste Management Advisory Committee.

Dates and Times:

Tuesday, December 14, 1993 from 8 a.m. to 6:30 p.m.

Wednesday, December 15, 1993 from 8 a.m. to 3 p.m.

Place: The Holiday Inn—Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia 22314-4695.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Secretary, Environmental Restoration and Waste Management Advisory Committee, EM-1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4400.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The purpose of the Committee is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on both the substance and process of the EM Programmatic Environmental Impact Statement and other EM projects, from the perspectives of affected groups and State and local Governments. The Committee will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous policies with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Tuesday, December 14, 1993

8 a.m.—Chairperson Opens the Meeting Chair reports.

8:30 a.m.—Assistant Secretary Thomas P. Grumbly—Program Goals.

9:30 a.m.—Senior Environmental Management Staff Issues Discussion.

12:30 p.m.—Lunch.

1:30 p.m.—Senior Environmental Management Staff Issues Discussion continued.

5:30 p.m.—Public Comment Session.

6:30 p.m.—Meeting Adjourns.

Wednesday, December 15, 1993

8 a.m.—Public Meeting Reconvened.

Senior Environmental Management Staff Issues Discussion continued.

12 p.m.—Lunch.

1 p.m.—Senior Environmental Management Staff Issues Discussion continued.

3 p.m.—Meeting Ends.

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Committee during the public comment session should call (800) 862-8860 and leave a message. Individuals may also register on December 14, 1993, at the meeting site. Every effort will be made to hear all those wishing to speak to the Committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Committee Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

A transcript and minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 19, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-28886 Filed 11-23-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Efficiency and Renewable Energy

[Case No. F-064]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Lennox Industries Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Lennox Industries Inc. (Lennox) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GCS24-650/813 combination gas-electric equipment.

Today's notice also publishes a "Petition for Waiver" from Lennox. Lennox's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Lennox seeks to test using a blower delay time of 40 seconds for its GCS24-650/813 combination gas-electric equipment instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department of Energy is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: The Department of Energy will accept comments, data, and information not later than December 27, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F-064, Mail Stop EE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel,

Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department of Energy amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On August 23, 1993, Lennox filed an Application for Interim Waiver regarding blower time delay. Lennox's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Lennox requests the allowance to test using a 40-second blower time delay when testing its GCS24–650/813 combination gas-electric equipment. Lennox states that the 40-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.7 percent. Since current DOE test procedures do not address this variable blower time delay, Lennox asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Lennox an Interim Waiver for its GCS24–650/813 combination gas-electric equipment. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to Lennox was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, November 17, 1993.

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

November 17, 1993.

Mr. David W. Treadwell,

Vice President, Research and Development, Lennox Industries Inc., P.O. Box 110877, Carrolton, Texas 75011–0877.

Dear Mr. Treadwell: This is in response to your August 23, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Lennox Industries (Lennox) GCS24–650/813 combination gas-electric equipment.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991;

Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Lennox's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Lennox will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Lennox's Application for an Interim Waiver from the DOE test procedure for its GCS24–650/813 combination gas-electric equipment regarding blower time delay is granted.

Lennox shall be permitted to test its GCS24–650/813 combination gas-electric equipment on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below:

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

August 23, 1993.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dear Sir: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to title 10 CFR 430.27. Waiver is requested from the uniform test method for measuring energy consumption of furnaces. In the interest of saving energy, Lennox Industries Inc. intends to use a fixed 40 second timing control on our GCS24–650/813 series of combination gas-electric outdoor HVAC equipment to gain additional energy savings that are achieved with the use of shorter blower on times. Waiver is requested from the 1.5 minute time delay requirement between the burner ignition and indoor blower activation in the heat-up portion of the test as outlined in appendix N to subpart B of part 430. We have found that under the current method of test the flue gas temperature as measured in the stack reaches a value which is higher than that which will be seen in actual operation resulting in inaccurate comparative data. Our test data indicates that an energy savings of approximately 0.7% on the AFUE is achievable with this reduction in blower delay.

Previous waivers for this type of timed blower delay control have been granted to a number of manufacturers of this type of equipment. Lennox is confident that this waiver will be granted and therefore requests an interim waiver be granted until a final ruling is made.

Manufacturers that market similar equipment are being sent a copy of this petition. If any other information is required, please contact me.

Sincerely,

David W. Treadwell,

Vice President, Research and Development.

cc: Jim Hickson
Mike Rose
Jim Day
Gina Rigby-Ledonne, GAMA

[FR Doc. 93–28888 Filed 11–23–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER93–949–000, et al.]

Carolina Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 18, 1993.

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Company

[Docket No. ER93–949–000]

Take notice that on November 5, 1993, Carolina Power & Light Company (CP&L) tendered for filing an amendment to its September 13, 1993, filing in the above-referenced docket.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Electric Power Company, L.P.

[Docket No. EC94–2–000]

Take notice that on November 10, 1993, Northern Electric Power Co., L.P. tendered for filing, a Request for Prior Approval of Sale of Partnership Interests Pursuant to Section 203 of the Federal Power Act. The Project is a qualifying small power production facility subject to the Federal Power Act.

Comment date: December 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Tampa Electric Company

[Docket No. ER94–133–000]

Take notice that on November 8, 1993, Tampa Electric Company (Tampa Electric) tendered for filing Letter Agreements between Tampa Electric and each of three utilities: The City of Homestead, Florida (Homestead); the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach); and Oglethorpe Power Corporation (Oglethorpe). The Letter Agreements amend existing Letters of Commitment under Service Schedule J (Negotiated Interchange Service) of Tampa Electric's contracts for interchange service with each of the utilities, to extend the terms of the commitments. The Letter Agreements with Homestead and New Smyrna Beach also amend the respective Letters of Commitment to make them reciprocal.

Tampa Electric proposes that the Letter Agreements be made effective on January 1, 1994, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that copies of the filing have been served on Homestead, New Smyrna Beach, Oglethorpe, and the Public Service Commissions of Florida and Georgia.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Louis Dreyfus Electric Power Company

[Docket No. ER94-141-000]

Take notice that on November 9, 1993, Louis Dreyfus Electric Power Inc. (LDEP) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that LDEP had completed all the steps for pool membership. LDEP requests that the Commission amend the WSPP Agreement to include it as a member. LDEP requests an effective date of September 7, 1993, for the proposed amendment. Accordingly, LDEP requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER94-139-000]

Take notice that on November 10, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission ("FERC" or "Commission") an Agreement for Clarification and Establishment of Deviation Accounting and Operation Under the Pacific Gas and Electric Company—Sacramento Municipal Utility District Interconnection Agreement (Agreement).

The Agreement clarifies provisions in Section 4.6 of the PG&E-SMUD Interconnection Agreement, entitled Deviations from the Schedule, and establishes certain operating and accounting procedures. There is no change in rates and therefore no change in revenues.

Copies of this filing have been served upon SMUD and the California Public Utilities Commission.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER94-143-000]

Take notice that on November 10, 1993, Wisconsin Public Service Corporation requested the Commission to disclaim jurisdiction over a Transmission Line Construction Agreement between itself and an all requirements retail industrial customer, Waupaca Foundry, Inc., or, if the Commission asserts jurisdiction, to accept the Agreement for filing.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket Nos. ER86-271-005 and ER87-365-004]

Take notice that on November 8, 1993, Southern California Edison Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER94-36-000]

Take notice that on November 16, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Settlement Agreement in its filing in the above-listed docket, for transmission service for New York State Electric & Gas Corporation (NYSEG). The Settlement agreement changes the proposed effective date of the rate change from April 1, 1993 to August 1, 1993.

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Comment date: November 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Elkem Metals Company

[Docket No. ER94-147-000]

Take notice that on November 12, 1993, Elkem Metals Company (Elkem Metals) tendered for filing a letter regarding the power purchase agreement between American Power-Ohio, Inc. and Elkem Metals.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Company

[Docket No. ER94-146-000]

Take notice that on November 10, 1993, Boston Edison Company (Edison) tendered for filing a true up of its 1992 bill to Cambridge Electric Light Company (CELCO) for services provided to CELCO from Edison's Substation 402 located in Somerville, Massachusetts.

Edison states that it has served the filing on CELCO and Town of Belmont, Massachusetts.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER94-145-000]

Take notice that on November 12, 1993, Portland General Electric Company (PGE) tendered for filing a Notice of Cancellation FERC Rate Schedule No. 85 between PGE and Bonneville Power Administration.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corporation

[Docket No. ER93-932-000]

Take notice that on November 10, 1993, Central Vermont Public Service Corporation ("Central Vermont" or the "Company") tendered for filing supplemental information in connection with the above-referenced docket.

Central Vermont requests the Commission waive its notice of filing requirements to permit the rate schedule to become effective within ten days.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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 18 CFR 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. 93-28829 Filed 11-23-93; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 2446-001 Illinois]

Commonwealth Edison Co.; Availability of Environmental Assessment

November 18, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Dixon Hydroelectric Project, located on the Rock River, in the town of Dixon, in Lee County, Illinois, and has prepared an Environmental Assessment (EA) for the project.

On August 26, 1993, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed with the Commission within 30 days. No comments were filed for this project in response to the draft EA.

In the EA, the Commission's staff has analyzed the environmental effects of the existing project and has concluded that approval of the project, with appropriate mitigation and enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28796 Filed 11-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11426-000 Pennsylvania]

T.A. Keck, III and H.S. Keck; Availability of Environmental Assessment

November 18, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the Blackstone Mill Project, located on East Mahantango Creek, in Dauphin County, Pennsylvania and has prepared an Environmental Assessment (EA) for the project.

On October 8, 1993, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed within 30 days. All comments that were filed have been considered in the EA.

In the EA, the Commission's staff has analyzed the environmental effects of the existing unlicensed project and has concluded that approval of the project, with appropriate mitigation and enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28797 Filed 11-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-74-000, et al.]

Arkla Energy Resources Company, et al.; Natural Gas Certificate Filings

November 17, 1993.

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources Co.

[Docket No. CP94-74-000]

Take notice that on November 12, 1993, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94-74-000, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new mainline compressor station in Grady County, Oklahoma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, AER requests authority to construct and operate on 8,250 horsepower compressor station on its Line AD in Grady County, Oklahoma (Amber Junction Compressor Station). AER states that this compressor station will allow AER to increase peak day gas delivery into the Chandler Compressor Station by 70,500 MMBtu per day thereby enhancing shipper supply options and increasing competitive transportation to existing markets at delivery points east of the proposed compressor station.

AER states that the estimated cost of the proposed facilities is $5,214,200. The proposed facility cost will be financed through internally generated funds.

Comment date: December 8, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP94-69-000]

Take notice that on November 9, 1993, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94-69-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with Chevron U.S.A. Inc. (Chevron), which was authorized in Docket No. CP77-255-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso proposes to abandon its exchange of natural gas with Chevron in New Mexico, which was carried out under the terms of an agreement dated October 15, 1976, on file with the Commission as El Paso's special Rate Schedule X-39. It is stated that the gas purchase agreement, dated October 14, 1976, under which El Paso was purchasing gas from Chevron, terminated March 10, 1989. It is explained that this gas purchase agreement was the basis for the gas exchange and that once El Paso terminated its purchases from Chevron, there is no need for the exchange. El Paso states that it has signed a letter agreement, dated June 30, 1993, with Chevron, agreeing to terminate the exchange. It is stated that there are no existing imbalances under the exchange service. It is asserted that any future need for the gas subject to purchase and exchange can be acquired by means of open-access transportation by El Paso for Chevron.

Comment date: December 8, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Pipeline Co.

[Docket No. CP94-83-000]

Take notice that on November 15, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94-83-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas exchange service between ANR and Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that in an order issued April 26, 1956, in Docket No. G-10057, the Federal Power Commission authorized the exchange of gas between Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) and Natural pursuant to an exchange agreement dated March 6, 1956. It is

further stated that Michigan Wisconsin subsequently changed its name to ANR.

ANR states that in a letter dated August 20, 1993, Natural notified ANR of its intent to terminate the above described service. ANR further states that it submitted written consent to Natural's proposed abandonment.

No facilities are proposed to be abandoned herein.

Comment date: December 8, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Gas Transmission Corp.

[Docket No. CP94–81–000]

Take notice that on November 15, 1993, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94–81–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a delivery facility under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 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.

Texas Gas proposes to abandon by removal the East South haven Meter Station which is located on its main line system in DeSoto County, Mississippi. Texas Gas states that the meter station is an existing delivery point to Mississippi Valley Gas Company (MVG) under a firm no-notice transportation agreement between Texas Gas and MVG. Texas Gas explains that MVG has requested by letter dated June 14, 1993, that (a) Texas Gas abandon service to MVG at the meter station, and (b) the gas requirements presently supplied from this delivery point be supplied from the existing Greenbrook delivery point. Texas Gas advises that service to MVG would not be affected by this abandonment.

Comment date: January 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. National Fuel Gas Supply Corp.

[Docket No. CP94–72–000]

Take notice that on November 12, 1993, National Fuel Gas Supply Corporation (National Fuel Gas Supply), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP94–72–000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act for authorization to relocate an existing delivery point with respect to an existing transportation customer, National Fuel Gas Distribution Corporation (National Fuel Gas Distribution), under the certificate issued in Docket No. CP83–4–000, 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.

National Fuel Gas Supply states that the delivery point is being relocated because of a transfer of a portion of a gathering line from National Fuel Gas Supply to National Fuel Gas Distribution, making it necessary to relocate the delivery point. National Fuel Gas Supply further states that construction is not required.

Comment date: January 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

6. Transcontinental Gas Pipe Line Corp.

[Docket No. CP94–68–000]

Take notice that on November 9, 1993, pursuant to Section 7(c) of the Natural Gas Act, as amended (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 157.7), Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed an application for a certificate of public convenience and necessity authorizing Applicant's 1994 Southeast Expansion Project including (a) authorization to construct and operate certain pipeline facilities to create additional firm transportation capacity of the dekatherm equivalent of 35,000 Mcf of gas per day on the main line, and (b) approval of Applicant's initial rates for firm transportation service to be rendered through such incremental firm transportation capacity; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to transport 35,000 Mcf of natural gas per day on a firm incremental basis under Rate Schedule FT and Applicant's blanket certificate under part 284(G) of the Commission's regulations on behalf of the 15 shippers in Georgia, South Carolina, North Carolina, and Virginia. The initial rate for the firm transportation service would consist of a monthly reservation rate of $12.70 per Mcf. This rate is based on the straight fixed-variable rate design methodology and an incremental cost of service. Applicant states that when the 1994 Southeast Expansion Project is completed it will provide additional capacity on the main line from the point of interconnection between the main line and the Mobile Bay Lateral near Butler, Alabama, to certain points of delivery upstream of Station No. 165 near Chatham, Virginia.

In order to provide the subject transportation service, Applicant proposes to:

(a) uprate (from 650 pounds per square inch "psi" to 800 psi) Line "A" from Station No. 120 to Station No. 130 in Georgia, which will be accomplished by regulator modifications and by replacing eight pipeline segments (totalling approximately 9.6 miles) on Line "A" between the stations; and

(b) place into regular service, two existing steam-driven compressors at Station 100 which are currently operated on a standby basis pursuant to Docket No. CP92–510 and re-wheel and make other minor modifications to these and other units to obtain more efficient operations.

The estimated cost of the proposed facilities is $27,842,000. The cost will be financed initially through short-term loans and funds on hand. Applicant proposes to have the facilities in service by November 1, 1994 and therefore, requests that the authorization be granted no later than May 31, 1994.

Comment date: December 7, 1993, in accordance with Standard Paragraph F at the end of this notice.

7. Koch Gateway Pipeline Co.

[Docket No. CP94–70–000]

Take notice that on November 10, 1993, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–70–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate metering and regulating facilities for deliveries to Mobil Oil & Refinery Company (Mobil), under Koch's blanket certificate issued in Docket No. CP82–430–000 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.

Koch proposes to install an 8-inch meter station, flow computer and regulator to facilitate deliveries of gas transported on an interruptible basis to Mobil. It is stated that the facilities will be located adjacent to an existing tap on Koch's line in St. Bernard Parish, Louisiana. The cost of the proposed facilities is estimated at $122,640. It is stated that the facilities will be used for the delivery of 12,000 MMBtu equivalent of gas per day. It is asserted that the deliveries are within Mobil's existing entitlement from Koch and

would have no impact on Koch's peak day deliveries.

Comment date: January 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. 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. 93–28803 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM94–1–32–000]

Colorado Interstate Gas Co.; GRI Charge Filing

November 18, 1993.

Take notice that on November 15, 1993, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, pursuant to Commission Opinion No. 384 issued October 5, 1993, in Docket No. RP93–140–000, reflecting the revised Gas Research Institute (GRI) rates effective as of January 1, 1994.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28802 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–120–008]

Panhandle Eastern Pipe Line Co.; Report of Refunds

November 18, 1993.

Take notice that on November 15, 1993, Panhandle Eastern Pipe Line Company (Panhandle) filed a refund report with the Federal Energy Regulatory Commission (Commission). Panhandle states that the refund report is filed in accordance with Article II of a Stipulation and Agreement (Agreement) dated June 4, 1993, approved by a Commission order issued August 4, 1993, in Docket No. RP92–120, *et al.* Panhandle states that the Agreement required it to pay refunds to customers on the Wattenberg System from September 1, 1992 to March 31, 1993.

Panhandle states that it paid the refunds on October 15, 1993, including interest calculated through that date.

Panhandle further states that a copy of the refund report was sent to each of its affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28800 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–79–000]

Panhandle Eastern Pipe Line Co.; Application

November 18, 1993.

Take notice that on November 15, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–79–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale its ownership interest in offshore pipeline and appurtenant facilities located offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle proposes to abandon its 72.2 percent ownership of the Vermilion 329 Line and its 38.2 percent ownership of the Vermilion 340 Line along with all appurtenant facilities located in Vermilion South Addition, Blocks 329, 338, 339, 340, 341, 326, 325, 320, and 321. Panhandle proposes to sell its interests to Midcon Offshore, Inc. (Midcon).

It is stated that these facilities, which were installed for the purpose of offshore gas gathering, are located at a distance from Panhandle's contiguous pipeline system and that the gas supply contracts that formed the basis for the original construction and ownership have been terminated. It is asserted that Panhandle has not been providing firm service using its capacity in these facilities, and that, therefore, the proposed abandonment would have no adverse effect on Panhandle's existing or future customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 3, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28794 Filed 11-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-224-009, RP89-203-000, RP90-139-000, RP91-69-000 (Consolidated)]

Southern Natural Gas Co.; Order Extending Briefing Schedule

November 18, 1993.

On August 12, 1993, Southern Natural Gas Company (Southern) filed a contested partial settlement (the Settlement) of cost of service and throughout issues for the locked-in period in the captioned dockets. On October 7, 1993, the Presiding ALJ certified the Settlement to the Commission. The Settlement addresses cost of service and throughput issues, but provides that issues of cost classification, cost allocation, rate design and refund obligations in the Docket Nos. RP90-139-000 and RP91-61-000 will be resolved by filing briefs and reply briefs with the Commission. The Settlement states that the first briefs were due 60 days after the Settlement was certified by the ALJ.

The Settlement is now under review by the Commission. In light of that review, and to assure that the parties brief the issues remaining under the Settlement in light of any modifications the Commission may make to the Settlement, the date for the filing of the first round of briefs is extended 30 days after the Commission issues an order on the Settlement in these proceedings. Thereafter briefs will be filed according to the schedule contained in the Settlement.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28789 Filed 11-23-93; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. GT94-7-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 18, 1993.

Take notice that on November 15, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2 certain revised Tariff sheets included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1993.

TGPL states that the purpose of the filing is (i) to set forth in TGPL's Volume No. 1 Tariff the rates and fuel applicable to the Niagara Import Point Project—System Expansion (NIPPs-SE) transportation service which is converted from Section 7(c) service to transportation under part 284 and (ii) to terminate effective as of November 1, 1993, Rate Schedules X-314 and X-317 for KCS Energy Marketing, Inc. (KCS) formerly Energy Marketing Exchange, Inc. and Transco Energy Marketing Company (TEMCO), respectively, pursuant to the elections, made by KCS and TEMCO to convert such service to service under part 284 effective as of that date. The rates included therein reflect, in addition to the generally applicable charges under Rate Schedule FT (including fuel), reservation and commodity rate surcharges. The derivation of such surcharges is set forth in Appendix B attached to the filing. TGPL believes that the rates filed therein are consistent with the Commission's policy that the rate for conversions from part 157 to part 284 service be the Rate Schedule FT rate which shall include a surcharge if the part 157 rate is higher than the FT rate.

TGPL states that copies of the filing are being mailed to KCS and TEMCO.

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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28795 Filed 11-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-018]

Trunkline Gas Co.; Report of Refunds

November 18, 1993.

Take notice that on November 4, 1993, Trunkline Gas Company (Trunkline) filed a refund report with the Federal Energy Regulatory Commission (Commission) in accordance with Article VI of the Stipulation and Agreement (Agreement) dated November 25, 1991, and approved by Commission orders issued January 3, 1992 and January 9, 1992, in Docket No. RP89-160-013, *et al.* Trunkline states that the Agreement required it to pay refunds to certain jurisdictional

customers for the period November 1, 1989 through November 30, 1991.

Trunkline states that it paid the refunds on October 4, 1993, including interest computed according to Section 154.67(c) of the Commission's regulations.

Trunkline further states that a copy of the refund report was sent to each of its affected customers and the state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28798 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–165–016]

Trunkline Gas Co.; Report of Refunds

November 18, 1993.

Take notice that on November 4, 1993, Trunkline Gas Company (Trunkline) filed a refund report with the Federal Energy Regulatory Commission (Commission) in accordance with Article VI of the Stipulation and Agreement (Agreement) dated January 25, 1993, and approved by Commission order issued February 24, 1993, in Docket No. RP92–165–010, *et al.* Trunkline states that the Agreement required it to pay refunds to certain jurisdictional customers for the period November 1, 1992 through January 31, 1993.

Trunkline states that it paid the refunds on October 4, 1993, including interest computed according to §154.67(c) of the Commission's regulations. Trunkline further states that a copy of the refund report was sent to each of its affected customers and the state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28801 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of July 19 Through July 23, 1993

During the week of July 19 through July 23, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Carl Weissman & Sons, 7/22/93, LFA–0308

Carl Weissman & Sons (Weissman & Sons) filed an Appeal from a denial by the DOE Field Office, Richland (DOE/RL) of a request for information submitted under the Freedom of Information Act (FOIA). Weissman & Sons requested a copy of the tabulation of bids received in response to a Request for Proposal (RFP) issued by Westinghouse Hanford Company (WHC), a DOE contractor. The RFP was eventually cancelled by WHC after a review of the proposals submitted. DOE/RL withheld the bid tabulations pursuant to FOIA Exemption 4. In considering the Appeal, the DOE found that because WHC intended to reissue the RFP at a later date, disclosure of the requested bid information could cause substantial harm to the competitive position of the companies whose bids would be released and impair the government's ability to obtain proposals from these companies in the future. Accordingly, the Appeal was denied.

Energy Products, Inc., 7/22/93 LFA–0307

Energy Products, Inc., filed an Appeal from a determination issued to it on June 14, 1993, by the Director of the Office of Building Energy Research (Director) of the DOE. In that determination, the Director stated that the DOE did not find any documents responsive to the appellant's information request under the Freedom of Information Act. In considering the Appeal, the DOE confirmed that the Director followed procedures which were reasonably calculated to uncover responsive documents. Accordingly, the DOE denied the appellant's request.

Refund Applications

Apex Oil Company, Clark Oil & Refining Corp./Gramco, Ltd., Sinclair Marketing, Inc., Schaetzel Oil Co., Jacobus Co., 7/22/93, RF342–153, RF342–244, RF342–280, RF342–281

The DOE issued a Decision and Order denying four Applications for Refund filed in the Apex/Clark special refund proceeding. All four applicants were initially identified as spot purchasers of Clark refined petroleum products during the consent order period. None of the firms attempted to rebut the spot purchaser presumption of non-injury. Consequently, their Applications were denied.

Atlantic Richfield Company/Energy Cooperative, Inc., 7/23/93, RF304–13010

The DOE issued a Decision and Order granting an Application for Refund filed on behalf of Energy Cooperative, Inc. (ECI), in the Atlantic Richfield Company Subpart V special refund proceeding. In order to qualify for a refund based upon the ARCO products it resold to its member-patrons, cooperatives such as ECI need only document their purchases from ARCO and certify that any refunds will be passed along to its member-patrons. However, ECI is currently a Chapter 7 Debtor under the Jurisdiction of the U.S. Bankruptcy Court for the Northern District of Illinois. The DOE determined that as ECI's member-owners currently have claims in excess of $15 million against the Estate, any refund from this proceeding would benefit the member-owners by increasing the value of their claims or decreasing their obligations to ECI's estate. In addition, ECI's Trustee certified to the DOE that he would notify the Bankruptcy Court upon receipt of any refund. The DOE determined that ECI had met the requirements applicable to a cooperative for a full volumetric refund and granted Jay A. Steinberg, Trustee for the Estate of ECI, a refund of $26,822.

Enron Corp./Thoms Enterprises, Inc., 7/20/93, RF340–85

The DOE issued a Decision and Order concerning an Application for Refund that Thoms Enterprises, Inc. (TEI), had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that TEI was essentially a

continuation of the proprietorship operated by Gerald and Donna Thoms prior to the incorporation of their business as TEI in 1977. Accordingly, the DOE granted TEI a small claims refund of $5,963 dollars based on both the total purchases of TEI and the total purchases of Thoms prior to TEI's creation.

Enron Corp./Waterloo Service Company, 7/21/93, RF340–72

The DOE issued a Decision and Order concerning an Application for Refund that Waterloo Service Company (WSC) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that WSC is an agricultural cooperative operating for the benefit of its common shareholder/patrons. WSC claimed a refund both for volumes of Enron propane that it resold to its member-customers and for volumes resold to non-member customers. WSC's combined claim raised issues concerning the appropriateness of combining different presumptions of injury. Due to the extreme hardship being suffered by WSC's member-customers as a result of weather conditions in Iowa, the DOE determined to immediately grant WSC's claim regarding its cooperative gallonage and to defer its claim for volumes sold to non-member customers. Accordingly, the DOE granted WSC a refund of $778,632 dollars based on its total purchases from Enron that were resold to member-customers and required WSC to pass through this refund to its members on a dollar for dollar basis.

Shell Oil Company/Collier-Evans Oil Co., Mid-America Petroleum, Inc., 7/23/93, RF315–8922 RF315–8923

This Decision and Order considered the Applications for Refund filed by Gary R. Evans on behalf of Collier-Evans Oil Company (Collier-Evans) and Mid-America Petroleum Company (Mid-America). Although Mr. Evans sold Collier Evans and Mid-America in September 1985, he claimed that he bought back the rights to seek those firms' refunds. After reviewing the submitted Assignment of Claim, we concluded that the language in the contract stipulated clearly and explicitly that Mr. Evans did, indeed, buy back the right to any refund due to Collier-Evans and Mid-America for Shell's alleged overcharges. Next, despite Mr. Evans' request that Collier-Evans and Mid-America receive separate refunds based on the applicable presumption of injury, the DOE found that he did not affirmatively demonstrate that the firms were operationally distinct entities during and after the consent order period under his ownership. Therefore, the purchase volumes of Collier-Evans and Mid-America were combined and considered under a single presumption of injury. The total refund granted in this Decision and Order was $11,992 (comprised of $8,011 in principal and $3,981 in interest) based on the purchase of 88,620,032 gallons of Shell refined product.

Texaco Inc./Consolidated Rail Corporation, 7/22/93, RF321–3067

The DOE issued a Decision and Order granting an Application for Refund filed by Consolidated Rail Corporation (Conrail) in the Texaco Inc. special refund proceeding. Conrail requested a refund based on purchases of 21,577,764 gallons of diesel fuel that the firm's records indicated it had purchased from Texaco from April through June 1976, and for 104,235,103 gallons of other refined petroleum products that Conrail estimated it had purchased from Texaco during the period April 1976 through January 1981. Conrail's estimate of its purchases of refined products other than diesel fuel was based upon the firm's ratio of diesel fuel to non-diesel fuel purchases from the Mobil Oil Corporation. Texaco's records, however, indicated that Conrail had purchased only 192,231 gallons of non-diesel fuel products during the refund period for those products. Because Conrail did not present any basis for finding that the ratio of its purchases from Texaco was the same as that of its purchases from Mobil, the DOE found that Texaco's figures were the most reliable source of purchase volume data for motor gasoline, naphthas, and gas oils. Accordingly, the DOE granted Conrail a refund of $32,642 ($23,947 principal plus $8,695 interest) based on 21,769,995 gallons of Texaco products.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Asheville Paving Co., Inc. et al	RF272–94144	7/23/93
Atlantic Richfield Company/Fauber Construction Co., Inc	RF304–13267	7/22/93
Bridgewater Home, Inc. et al	RF272–90263	7/19/93
Carroll & Corum Bldg Supply Co. et al	RF272–91519	7/23/93
Chicago Housing Authority	RF272–63987	7/22/93
Childers Products Co. et al	RF272–92505	7/20/93
City of Bridgeport et al	RF272–94407	7/19/93
City of Sparta et al	RF272–94301	7/19/93
Clark Oil & Refining Corp./E.J. Bill Green	RF342–3	7/22/93
Glen's Clark Oil	RF342–265	.....
Garrow Oil Corp	RF342–322	.....
Chuck's Clark Super 100	RF342–323	.....
Cleveland Guillotte et al	RF272–91615	7/22/93
Columbus-McKinnon Corp. et al	RF272–93781	7/19/93
Consolidated Parcel Serv., Inc. et al	RF272–93206	7/20/93
Eby Contractor, Inc. et al	RF272–90512	7/22/93
Enron Corp./ Lyle Oil Company	RF340–68	7/20/93
Farmville Furniture Co. et al	RF272–92103	7/19/93
Florida Veneer Co., Inc. et al	RF272–91800	7/19/93
Gulf Oil Corporation/Briarwood Gulf, Inc,	RF300–13577	7/22/93
Briarwood Gulf	RF300–14939	.....
Briarwood Gulf, Inc	RF300–21745	.....
Gulf Oil Corporation/Econ-O-Gas, Inc	RF300–18439	7/23/93
Gulf Oil Corporation/Gilmer Plantation et al	RF300–19501	7/20/93
Gulf Oil Corporation/Hi-Air	RF300–13351	7/20/93
Stevens Aviation, Inc	RF300–13369	.....
Gulf Oil Corporation/Martin Gas Products	RF300–18005	7/23/93
Gulf Oil Corporation/Shubuta Gulf Service et al	RF300–19578	7/20/93

High Plains Concrete Co., Inc. et al	RF272–94200	7/22/93
Kimsey Egg Company et al	RF272–91700	7/19/93
Lemhi County, Idaho et al	RF272–85139	7/19/93
Luter Packing Co., Inc. et al	RF272–90400	7/19/93
Manor Independent School District et al	RF272–83600	7/20/93
Monahans-Wickett-Pyote I.S.D. et al	RF272–93927	7/19/93
Santa Cruz City High et al	RF272–79028	7/20/93
Saroni Sugar & Rice, Inc. et al	RF272–92302	7/19/93
Shell Oil Company/Simpson's Shell et al	RF315–927	7/20/93
Stanley Ivy Trucks	RC272–206	7/20/93
Texaco Inc./Gold Hill Texaco et al	RF321–15457	7/22/93
Texaco Inc./Heinen's Texaco et al	RF321–10990	7/22/93
Texaco Inc./J.C. Roberts et al	RF321–10280	7/20/93
Texaco Inc./John L. Cormier Texaco et al	RF321–5675	7/23/93
Texaco Inc./Redfern's Texaco et al	RF321–16912	7/22/93
Texaco Inc./Roger Plummer Co	RF321–19801	7/23/93
Texaco Inc./Western Square Texaco et al	RF321–1865	7/20/93
Waterloo Coal Co., Inc. et al	RF272–92627	7/19/93
Webb-Norfolk Conveyor et al	RF272–93553	7/19/93
White County Lumber Co. et al	RF272–94013	7/22/93
William L. Brown Ranch et al	RF272–90705	7/23/93
Williams Tile & Terrazzo Co. et al	RF272–94247	7/22/93
Yale Transportation Company	RC272–208	7/20/93

Dismissals

The following submissions were dismissed:

Name	Case no.
Basil Swim Texaco #1	RF321–16647
Breathitt County Schools	RF272–79283
Brox Diaries, Inc	RF272–85642
Bud's Texaco	RF321–18350
Cherne Contracting Corp	RF272–91674
Davis Bros	RF321–16934
Independent Taxi Operators Association.	RF272–90822
Jansky Brothers Dump Truck Service.	RF272–94602
Loneman School	RF272–81475
Loyola University Chicago	RF272–93883
Magnolia Oilfield Services	RF300–13976
North Trail Gulf	RF300–15292
Sandoval Texaco	RF321–16706
School District 024	RF272–87168
Shively's Texaco	RF321–10968
Station Shell	RF315–3384
Yellow Cab of Louisville, Inc.	RF272–93221

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 17, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–28889 Filed 11–23–93; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of September 6 Through September 10, 1993

During the week of September 6 through September 10, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Joseph A. Camardo, Jr., 9/9/93, LFA–0314

Mr. Joseph A. Camardo, Jr., filed an Appeal from a determination issued to him on July 19, 1993, by the Manager of the Pittsburgh Naval Reactors Office of the DOE. In that determination, the Manager denied a request for information filed pursuant to the Freedom of Information Act. Specifically, the Manager denied Mr. Camardo's request for copies of information regarding a contract awarded to Afftrex Limited. In considering the Appeal, the DOE confirmed the existence of some additional documents responsive to Mr. Camardo's clarified request. Accordingly, the DOE remanded the case to the Manager for a determination regarding the releasability of these documents but denied the Appeal in all other respects.

Milton L. Loeb, 9/10/93, LFA–0313

Mr. Milton L. Loeb filed an Appeal from a denial by the Albuquerque Field Office of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Mr. Loeb challenged Albuquerque's withholding of the user's manual for software developed by a contractor for the DOE. The DOE determined that Albuquerque had properly withheld the requested manual, in which the contractor holds a copyright, under Exemption 4 of the FOIA. Accordingly, the Appeal was denied.

Refund Applications

Empire Asphalt, Inc., 9/10/93, RF272–49401, RD272–44574

The DOE issued a Decision and Order granting an Application for Refund filed by Empire Asphalt, Inc., a producer of asphaltic concrete, in the Subpart V crude oil special refund proceeding. A group of States and Territories (States) objected to the Application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $5,142.

Texaco Inc./Gonzales Texaco, 9/10/93, RF321–19877

The DOE issued a Decision and Order rescinding a refund that had been granted to Gonzales Texaco in the Texaco Inc. Subpart V special refund proceeding on August 12, 1993 (Case

No. RF3211–5040). The events that led to this Decision began on October 25, 1990, when a refund was erroneously granted to Gonzales Texaco on the basis of the purchases of another Texaco outlet. When this error came to light, a further Decision dated April 19, 1991, was issued rescinding the prior refund and requiring Mr. Horacio Gonzales, the owner of Gonzales Texaco, and the firm's representative, Energy Refunds, Inc., to repay the improperly-based refund. See *Texaco Inc/Gonzales Texaco*, 21 DOE ¶ 85,220 (1991). Because the actual refund product sales of Gonzales Texaco formed the basis for a refund, when the improper refund was repaid, the August 12, 1993 Decision was issued granting Gonzales Texaco a refund that was somewhat greater than that awarded in the initial determination. Then, however, we learned from Energy Refunds, Inc., that Mr. Gonzales had not contributed to the repayment of the first improperly-based refund. In order to avoid a windfall to Mr. Gonzales, the August 12, 1993 refund was rescinded.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/A.H. Perkins et al	RF304–13384	9/07/93
Atlantic Richfield Company/Euclid Arco	RF304–14481	9/07/93
Atlantic Richfield Company/Harvey's Arco et al	RF304–11882	9/10/93
Atlantic Richfield Company/Maryland Bolt & Nut Co. et al	RF304–14016	9/08/93
Atlantic Richfield Company/Milburn Grocery et al	RF304–14077	9/07/93
City of Llano et al	RF272–84360	9/10/93
City of Pineville, Louisiana et al	RF272–88125	9/07/93
Floyd S. Pike Electrical	RF272–87997	9/07/93
Getty Oil Company/Frantic Auto Repair	RF265–2887	9/10/93
Gulf Oil Corporation/James M. Walker, Jr.	RR300–74	9/9/93
Gulf Oil Corporation/Sumiton Gas Co. et al	RF300–13363	9/08/93
Magoffin County Schools	RR272–113	9/08/93
Shell Oil Company/Burditt W. Ashton	RF315–303	9/08/93
Corner Shell Grocery	RF315–5357	.....
San Andreas Shell	RF315–5910	.....
Joe's Shell	RF315–10280	.....
Texaco Inc./E.D. Lloyd Oil Co. et al	RF321–15704	9/10/93
Texaco Inc./Greene's Texaco #1 et al	RF321–16456	9/08/93
Texaco Inc./Peco Texaco	RF321–19873	9/08/93
Texaco Inc./Tideport Petroleum, Inc. et al	RF321–17637	9/10/93
Texaco Inc./Ward Road Texaco et al	RF321–19001	9/9/93
Town of Plainville et al	RF272–85318	9/07/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Abbott ISD	RF272–81266
Ansonia School District	RF272–81606
Bethel School District	RF272–81382
Big Springs Public Schools	RF272–81318
City of Guadalupe	RF272–88368
City of Harahan	RF272–88373
City of Sartell	RF272–88392
City of Seneca	RF272–88387
City of Tipton	RF272–88395
Colmesneil ISD	RF272–81242
Dolton School District 148	RF272–79638
Dupree School District 64–2.	RF272–81428
Enterprise School District	RF272–81793
Farwell Area Schools	RF272–81213
Gary Lekvold	LFA–0317
Graettinger Community School District.	RF272–81692
James W. Simpkin	LFA–0318
Liberty-Perry Community School Corp.	RF272–81518
Los Gatos/Saratoga Joint Union.	RF272–84605
Montgomery County R II	RF272–81250
Morrison Brothers, Inc	RF272–91821
North County Transit District.	RF272–92258
North White School Corporation.	RF272–81683
Oelwein Community School District.	RF272–81281
Painesville City School District.	RF272–81706
Pass & Seymour/Legrand	RF272–92012
Ravenswood City Elementary.	RF272–81217
Scott City R I School District.	RF272–81264
Scott County Central Schools.	RF272–79677
Sheldon Ranches, Inc	RF272–93180
Siren School District	RF272–81258
The O.K. Trucking Company.	RF315–9541
Toppenish School District	RF272–81495
Town of Tiburon	RF272–88396
Town of Torrington	RF272–88393
Town of Townsend	RF272–88394
Vecellio & Grogan, Inc	RF272–94515
Verifine Dairy Products Corp.	RF272–93703
Via Metropolitan Transit	RF272–91928
Village of Hastings-on-Hudson.	RF272–88377
Village of Hicksville	RF272–88381
Village of Thornton	RF272–88397
Whirlpool Corp	RF272–91954
Window Rock Unified District #8.	RF272–81298

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 17, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–28890 Filed 11–23–93; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Office of Hearings and Appeals

Week of September 13 Through September 17, 1993

During the week of September 13 through September 17, 1993, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were

dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/The Wemett Corp., 9/16/93, RS304-14224

On August 4, 1993, the DOE issued a Supplemental Decision and Order to the Wemett Corp. and the firm's counsel, Bassman, Mitchell & Alfano, concerning an Application for Refund that counsel had filed on behalf of the firm in the Atlantic Richfield Company (ARCO) Subpart V special refund proceeding. The Supplemental Order found that an ARCO refund previously granted to The Wemett Corp. had been excessive because the firm's refund Application overstated its period of ownership of an ARCO reseller and consequently overstated the volume of ARCO purchases that could form the basis for a refund. Consequently, the DOE required The Wemett Corp., or the counsel (the co-payee of the excessive refund), to repay the difference between the amount of the refund granted and the lesser refund to which the firm was entitled, *i.e.*, $677. In the event that the excessive portion of their refund was not repaid within a period of 30 days, the Supplemental Order provided for the accrual of interest on the unpaid balance. In response, Mr. Douglas B. Mitchell, of counsel, responded that the client was bankrupt and, while counsel attempted to locate the client, requested a stay of the portion of the Supplemental Decision concerning the accrual of interest. The request was denied because counsel did not even allege the possibility of irreparable injury or impossibility of complying with the provisions of the order—the general basis for a stay—and because the relief sought by counsel could be obtained merely by the repayment of the $677 excessive refund, obviating the need for any administrative remedy.

Charter Oil Company/Texas, 9/16/93, RM23-263

The State of Texas filed a Motion for Modification of a previously-approved, second-stage refund plan. The Motion, if granted, would allow the State to discontinue the Diesel Fuel Conservation program and implement a new Rural Public Transportation program. Under Texas' proposed modification, $1,700,000 ($800,000 plus accrued interest) of the Charter Oil Company monies designated for the Diesel Fuel Conservation program would be reallocated to the Rural Public Transportation program. The State predicts that its injured customers will receive restitutionary benefits through reduced gasoline consumption. A reduction in the number of single occupant vehicles will also lead to smoother traffic flow and reduce congestion. Furthermore, this program will reduce air pollution due to auto emissions. The DOE has previously approved funds for state support of public transportation. Accordingly, the Motion for Modification was granted.

Gulf Oil Corporation/ Holston Defense Corporation, 9/15/93, RF300-19821

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Holston Defense Corporation (Holston), a firm which purchased Gulf products for use in the Holston Army Ammunition Plant. Holston operated this facility under a "cost-plus-fixed fee" contract for the Department of the Army, which ultimately paid for the cost of all purchases of petroleum products made by Holston for the plant. Accordingly, the OHA found that Holston was not injured by any Gulf overcharges, and the Application for Refund was therefore denied.

South Orange-Maplewood School District, 9/16/93, RR272-108

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the Subpart V crude oil special refund proceeding being completed by the DOE under 10 CFR Part 205. The South Orange-Maplewood School District stated as a basis for reconsideration that the individual responsible for submitting any additional crude oil refund information to OHA had not received the request for information. Upon reconsideration, the DOE determined that the School District should receive a refund of $1,300.

Texaco Inc./Jack Musgrove Texaco Service, 9/17/93, RF321-19897

The DOE issued a Supplemental Decision and Order reducing a refund of $4,377 (including $650 in accrued interest) that had been granted to Katherine M. Gentry in the Texaco Inc. Subpart V special refund proceeding. The refund was based upon the sales of Texaco refined products by a retail motor gasoline sales outlet, Jack Musgrove Texaco, operated by Ms Gentry's father during the period March 1973 through January 1981. However, a subsequent refund Application showed that Ms Gentry's father had not operated the Texaco outlet after May 1979. Accordingly, the DOE modified the refund granted to Ms Gentry and directed her to repay the excessive refund together with interest to the present date.

Texaco Inc/Mongans, Inc., 9/14/93, RF321-6167

DOE issued a Decision and Order concerning an Application for Refund filed by Mongans, Inc. (Mongans), in the Texaco Inc. special refund proceeding. This applicant claimed to have purchased Texaco products both directly from Texaco and indirectly through the Woodbury Fuel and Supply Co. Howevever, the applicant did not document any of the indirect purchases nor some of the purchases claimed to have been made directly from Texaco. The DOE determined that Mongans was eligible for a refund based upon the Texaco invoices for purchases that were not reflected in Texaco's records, but rejected the request that additional direct Texaco purchases be extrapolated from those invoice figures. Mongans was granted a refund of $2,253 ($1,649 principal plus $604 interest), based upon its documented direct Texaco purchases.

Texaco Inc./R & L Texaco, 9/15/93, RR321-125

Raymond R. Henry, the owner of R & L Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund Applications that he had filed in the Texaco refund proceeding. Mr. Henry had signed both Applications, and in the second Application had certified that he had not previouly filed, or authorized the filing of, any other refund application in the Texaco proceeding. In support of the Motion, Mr. Henry stated that he had not realized that he had filed two Applications for the same refund. In considering the Motion, the DOE found that Mr. Henry's statement was not credible since the DOE had previously dismissed an earlier duplicate Application and warned him not to file another Application in the Texaco proceeding. Accordingly, the DOE reaffirmed the denial of Mr. Henry's refund claim on equitable grounds and denied the Motion for Reconsideration.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Air Products and Chemicals, Inc	RF272–19034	09/17/93
Appleton City R II et al	RF272–81862	09/14/93
Atlantic Richfield Company/Borough of Northvale et al	RF304–14400	09/15/93
Atlantic Richfield Company/Faith Oil Company, Inc	RR304–62	09/17/93
Atlantic Richfield Company/Joe's Service et al	RF304–14131	09/17/93
Beacon Oil Company/Westside Beacon	RF238–6951	09/15/93
Belt High School D et al	RF272–82339	09/13/93
Chatham School District et al	RF272–80653	09/14/93
Enron Corp./Schauls Gas	RF340–79	09/14/93
Salem Blue Flame Gas Company	RF340–106	
Gulf Oil Corporation/Air Engineers, Inc. et al	RF300–19504	09/16/93
Gulf Oil Corporation/D.G. Thompson	RF300–15748	09/14/93
Gulf Oil Corporation/E & S Mobile Service et al	RF300–13907	09/16/93
Gulf Oil Corporation/Fuels, Inc	RF300–21749	09/14/93
Gulf Oil Corporation/Hendren's Gulf Service	RF300–18509	09/16/93
Gulf Oil Corporation/Wadsworth Auto Wash	RF300–18142	09/14/93
Norton Auto Wash	RF300–18143	
Copley Auto Wash	RF300–18144	
Howe Oil Co., Inc	RF272–86060	09/15/93
Pike Delta York Local Schools et al	RF272–80219	09/14/93
Sanderson Farms, Inc	RC272–214	09/17/93
Shell Oil Company/C&F Service Co., Inc	RF315–8351	09/15/93
Shell Oil Company/Cannon Aviation	RF315–6723	09/14/93
Texaco Inc./A & W Texaco	RF321–14495	09/15/93
Texaco Inc./La Pine Texaco	RF321–1660	09/16/93
Hagar's Texaco	RF321–17420	
Texaco Inc./Pine Tree Texaco Service et al	RF321–12346	09/14/93
Tri-County Electric Coop. et al	RF272–91029	09/17/93
Troiano Fuel Oil Co. et al	RF272–90404	09/15/93
W.R. Grace & Co.—Conn	RF272–90938	09/17/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Anna Jonesboro Community High School District 81	RF272–81425
Billy's Texaco	RF321–18194
C.A. Dillon Supply Company	RF272–92856
Central Oklahoma Freight Lines, Inc.	RF272–90913
City of Lafayette	RF272–83230
City of Storm Lake	RF272–83093
Copeland Texaco	RF321–14502
Crothersville Community School	RF272–81577
Darby's Texaco	RF321–17058
East San Gabriel Valley Rop	RF272–81513
Fowlerville Community Schools	RF272–79412
Glasgow Grocery	RF321–14428
Hurry Back Texaco	RF321–14513
Hurry Back Texaco	RF321–14576
John G. Sales & Service	RF321–18839
Jose M. Silva	RF304–14229
Kirschenmanis Texaco	RF321–18825
Lake Forest School District 67	RF272–81371
Lewisville Texaco	RF321–14921
McIntosh County School Board	RF272–81566
Montague Area Public Schools	RF272–82445
Norshep Texaco	RF321–14490
Richfield Truck Stop	RF304–14106
Suburban Texaco	RF321–14424
W.A. Mathis Texaco	RF321–18829
Weisenfluh Service Center	RF321–14480
Willow Glenn Texaco	RF321–19049
Wilson Texaco	RF321–18830
Wilson's Gulf	RF300–13586

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 17, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–28891 Filed 11–23–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4806–1]

Access to Confidential Business Information by Booz-Allen, & Hamilton

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton to conduct reviews of selected Superfund cost recovery documentation and records management. During the review, the contractor will have access to information which has been submitted to EPA under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data December 2, 1993.

ADDRESSES: Send or deliver, written comments to Steven X. Pandza, U.S. Environmental Protection Agency, Financial Management Section (3PM31), 841 Chestnut Street, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Steven X. Pandza, Financial Management Section, Superfund Cost Recovery Section (3PM31), 841 Chestnut Street, Philadelphia, Pennsylvania 19107, Telephone (215) 597–6161.

SUPPLEMENTARY INFORMATION: Under Contract 68–W3–002, Delivery Order 001, Booz-Allen, & Hamilton, Inc., will be conducting an on-site review of the procedures and systems currently in place for compliance with Superfund cost recovery and record keeping requirements in the States of Delaware and Virginia. These reviews involve conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) Expenditures Review: Expenditure documentation such as expense reports, timesheets, and purchase requests from the point of origination to the point of payment to determine compliance with such requirements as site-specific accounting data, authorizing signature and reconciliation of time sheets to expense reports.

(2) Financial Reports: Review financial drawdowns, Financial Status Reports, and internal status reports, to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required.

(3) Record Keeping Procedures: Review samples of Superfund documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation (focusing on site-specific documentation, retention schedules, and the ability of the recipient to provide EPA with required financial documentation for cost recovery purposes in the specific time frame).

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under section 104 of CERCLA, some of which may contain information claimed or determined to be CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to CBI to provide the support and services required under the Delivery Order. These regulations provide for five working days notice before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc. will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: October 18, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–28896 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30340A; FRL–4740–9]

AKZO Chemicals, Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by AKZO Chemicals, Inc., to register the pesticide product Sinesto B containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 2, 1992 (57 FR 40186), which announced that AKZO Chemicals, Inc., 300 South Riverside Plaza, Chicago, IL 60606, had submitted an application to register the pesticide product Sinesto B (File Symbol 34688–AO), containing a new active ingredient alkyl trimethylammonium chloride (alkyl as in fatty acids of coconut oil) at 12 percent, an active ingredient not included in any previously registered product.

The application was approved on September 30, 1993, as Sinesto B for use on fresh cut lumber to control sap stains (EPA Registration Number 34688–69).

The Agency has considered all required data on the risks associated with the proposed use of alkyl trimethylammonium chloride (alkyl as in fatty acids of coconut oil), and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of alkyl trimethylammonium chloride (alkyl as in fatty acids of coconut oil) when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on alkyl trimethylammonium chloride (alkyl as in fatty acids of coconut oil).

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public

inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 3, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–28613 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140217; FRL–4744–2]

Reduction of Hours of Service and Change of Mail Code for TSCA Confidential Business Information Center and TSCA Nonconfidential Information Center

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is issuing this notice to announce that the Office of Pollution Prevention and Toxics (OPPT) Confidential Business Information Center (CBIC) and the Toxic Substances Control Act (TSCA) Nonconfidential Information Center (NCIC), also known as, the TSCA Public Docket Office will reduce their hours of service effective November 29, 1993. In addition, the EPA mail code has changed for both offices.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Due to fiscal restraints, the Office of Pollution Prevention and Toxics (OPPT) Confidential Business Information Center (CBIC) will be open from 8 a.m. to 12 noon and the TSCA Nonconfidential Information Center (NCIC), also known as, the TSCA Public Docket Office, will be open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays, effective November 29, 1993. EPA has reviewed the traffic and use patterns of the Public Docket Office and has determined that reducing the number of hours that the Docket Office is open should not restrict access to OPPT public documents. In addition, OPPT is committed to continuing its efforts to make more information publicly accessible through OPPT Information Products. The EPA mail code for both offices has changed to 7407. Telephone numbers remain the same.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 18, 1993.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–28904 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–F

[PP 0G3916/T650; FRL 4634–8]

Deltamethrin; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the insecticide deltamethrin and its metabolite in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm).

DATES: This temporary tolerance expires June 1, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6100.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206, P.O. Box 2500, Somerville, NJ 08876–1258, has requested in pesticide petition (PP) 0G3916, the establishment of a temporary tolerance for the combined residues of the insecticide Deltamethrin (1*R*,3*R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-α-cyano-3-phenoxybenzyl ester and its metabolite, *trans*-deltamethrin: (1*S*,3*R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and alpha-*R*-deltamethrin: (1*R*,3*R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*R*)-alpha-cyano-3-phenoxybenzyl ester in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 34147–EUP–3, 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 materials were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has 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 ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Hoechst-Roussel Agri-Vet 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.

This tolerance expires June 1, 1994. Residues not in excess of this amount 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 tolerance. This tolerance 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).

List of Subjects

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

Dated: November 8, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-28612 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

[PF-586; FRL-4745-1]

Zeneca Ag Products et al.; Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions, PP 6F3344 and PP 1E4031 filed by Zeneca Ag Products and Monsanto Co., respectively, proposing to establish regulations for residues of certain pesticide chemicals (safeners) in or on certain agricultural commodities.

DATES: Comments, identified by the document control number [PF-586], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 703-308-8320.

SUPPLEMENTARY INFORMATION: EPA has received initial filings of pesticide petitions as follows proposing the establishment of regulations for residues of certain pesticide chemicals (safeners) in or on various agricultural commodities.

1. *PP 6F3344.* Zeneca Ag Products, 1800 Concord Pike, P.O. Box 751, Wilmington, DE 19897, proposes to amend 40 CFR 180.1026 by establishing a regulation to permit residues of *N,N*-diallyl dichloroacetamide when used as an inert ingredient (safener) in formulations applied to corn fields before the corn plants emerge from the soil with a maximum use level of 1.0 pound of this safener per acre per year in or on corn, fodder at 0.05 part per million (ppm), corn, forage at 0.05 ppm, and corn, grain at 0.05 ppm.

2. *PP 1E4031.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to establish negligible (N) residue tolerances for the saefner MON 13900, 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyl-oxazolidine, in or on field corn, grain at 0.01 ppm (N) and field corn, fodder and forage at 0.01 ppm (N).

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 7 U.S.C. 136a

Dated: November 15, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-28731 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4805-8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the J.H. Baxter Superfund site in Weed, California was issued by the Agency on September 30, 1993. The settlement resolves an EPA claim under Section 107 of CERCLA against the following companies for past response costs through the date of October 31, 1992: J.H. Baxter and Company, Roseburg Forest Products Company, International paper, and Beazer East Incorporated on behalf of the American Lumber and Treating Company Interests; together known as Respondents. Costs through October 31, 1992 total at least $2,966,899, which include $2,790,497 in response costs and $176,402 in interest. Payment of $420,000 has previously been received from the Respondents, resulting in a revised total of $2,546,899.

The settlement of these past costs requires the Respondents to pay $2,324,381.10, plus interest, to the Hazardous Substances Superfund in seven payments over the next two year. Because the response costs incurred by EPA for this site exceed $500,000, EPA has received prior approval of the Attorney General to compromise its claim.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the EPA Region 9 Office located at 75 Hawthorne Street, San Francisco, California.

DATES: Comments must be submitted on or before December 27, 1993.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Region 9 Office located at 75 Hawthorne Street, San Francisco, California 94105. A copy of the proposed settlement may be obtained at the same address from Greg Pennington (Mail Code: H-7-4), telephone (415) 744-2372. Comments should reference the J.H. Baxter Superfund site, Weed, California and EPA Docket No. 93-25 and should be addressed to Greg Pennington (Mail Code: H-7-4) at the above address.

FOR FURTHER INFORMATION CONTACT: Mardi Black, Office of Regional Counsel, (415) 744-1395.

Dated: November 15, 1993.

Keith Takata,

Acting Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 93-28903 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-M

[WH-FRL-4805-7]

State Water Quality Standards: Annual Listing of EPA Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice contains a list of the States that have revised their water quality standards, dates of adoption by the State and dates of approval by EPA for the period October 1, 1991 through September 30, 1992. This Notice is published pursuant to a requirement of the Water Quality Standards Regulation (40 CFR 131.21).

FOR FURTHER INFORMATION CONTACT:

Region	Coordinator	Phone
1	Eric Hall	617-565-3533
2	Wayne Jackson	212-264-5685
3	Helene Drago	215-597-9911
	Evelyn Macknight	215-597-4491
4	Fritz Wagener	404-347-3396
5	Dave Pfiefer	312-353-9024
6	Cheryl Overstreet	214-655-6643
7	Larry Shepard	913-551-7441
8	Jim Luey	303-293-1425
9	Phil Woods	415-744-1997
10	Sally Marquis	206-553-2116
	Marcia Lagerloef	206-553-0176

SUPPLEMENTARY INFORMATION: This Notice lists State water quality standards review/revisions approved by EPA for the period October 1, 1991 through September 30, 1992. The most recent previous list of reviews and revisions of State water quality standards was published in the **Federal Register** on May 18, 1992 (57 FR 21068). Today's Notice identifies the State regulatory documentation containing the State water quality standards and dates of State adoption and EPA approval. Not included in this Notice are: (1) The text of the water quality standards, or (2) any conditions (including disapprovals of portions of the State submittals) that might have been attached to the approvals.

The text of a State's standards and copies of the approval letters can be obtained from the State's pollution control agency or the appropriate EPA Regional Office (see above). Proprietary publications such as those of the Bureau of National Affairs also contain the text of State Standards.

Dated: October 22, 1993.

Martha G. Prothro,

Acting Assistant Administrator for Water.

Region 1

Connecticut

Water Quality Standards for the State of Connecticut are contained in Connecticut General Statutes.

Adopted by State: January 29, 1992
EPA Action: Approval May 15, 1992

Adopted EPA numeric criteria for toxic for all chemicals except copper and zinc. Adopted State-specific criteria for cooper and zinc. Revised antidegradation policy and appended an implementation strategy.

Region 2

New York

Water Quality Standards for the State of New York are contained in Water Quality Regulations for Surface Waters and Ground Waters (6NYCRR Parts 700-705).

Adopted by State: September 1, 1991
EPA Action: Approval September 30, 1992

Revisions were made for Public Participation in the Development of Numeric Guidance Values; and the adoption of numeric criteria for seven substances (ammonia, benzene, cadmium, chlorine, chloroform, copper and nitribltriacetic acid)

Region 3

District of Columbia

Water Quality Standards for the District are contained in Water Quality Standards of the District of Columbia.

Adopted by District: August 30, 1991
EPA Action: Approved Zinc January 13, 1993

Amended criteria for zinc and mercury.

Maryland

Water Quality Standards for the State of Maryland are contained in Title 26, Dept. of the Environment, Subtitle 08 Water Pollution, Subpart 26.08.02 Water Quality.

Adopted by State: March 22, 1992
EPA Action: Approval June 25, 1992

Use designation revisions for a number of streams statewide.

Pennsylvania

Water Quality Standards for the State of Pennsylvania are contained in Title 25, Rules & Regulations, Part I, Dept of Environmental resources, Subpart C, Protection of Natural Resources Article II, Water Resources, Chap. 93 Water Quality Standards; Chap. 16 Water Quality Standards, Toxics Management Strategy.

Adopted by State: November 30, 1991
EPA Action: Approval March 17, 1992

Use designation revisions for a number of streams statewide (Chap 93, Section 93.9)

Adopted by State: July 18, 1992
EPA Action: Approval December 22, 1992

Use designation revisions for a number of streams statewide (Chap. 93, Section 93.9)

Virginia

Water Quality Standards for the State of Virginia are contained in Commonwealth of Virginia, State Water Control Board Water Quality Standards.

Adopted by State: May 20, 1992
EPA Action: Approval July 31, 1992

Revisisions to fulfill their triennial review requirements.

West Virginia

Water Quality Standards for the State of West Virginia are contained in Requirements Regarding Water Quality Standards.

Adopted by State: May 9, 1991
EPA Action: Approval July 23, 1991

Revisions to finalize the emergency rules that were filed August 20, 1990 and which expires in November 1991.

Region 4

Alabama

Water Quality Standards for the State of Alabama are contained in Chapter 335 6-10 (Water Quality Criteria) and Chapter 335 6-11 (Water Use Classifications for Interstate and Intrastate Waters) of the Alabama Dept of Environmental Management Administrative Code.

Adopted by State: June 26, 1991, Effective August 1, 1991, AG Certified December 27, 1991
EPA Action: Approved February 12, 1992

State adoption of the Outstanding National Resource Water Designation for the Little River, the East Fork of the Little River, the West Fork of the Little River and tributaries of these segments.

Adopted by State: February 26, 1992, Effective April 2, 1992, AG Certified June 3, 1992
EPA Action: Approval August 11, 1992

State Adoption of Outstanding National Resource Water designation for Weeks Bay.

Kentucky

Water Quality Standards for the State of Kentucky are contained in 401 KAR 5.031 Surface Water Standards.

Adopted by State: January 27, 1992
EPA Action: Approval May 26, 1992 (all except dioxin)

Region 5

Ohio

Water Quality Standards for the State of Ohio are contained in Ohio's Water Quality Standards Rule 3745-1-14 of the Ohio Administrative Code.

Adopted by State: September 9, 1992
EPA Action: Approval November 23, 1992

Incorporates a variance to the water quality standard for Fields Brooks for whole effluent toxicity.

Wisconsin

Water Quality Standards for the State of Wisconsin are contained in NR 103, NR 105.

Adopted by State: NR 103 August 1, 1991, NR 105 July 1991
EPA Action: Approval NR 103 February 11, 1992, Approval NR 105 November 11, 1991

NR 103—Wetland water quality standards

NR 105—Deletion of footnotes to water quality criteria regulating PCBs on an arochlor-specific basis.

Region 6

Louisiana

Water Quality Standards for the State of Louisiana are contained in Title 33 Environmental Quality, Part IX, Water Quality Regulations, Chapter 11. Surface Water Quality Standards.

Adopted by State: October 20, 1991
EPA Action: Approval January 24, 1992

Revisions added criteria for dioxin bringing the State into full compliance with Section 303(c)(2)(B) of the Clean Water Act.

New Mexico

Water quality Standards for the State of New Mexico are contained in Rule number WQCC 91-1, Amendment 1—"Water Quality Standards for Interstate and Intrastate Streams in New Mexico."

The State adopted revisions to the Water Quality Standards on May 22, 1991. These revisions contained numerical criteria for the protection of aquatic life and were approved by EPA on August 19, 1991. On October 8, 1991, the State revised its standards and adopted a revision which allowed biomonitoring criteria to supersede acute numerical criteria. This part of the standards was found to be not compliant with section 303(c)(2)(B) of the Clean Water Act and was disapproved by the Region on January 13, 1992.

Adopted by State: October 13, 1991
EPA Action: January 13, 1992

Arkansas

Water Quality Standards for the State of Arkansas are contained in Regulation No. 2—"Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas."

The State adopted revisions to Water Quality Standards on October 25, 1991. These revisions contained human health criteria including criteria for dioxin. The revisions did not include aquatic life criteria for metals or cyanide. EPA disapproved this revision on January 24, 1992, for lack of aquatic life criteria for cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, zinc, and cyanide.

Adopted by State: October 25, 1991
EPA Action: January 24, 1992

Region 8

Colorado

Water Quality Standards for the State of Colorado are contained in Basic Standards and Methodologies for Surface Water, 3.1.0 (5 CCR 1002-8).

Adopted by State October 8, 1991
EPA Action: Approval February 4, 1992 (all but toxics), Approval December 10, 1991 (toxics criteria only)

Addition of numeric criteria for priority toxic pollutants. Revisions to the antidegradation provisions, clarification of the Class 1 recreation use and several revisions/clarifications that address integration of standards into discharge permits.

Adopted by State: January 6, 1992
EPA Action: Approval July 16, 1992 (except for segments where CWA section 101(A)(2) uses not designated.

Revision of hardness-based aquatic life criteria for zinc, adoption of additional organic chemical standards for certain aquatic life segments and miscellaneous other segment specific water quality standard revisions.

Region 9

Arizona

Water Quality Standards for the State of Arizona are contained in Arizona's Rules on Water Quality Standards for Navigable Waters (Title 18, Chapter 11, Article 1)

Adopted by State: February 18, 1992
EPA Action: Approval March 2, 1992 (numeric standards for toxics only); Approval March 26, 1992 (nutrient standards for Colorado River below Imperial Dam); Approval July 6, 1992 (Colorado River Basin salinity standards)

General Revision including:

Numeric standards for additional toxic substances to fully satisfy section 303(c)(2)(B); revised use designations; revised microbiological standards; revised nutrient standards; amendment narrative requirements

California

These water quality standards for the State of California are contained in the Water Quality Control Plan for Inland Surface Waters of California and the Water Quality Control Plan for Enclosed Bays and Estuaries of California (State Water Resources Control Board Resolution No. 91-33)

Adopted by State; April 11, 1991
EPA Action: Partial Approval November 6, 1991

Added numeric standards for additional toxic substances and amended the narrative prohibition on toxicity to partially satisfy section 303(c)(2)(B) for these waters and provisions for implementation of these standards.

Approval of narrative water quality standards and toxicity limits, numeric standards for toxic substances, parts of the implementation program.

These water quality standards for the State of California are contained in 1990 Review-Water Quality Standards for Salinity-Colorado River System (State Water Resource Control Board Resolution No. 91-22).

Adopted by State: March 21, 1991
EPA Action: Approval March 12, 1992

Adopted 1990 Review of salinity standards for the Colorado River Basin.

These water quality standards for the State of California are contained in the Water Quality Control Plan for the North Coast Region as amended by State Water Resources Control Board Resolution No. 91-94.

Adopted by State: September 26, 1991
EPA Action: Approval March 13, 1992

Added numeric site-specific temperature standards and an interim action plan for the Trinity River.

Nevada

Water Quality Standards for the State of Nevada are contained in Nevada Administrative Code, Water Pollution Control Provisions (NAC).

Adopted by State: February 10, 1992
EPA Action: Approval July 6, 1992

Adopted 1990 review of salinity standards for the Colorado River Basin.

Guam

Water Quality Standards for the Territory of Guam are contained in the Guam Water Quality Standards.

Adopted by State: January 2, 1991 (eff. March 23, 1992)
EPA Action: Approval July 23, 1992

Numeric standards for toxic substances updated to reflect current national criteria guidance and continue to fully satisfy section 303(c)(2)(B); applicability of standards to wetlands was clarified, and an extensive wetlands classification system was added; provisions for 401 certification and miscellaneous other revisions were incorporated.

Northern Mariana Islands

Water Quality Standards for the Commonwealth of the Northern Mariana Islands are contained in Commonwealth of the Northern Mariana Islands Water Quality Standards.

Adopted by State: November 15, 1991 (eff. November 25, 1991)
EPA Action: Approval January 13, 1992

Added numeric standards for additional toxic substances and amended the narrative prohibition on toxicity to fully satisfy section 303(c)(2)(B).

Region 10

Oregon

Water Quality Standards for the State of Oregon are contained in Oregon Administrative Rules (OAR) Chapter 340, Division 41.

Adopted by State: July 24, 1991 (all but antidegradation) September 18, 1991 Antidegradation
EPA Action: Approval January 27, 1992

Antidegradation policy revision, bacterial criteria revision (enterococci); mixing zone policy; narrative biological criteria; turbidity; toxic substances.

[FR Doc. 93-28822 Filed 11-23-93; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1981]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

November 2, 1993.

Petitions for reconsideration, and clarification 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 this petition must be filed December 9, 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: Expanded Interconnection with Local Telephone Company Facilities (CC Docket No. 91-141).
Number of Petitions Filed: 16.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93-28847 Filed 11-23-93; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Emergency Management Agency Advisory Board Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 1, FEMA announces a meeting of the FEMA Advisory Board.

NAME: Federal Emergency Management Agency Advisory Board (FAB).

DATES OF MEETING: December 13-14, 1993.

PLACE: Hyatt Regency Washington, 400 New Jersey Avenue, N.W., Washington, DC 20001.

TIME: December 13, 1993, 2 p.m.-5 p.m. and December 14, 1993, 9 a.m.-3 p.m.

PROPOSED AGENDA: General update on programs and issues concerning FEMA. Also an update on the status of FEMA's reorganization.

SUPPLEMENTARY INFORMATION: New members of the FEMA Advisory Board will be oriented, and all members of the FEMA Advisory Board will be brought current on FEMA programs and issues. The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who want to attend the meeting should contact John "Chili" Cole, Confidential Assistant to the Director of the Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3746, on or before December 8, 1993.

Minutes of the meeting will be prepared and will be available for public viewing upon request 60 days after the meeting.

Dated: November 18, 1993.
James L. Witt,
Director.
[FR Doc. 93-28762 Filed 11-23-93; 8:45 am]
BILLING CODE 6718-01-P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-002744-073.
Title: West Coast of South America Agreement.
Parties:
A.P. Moller-Maersk
Compania Chilena de Navigacion Interoceania, S.A.
Compania Sud Americana de Vapores, S.A.
Crowley American Transport, Inc.
ENS Container Line Ltd.
Empremar/MSC Joint Service
Flota Mercante Grancolombiana, S.A.
Gulf Pac Express Service
Lineas Navieras Bolivianas, S.A.
Lykes Bros. Steamship Co., Inc.
Nedlloyd Lijnen, B.V.
South Pacific Shipping Company Ltd.

Synopsis: The proposed amendment revises the Agreement by adding language regarding inactive membership and service contract participation.

Agreement No.: 203-011408-005.
Title: The Red Sea/Arabian Gulf/Indian Subcontinent Discussion Agreement.
Parties:
American President Lines, Ltd.
A.P. Moller-Maersk Line
Croatia Line
National Shipping Company of Saudi Arabia
P&O Containers Limited
Sea-Land Service, Inc.
Senator Linie
United Arab Shipping Company

(S.A.G.)
Waterman Steamship Corporation
The "8900" Lines Rate Agreement
West Coast/Middle East Rate Agreement

Synopsis: The proposed modification provides for the termination of the Agreement effective January 31, 1994.

Agreement No.: 203–011435.

Title: APL–TMM Space Charter Agreement.

Parties:

American President Lines, Ltd. ("APL")
Transportacion Maritima Mexicana, S.A. de C.V. ("TMM")

Synopsis: The proposed Agreement authorizes the parties to discuss and agree upon terms by which APL may charter container slots to TMM between ports and points in the Far East, the Indian Subcontinent, and the Middle East, and ports and points in the U.S. Pacific.

Agreement No.: 207–011436.

Title: Hornet Shipping Company Limited/Lauritzen Reefers A/S Joint Service Agreement.

Parties:

Hornet Shipping Company Limited
Lauritzen Reefers A/S

Synopsis: The proposed Agreement authorizes the parties to establish and operate a joint service in the trades from ports and points on the U.S. West Coast to ports and points in Ecuador, and Chile and between ports and points on the U.S. West Coast and ports and points in Japan. The parties have requested a shortened review period.

Agreement No.: 224–200589–002.

Title: Jacksonville Port Authority/Green Cove Marine, Inc. Terminal Agreement.

Parties:

Jacksonville Port Authority
Green Cove Marine, Inc.

Synopsis: The proposed amendment revises specific sections of the Agreement pertaining to throughput charges, rental and other related rates.

Agreement No.: 224–200810.

Title: The Port Authority of New York & New Jersey/D.B. Turkish Cargo, Line Container Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port")
D.B. Turkish Cargo, Line ("D.B. Turkish")

Synopsis: The Agreement provides for the Port to pay D.B. Turkish a container incentive of $20.00 for each import container and $40.00 for each export container with cargo moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Dated: November 18, 1993.

By Order of the Federal Maritime Commission.

[FR Doc. 93–28764 Filed 11–23–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Decatur Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 17, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Decatur Bancshares, Inc., Decaturville, Tennessee; to become a bank holding company by acquiring at least 80 percent of the voting shares of Decatur County Bank, Decaturville, Tennessee.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dakota Bancshares, Inc., Mendota Heights, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Dakota County State Bank, Mendota Heights, Minnesota.

2. St. Paul Bancshares, Inc., Phalen Park, Minnesota; to acquire 23.86 percent of the voting shares of Dakota Bancshares, Inc., Mendota Heights, Minnesota, and thereby indirectly acquire Dakota County State Bank, Mendota Heights, Minnesota.

Board of Governors of the Federal Reserve System, November 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28816 Filed 11-23-93; 8:45 am]

BILLING CODE 6210-01-F

David W. Fleming, 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 December 14, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. David W. Fleming, Litchfield, Illinois; to acquire an additional 7.58 percent of the voting shares of LBT Bancshares, Inc., Litchfield, Illinois, for a total of 19.12 percent, and thereby indirectly acquire Bank and Trust Company, Litchfield, Illinois, and First National Bank of Mt. Auburn, Mt. Auburn, Illinois.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jack L. and Frances M. Brozman, Kansas City, Kansas; to acquire 65.25 percent; David A. and Joyce A. Nichols, Kansas, City, Kansas, to acquire an additional 15.85 percent for a total of 27.61 percent; and The David A. Nichols Defined Benefit Pension Plan Dated January 1, 1985, Kansas City, Kansas, to acquire 4.35 percent of the voting shares of First Bancshares, Inc., Kansas City, Kansas, and thereby

indirectly acquire The First State Bank of Kansas City, Kansas City, Kanses.

2. Don H. Carlton, Tulsa, Oklahoma; to acquire an additional 6.6 percent for a total of 31.2 percent; and Roger Marshall, Tulsa, Oklahoma, to acquire an additional 5.9 percent for a total of 27.6 percent of the voting shares of Tulsa National Bancshares, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Tulsa National Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, November 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28817 Filed 11-23-93; 8:45 am]

BILLING CODE 6210-01-F

Popular International Bank, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Popular International Bank, Inc., Hato Rey, Puerto Rico, and BanPonce Financial Corp., Mount Laurel, New Jersey; to acquire Spring Financial Services, Inc., Mount Laurel, New Jersey, Spring Financial Mortgage Company, Mount Laurel, New Jersey, Spring Mortgage Servicing Company, Mount Laurel, New Jersey, Equity One Incorporated, Langhorne, Pennsylvania, and Equity One Consumer Discount Company, Langhorne, Pennsylvania; and thereby engage in acquiring or servicing of loans or other extensions of credit pursuant to § 225.25(b)(1); and acting as principal, agent, or broker for credit related insurance pursuant to § 225.25(b)(8)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28819 Filed 11-23-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Health Research Advisory Committee (MHRAC); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Mine Health Research Advisory Committee (MHRAC).

Times and Dates: 8:30 a.m.–5 p.m., December 9, 1993; 8:30 a.m.–12 noon, December 10, 1993.

Place: Euro-Suites Hotel, Mezzanine Room, 501 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research. Additionally, the committee assesses mine health research needs and advises on the conduct of mine health research.

Matters to be Discussed: The agenda will include the NIOSH Acting Director's remarks and charge to the committee; NIOSH fiscal year 1994 mining-related activities overview and discussion; an update on silicosis prevention efforts; interactions between NIOSH and the Mine Safety and Health Administration; policy update and criteria documents; and NIOSH injury/safety research relevant to mining. Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Gregory R. Wagner, M.D., Executive Secretary, Division of Respiratory Disease Studies, NIOSH, CDC, Mailstop 220, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, telephone 304/291–4474.

Dated: November 18, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–28811 Filed 11–23–93; 8:45 am]

BILLING CODE 4160–19–M

Health Care Financing Administration

[BPD–762–PN]

RIN 0938–AG04

Medicare Program; Payment for Extracorporeal Shock Wave Lithotripsy Services Furnished by Ambulatory Surgical Centers (ASCs)

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

ACTION: Proposed notice; extension of comment period.

SUMMARY: This notice announces a 30-day extension of the comment period on a proposed notice we published in the Federal Register on October 1, 1993.

DATES: Comments will be considered if we receive them at the appropriate address, as provided in the October 1, 1993 proposed notice, no later than December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (410) 966–4571.

SUPPLEMENTARY INFORMATION: On October 1, 1993, we published a proposed notice in the Federal Register (58 FR 51355), in response to a complaint and motion to preliminarily enjoin enforcement and implementation of our December 31, 1991 notice (55 FR 67666), insofar as it concerned Extracorporeal Shock Wave Lithotripsy (ESWL). The comment period for the October 1, 1993 proposed notice was to end on November 30, 1993. We are extending the comment period and will consider comments if we receive them at the appropriate address, as provided in the October 1, 1993 proposed notice,

no later than 5 p.m. on December 30, 1993.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 5, 1993.

Bruce C. Valadeck,

Administrator, Health Care Financing Administration.

Dated: November 12, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–28772 Filed 11–23–93; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings to Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Joseph Kimm (301) 594–7257

Date of Meeting: November 30, 1993

Place of Meeting: Hyatt Regency, Bethesda, MD

Time of Meeting: 9 a.m.

Meetings to Review Individual Grant Applications

Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358

Date of Meeting: December 8, 1993

Place of Meeting: Westwood Bldg., room 319C, NIH, Bethesda, MD (Telephone Conference)

Time of Meeting: 11 a.m.

Scientific Review Administrator: Dr. Andrew Mariani (301) 594–7206

Date of Meeting: December 3, 1993

Place of Meeting: Chevy Chase Holiday Inn, Chevy Chase, MD

Time of Meeting: 9 a.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93–396, 93.837–93–844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 19, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28936 Filed 11–23–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Coal Lease Offering By Sealed Bid

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in lands hereinafter described in Emery County, Utah, will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). However, no bid will be accepted for less than fair market value as determined by the authorized officer.

DATES: The lease sale will be held at 1 p.m., December 29, 1993. Sealed bids must be submitted on or before 10 a.m., December 29, 1993.

ADDRESSES: The lease sale will be held in the Bureau of Land Management Conference Room, 324 South State Street, Suite 302, Salt Lake City, Utah. Sealed bids must be mailed to the Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145–0155 or hand delivered to the cashier, 324 South State Street, (room 400), Salt Lake City, Utah.

COAL OFFERED: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Emery County, Utah, approximately 15 miles northwest of Huntington, Utah:

T. 15 S., R. 6 E., SLM, Utah
Sec. 25, S2;
Sec. 26, S2;
Sec. 35, all.
T. 15 S., R. 7 E., SLM, Utah
Sec. 30, lots 7–12, SE;
Sec. 31, lots 1–12, NE, N2SE, SWSE.
T. 16 S., R. 6 E., SLM, Utah
Sec. 1, lots 1–12, SW.
T. 16 S., R. 7 E., SLM, Utah
Sec. 6, lots 2–4, SWNE.
Containing 2,979.49 acres

One economically recoverable coal bed, the Hiawatha Seam is found in this tract. The seam averages 7.2 feet in thickness. This tract contains an estimated 18,666,000 tons of recoverable high volatile C bituminous coal. The estimated coal quality using weighted average of samples on an as-received basis is:

12,790 BTU/lb.;
4.08 Percent moisture;
.63 Percent sulphur
8.75 Percent ash;
45.31 Percent fixed carbon;
42.45 Percent volatile matter.

(Totals do not equal 100% due to rounding)

RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 12.5 percent of the value of the coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with BLM Manual 3070.

NOTICE OF AVAILABILITY: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145–0155 or in the Public Room (room 400) Utah State Office, 324 South State Street, Salt Lake City, Utah, telephone 801–539–4001. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act are available for public inspection in the Public Room (room 400) of the Bureau of Land Management, Utah State Office.

SUPPLEMENTARY INFORMATION: The unleased coal in this tract is included in the Utah Schools and Lands Improvement Act of 1993 (Pub. L. 103–93) as a Federal interest which the State of Utah may select to satisfy the value of the exchange of State for Federal lands authorized in the Act. In accordance with the Act, the Federal interest, i.e., the unleased coal, in this tract was offered to the State of Utah on October 20, 1993. Consummation of the exchange under the Act may, in the future, allow for the State of Utah to succeed to some or all of the United States interest in this tract.

G. William Lamb,

Associate State Director.

[FR Doc. 93–28869 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–DQ–P

[AZ–020–04–4140–05; LEAS]

Intent To Prepare an Environmental Impact Statement; Cyprus Casa Grande Mine, Papago Indian Reservation, AZ

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Agency Notice Correction of Notice of Intent to Prepare an Environmental Impact Statement; Cyprus Casa Grande Mine; Tohono O'Odham Nation, Papago Indian Reservation, Arizona.

SUMMARY: The meeting times published in column 3, page 60048, of the November 12, 1993 **Federal Register** are postponed until early 1994. Revisions are being made to the meeting schedule in order to maximize accessibility and participation of all concerned parties and members of the Tohono O'Odham Nation. Notice of the new schedule will be published in the **Federal Register**. Point of contact for information is Moon J. Hom, Mining Engineer, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027, phone (602) 780–8090.

Dated: November 18, 1993.

David J. Miller,

Acting District Manager.

[FR Doc. 93–28820 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–32–M

[NM–060–4110–01 (603)]

Southeast New Mexico Playa Lakes Coordinating Committee; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast New Mexico Playa Lakes Coordinating Committee meeting.

DATES: Friday, December 10, 1993, beginning at 9:30 a.m.

SUMMARY: The proposed agenda will include presentation by the Planning Group of the status of the moist soil project and the determent activities; the revised Action Plan; statement of work for literature review; and proposal for preliminary pathology work. The meeting will be held at the Carlsbad Resource Area Office, 620 E. Greene, Carlsbad, New Mexico. Planning Group recommendations will be presented at 9:30 a.m. to the Southeast New Mexico Playa Lakes Coordinating Committee. Final decisions on recommendations of the Planning Group are expected to be made by the Committee. Summary minutes will be maintained in the Roswell District Office and will be available for public inspection during regular business hours (7:45 a.m.–4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 West 2nd Street, Roswell, NM 88201, (505) 627–0272.

Dated: November 10, 1993.

Leslie M. Cone,

District Manager.

[FR Doc. 93–28776 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–04–4710–06]

Notice of Closure of Bishop Canyon Road to Motorized Vehicle Travel

Authority: Title 43 Code of Federal Regulations 8365.1–6, 43 U.S.C. 1701.

SUMMARY: Notice is hereby given that motorized vehicle travel in Bishop Canyon is prohibited. The access route from the Woodward Ranch through Bishop Canyon to the top of the Pine Forest Mountain Range is closed to all motorized vehicle travel.

This notice/order affects all those public lands located in the general area of Bishop Canyon within the unsurveyed township, T. 42 N., R. 30 E., Mount Diable Meridian, Nevada.

Bishop Canyon Access Road starts on the East side of the Pine Forest Mountain Range in Northern Humboldt County, Nevada, just West of the Woodward Ranch then proceeds in a Southwesterly direction through Bishop Canyon to the crest of the Pine Forest Mountain Range for approximately three (3) miles. The access road is a single lane, narrow, steep grade consisting of loose rock and dirt. This access road is considered to be hazardous and dangerous for 4WD travel. This access road is closed to motorized vehicle travel for the purpose of public safety.

This road closure order does not affect the travel by U.S. Government employees in their administrative duties assigned of the management of those affected public lands within Bishop Canyon. The road closure also does not affect the emergency use by any other public entity, Humboldt County Sheriff's Department, State of Nevada Department of Public Safety or the Federal Aviation Administration.

The above road closure will remain in effect until the Paradise-Denio Resource Management Plan is completed and the restrictions as to motorized vehicle use have been identified in the RMP and are fully implemented.

Comments: Comments on the Bishop Canyon closure can be mailed to the Bureau of Land Management, Winnemucca District Office, 705 E. 4th St., Winnemucca, NV 89445, or phone (702) 623–1500.

Dated: November 12, 1993.

Ron Wenker,

District Manager.

[FR Doc. 93–28827 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–HC–M

[ID–942–04–4055–02]

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., November 12, 1993.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and subdivision of sections 3 and 4, T. 9 S., R. 14 E., Boise Meridian, Idaho, Group No. 845, was accepted, November 9, 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: November 12, 1993.

Mark Smirnov,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–28775 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–GG–M

[NV-930-4210-05; N-57206]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a fire station.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., M.D.M.
Sec. 7: E½SE¼NE¼NE¼.
Containing 5.00 acres, more or less.

The land is not required for any Federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 50.00 feet in width along the east boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

2. An easement 30.00 feet in width along the south boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

3. An easement 30.00 feet in width along the north boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

4. Those rights for distribution line and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company by Permit No. N-52939 under the Act of October 21, 1976 (43 CFR 1732).

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: November 12, 1993.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 93-28849 Filed 11-23-93; 8:45 am]

BILLING CODE 4310-HC-M

[NM-010-4210-06; NMNM 90118]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 120 acres of public land and 680 acres of federally reserved mineral interests underlying private surface estate in Rio Arriba County to allow the sale of a mineral material, humate (a carbonaceous shale). This notice closes 120 acres of public land for up to 2 years from surface entry and mining and closes 680 acres of federally reserved mineral interests from mining only, subject to valid existing rights. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by February 22, 1994.

ADDRESSES: Comments and requests for a public meeting should be sent to the Albuquerque District Manager, BLM, 435 Montano Road NE., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM Rio Puerco Resource Area Office, (505) 761-8700.

SUPPLEMENTARY INFORMATION: On November 16, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 23 N., R. 1 W.,
Sec. 11, NE¼NE¼ and S½NE¼/

The area described contains approximately 120 acres in Rio Arriba County.

And, to withdraw the following described federally reserved mineral interests underlying private surface estate from the mining laws, subject to valid existing rights:

T. 23 N., R. 1 W.,
Sec. 11, SE¼SW¼ and SE¼;
Sec. 14, NW¼NE¼, S½NE¼, E½W½, SW¼SW¼, and SE¼.

The area described contains approximately 680 acres in Rio Arriba County.

The purpose of the proposed withdrawal is to segregate the above described land from mineral entry so a mineral material, humate (a carbonaceous shale) can be offered for sale.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be

permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: November 18, 1993.

Michael R. Ford,

District Manager.

[FR Doc. 93–28900 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–FB–M

[UT–942–4210–06; UTU–71781]

Proposed Withdrawal; Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 4,710 acres of public land near Moab, Utah, to protect the recreational, scenic, geologic, cultural, and fish and wildlife values of Westwater Canyon of the Colorado River. This notice closes these lands for up to two years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments on the proposed withdrawal or request for public meeting must be received on or before February 22, 1994.

ADDRESS: Comments and meeting requests should be sent to the Utah State Director, P.O. Box 45155, Salt Lake City, Utah 94145–0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, Utah State Office, (801) 539–5119.

SUPPLEMENTARY INFORMATION: On November 12, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described land from settlement, sale, location, or entry under the general lands laws, including the United States mining laws (30 U.S.C. ch. 2), subject to valid existing rights:

Salt Lake Meridian

T.21 S., R. 24 E.,
- Sec. 24, lots 11 to 21, inclusive, NE¼SE¼;
- Sec. 25, lot 2, N½NW¼NE¼.

T.20 S., R. 25E.,
- Sec. 22, lots 1, 2, and 4 to 8, inclusive, E½NW¼NE¼;
- Sec. 23, lots 7 and 8, SW¼NW¼;
- Sec. 26, lots 1 to 5, inclusive, NW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, W½SE¼SW¼;
- Sec. 27, lots 1 to 5, inclusive, SW¼NE¼;
- Sec. 33, lots 1 to 4, inclusive, NW¼NE¼, E½NE¼NW¼;
- Sec. 34, lots 1 to 8, inclusive, NW¼NE½, W½NW¼NW¼, SW¼NW¼, SE¼SW¼, N½NE¼SE¼;
- Sec. 35, lots 1 and 2, W½NE¼NW¼, SW¼NW¼.

T. 21 S., R. 25 E.,
- Sec. 3, lots 1 to 4, inclusive, SW¼NE¼, N½NW¼, NE¼SW¼NW¼, SE¼NW¼, NE¼NE¼SW¼, W½SW¼, NW¼SE¼, E½SW¼SE¼, SW¼SW¼SE¼, W½E½SE¼;
- Sec. 4, lots 1 and 5;
- Sec. 8, lots SE¼NE¼, E½SE¼;
- Sec. 9, lots 1 to 15 inclusive, SE¼SW¼, N½SE¼SE¼;
- Sec. 10, lots 1 to 6, inclusive, W½NE¼NE¼, NW¼SW¼NE¼, W½NE¼SW¼, N½SW¼SW¼;
- Sec. 16, lots 1 to 4, inclusive;
- Sec. 17, lots 1, 2, 3, and 5 to 12, inclusive, N½N½SE¼;
- Sec. 18, SE¼SE¼;
- Sec. 19, lots 1, 2, and 6 to 13, inclusive, NE¼SE¼, SW¼SE¼;
- Sec. 20, lots 1 to 3, inclusive, W½NE¼NW¼;
- Sec. 30, lot 1, N½NE¼NW¼.

Unsurveyed lands in the Colorado River bed, in the area described above, are included in this notice. The area described contains approximately 4,710 acres in Grand County, Utah.

The purpose of the proposed withdrawal is to protect the recreational values of Westwater Canyon. Westwater Canyon has long been one of the most popular white water rafting areas in the Western United States. In addition to its recreational values, Westwater has other significant resource values. Six threatened or endangered species of animals are present in the corridor and it contains outstanding geologic features, scenery, and important historic and cultural sites.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–28825 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Los Vaqueros Project, Contra Costa County, CA; Final Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of final environmental impact statement/final environmental impact report (FEIS): INT–FES–93–27.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and Contra Costa Water District (CCWD) have prepared a final environmental impact statement/final environmental impact report (FEIS/FEIR) for the Los Vaqueros Project in California. Because Department of the Army permits are required, the Corps of Engineers is a cooperating agency. The FEIS/FEIR describes and presents the environmental effects of five alternatives, including no action, for improving the quality of water supplied to CCWD customers, minimizing seasonal quality changes, and improving the reliability of the CCWD supply by providing for emergency storage.

No decision will be made on the proposed action until completion of the 30-day waiting period required under NEPA. After the 30-day waiting period, Reclamation proposes to issue a Record of Decision.

ADDRESSES: Copies of the FEIS/FEIR may be obtained on request from CCWD or Reclamation at the following addresses:

- Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Attention: MP–152, Sacramento CA 95825–1898; telephone: (916) 978–5130.

• Mr. John S. Gregg, Assistant General Manager, Contra Costa Water District, PO Box H20, Concord CA 94524; telephone: (510) 674–8000.

Copies of the FEIS/FEIR are available for inspection at the above addresses and the following locations:

• Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW., Washington DC 20240; telephone: (202) 208–4662.

• Bureau of Reclamation, Denver Office Library, Denver Federal Center, Denver CO 80225; telephone: (303) 236–6963.

Libraries

• California State Library, Government Publications Section, Sacramento, California.

• City of Livermore Public Library—Springtown, Livermore, California.

• City of Livermore Public Library, Livermore, California.

• Contra Costa County Public Library, Antioch, California.

• Contra Costa County Public Library, Oakley, California.

• Contra Costa County Public Library, Brentwood, California.

• Contra Costa County Public Library, Concord, California.

• Contra Costa County Public Library, Martinez, California.

• Contra Costa County Public Library, Walnut Creek, California.

• U.S. Geological Survey Library, Menlo Park, California.

• University of California, Water Resources Library, Berkeley, California.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Hutton, Contra Costa Water District, PO Box H20, Concord CA 94524; telephone: (510) 674–8130 or Mr. Douglas Kleinsmith, Bureau of Reclamation, Mid-Pacific Region, MP–152, 2800 Cottage Way, Sacramento CA 95825–1898; telephone: (916) 978–5129.

SUPPLEMENTARY INFORMATION: The proposed action involves construction of a dam and 100,000-acre-foot reservoir on Kellogg Creek, south of the city of Brentwood in southeastern Contra Costa County. There would also be a new point of diversion in the Sacramento-San Joaquin Delta, associated water conveyance and delivery facilities, pumping plants, and other facilities. Vasco Road, an important arterial roadway that would be inundated by the project, would be realigned and several buried pipelines and electric power transmission lines would be relocated.

No significant changes have been made to the proposed action as a result of public review and comment (although some operational changes were made to accommodate concerns about fisheries) on the draft environmental impact statement/draft environmental impact report (DEIS/DEIR). The FEIS/FEIR presents the proposed action and four other alternatives, including no action. It also presents the comments received during the 60-day public review period of the DEIS/DEIR and documents Reclamation and CCWD responses to those comments.

Dated: November 10, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 93–28741 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–94–M

National Park Service

Keweenaw National Historic Park Interim Boundary

AGENCY: National Park Service, Department of the Interior.

ACTION: Notification of establishment of interim boundary.

SUMMARY: Public Law 102–543, 106 Stat. 3569, 16 U.S.C. 410yy, *et. seq.* established Keweenaw National Historical Park, in Houghton County, Michigan, as a unit of the National Park System. Section 3(b)(1) describes the boundaries to "be as generally depicted on the map * * * numbered NH–KP/20012–B and dated June, 1992". Section 3(b)(2) of that law requires that the Secretary of the Interior publish in the **Federal Register** a detailed description and map of the boundaries of the Keweenaw National Historical Park as established under paragraph (a)(1).

The law also requires that not later than 3 years after the date of enactment of Public Law 102–543, the Secretary prepare, in consultation with a Commission established through the act, a general management plan for the park.

The National Park Service has determined that development of a final park boundary will require the type of data gathering and analysis and public involvement normally conducted as part of a general management planning process. The National Park Service anticipates initial funding for the new park to be available in fiscal year 1994. To avoid duplication of effort, an interim boundary will be published and a final boundary will be determined as part of the general management planning effort.

The interim boundary for the Keweenaw National Historical Park has been developed from the map numbered NHP–KP/20012–B. It includes adjustments which make the units more manageable, recognize conditions which have changed since the original map was developed, and more accurately reflect Congressional intent. The boundaries and map references are as follows.

Calumet Unit: Beginning at the intersection of the centerlines of Pine Street (M 203) and Rockland Street in Section 13, Township 56 North, Range 33 West, Michigan Principal Meridian; thence Southwesterly 7000 feet, more or less, along the centerline of Rockland Street to the centerline of U.S. 41; thence Southerly 1400 feet, more or less, along the centerline of U.S. 41 to the centerline of Church Street; thence Southwesterly 1250 feet, more or less, along the centerline of Church Street to the centerline of Millionaire Street; thence Westerly 1900 feet, more or less, along the centerline of Millionaire Street to the centerline of Mine Street; thence Southerly 500 feet, more or less, along the centerline of Mine Street to the centerline of an unnamed, informal road; thence Northwesterly 1100 feet, more or less, along the centerline of said unnamed road to the westerly right-of-way line of the SOO Line Railroad; thence Northerly 5500 feet, more or less, along said right-of-way to the centerline of Spruce Street; thence Northwesterly 1000 feet, more or less, to a point where the westerly prolongation of the south line of Scott Street intersects the southerly prolongation of the west line of the lots on the west side of Tenth Street; thence North 1000 feet, more or less, along said prolongated line and the west line of the lots on the west side of Tenth Street to the intersection with the westerly prolongation of the centerline of E. Acorn Street; thence Easterly 675 feet, more or less, along said prolongated line and the centerline of E. Acorn Street to the centerline of Ninth Street; thence North 1000 feet, more or less, along the centerline of Ninth Street to the centerline of Pine Street; thence East 175 feet, more or less, along the centerline of Pine Street to its intersection with the southerly prolongation of the west line of the west lots of Block 35, Village of Calumet; thence North 500 feet, more or less, along said prolongated line and west lot lines to the north right-of-way line of Spruce Street, said right-of-way line also being the north line of the Village of Calumet; thence East 1900 feet, more or less, along said north line to its intersection with the northerly prolongation of the centerline of Third Street; thence North 175 feet, more or less, to the shoreline of Calumet Lake; thence Northeasterly 1200 feet, more or less, along said shoreline to its intersection with the northerly

prolongation of the east line of the lots on the east side of Waterworks Road; thence South 1300 feet, more or less, along said prolongated line and east lot lines to the centerline of Pine Street (M 203); thence East 2250 feet, more or less, along said centerline to the point of beginning.

Quincy Unit: Beginning at the Southeast corner of the Southwest Quarter of the Southwest Quarter of Section 25, Township 55 North, Range 34 West, Michigan Principal Meridian; thence Westerly 900 feet, more or less, along the south line of said Section 25 to the east boundary of the City of Hancock; thence Northerly along said city boundary 339.6 feet; thence continuing along said city boundary Westerly 20 feet; thence continuing along said city boundary North 15 degrees 12 minutes West 341 feet; thence continuing along said city boundary Westerly 279.9 feet to its intersection with the west line of said Section 25; thence North 500 feet, more or less, along said section line to the North line of the lots on the north side of Lakeview Avenue; thence Westerly 1000 feet, more or less, along said lot lines to the northwest corner of the western most lot on the north side of Lakeview Avenue; thence Southerly 100 feet, more or less, along the west line of said lot to its intersection with the easterly prolongation of the centerline of Sampson Street; thence Westerly 1200 feet, more or less, along said centerline to the centerline of Hillside Avenue; thence Northwesterly 400 feet, more or less, along the centerline of Hillside Avenue to the centerline of Shafter Street; thence Westerly 150 feet, more or less, along the centerline of Shafter Street to its intersection with the North-South centerline of Section 26, said line also being the City of Hancock boundary line; thence North 2750 feet, more or less, along said center section line to its intersection with the centerline of now abandoned Township Road Q–37 (Streetcar Track); thence Northeasterly 600 feet, more or less, along the centerline of said road to its intersection with the centerline of now abandoned Township Road Q–38 (Karpenan Road); thence, leaving said road on a line bearing North 29 degrees East 4000 feet, more or less, to the centerline of Lake Annie Road; thence Northeasterly 350 feet, more or less, to the east quarter corner of Section 23; thence Northeasterly 5200 feet, more or less, to the intersection of the centerlines of Pontiac Road and an unnamed, abandoned road, said point being 650 feet, more or less, Northwesterly from the centerline of Township Road F–19 (Boston Road), as measured along the centerline of Pontiac Road; thence Southeasterly 650 feet, more or less, along the centerline of Pontiac Road to the centerline of Township Road F–19 (Boston Road); thence Northeasterly 200 feet, more or less, along the centerline of F–19 to the centerline of Township Road F–22; thence Southeasterly along the centerline of F–22 to a point 350 feet, more or less, southeast of F–19 as measured perpendicular to the centerline of F–19; thence Southwesterly 1000 feet, more or less, along a line parallel with and 350 feet southeast of, as measured perpendicular to, the centerline of F–19; thence Southeasterly 550 feet, more or less, along a line measured perpendicular to the centerline of F–19 to its intersection with a line lying parallel with and 150 feet southeast of the centerline of the now abandoned Mesnard Water Tower Road; thence Southwesterly 1000 feet, more or less, along said parallel line to the centerline of Township Road F–23 Paavola Road; thence Westerly 150 feet, more or less, along the centerline of Paavola Road to the centerline of said Mesnard Water Tower Road; thence Southwesterly 3850 feet, more or less, to the intersection of the centerlines of Arcadian Road and Sunshine Road; thence Southeasterly, 2100 feet, more or less, along the centerline of Pewabic Road to its intersection with the westerly prolongation of the centerline of a now abandoned road; thence Easterly 1400 feet, more or less, along the centerline of said abandoned road to its intersection with a line lying parallel with the east line of said Section 25 and passing through the northeast corner of lot 6, block 15 in the Village of Ripley; thence South 4800 feet, more or less, along said parallel line and its southerly prolongation thereof to its intersection with a line parallel with and 1100 feet south of the south line of Section 25; thence West 3000 feet, more or less, along said parallel line to its intersection with the southerly prolongation of the east line of the Southwest Quarter of the Southwest Quarter of Section 25; thence North 1100 feet, more or less, along said prolongated line to the point of beginning.

The maps required by Public Law 102–543, 106 Stat. 3569, 116 U.S.C. 410yy-2 bear a National Park Service Drawing Number of 480–80,000 and are dated September 1993. These maps are on file in the Office of the National Park Service, Department of Interior, the Office of the Midwest Region, National Park Service; and the Office of the Superintendent, Keweenaw National Historical Park.

Dated: November 14, 1993.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 93–23766 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–70–P

Wolf Trap Farm Park General Management Plan/Environmental Impact Statement, Vienna, VA

AGENCY: National Park Service (Interior).

ACTION: Notice of public scoping meetings for the General Management Plan/Environmental Impact Statement.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces public scoping meetings to commence development of a General Management Plan/Environmental Impact Statement for Wolf Trap Farm Park.

Wolf Trap Farm Park, a unit of the NPS and home to the Filene Center, is the only unit of the National Park Service dedicated to the performing arts. It is managed as a public/private partnership between the NPS and the Wolf Trap Foundation for the Performing Arts, a private not-for-profit corporation.

General Management Plans are the planning documents for each unit of the national park system. The plans set forth the basic philosophy and management concepts for each park, and set guidelines for park operations. Completion of this plan will take approximately 3 years.

Public involvement in the development of the plan will be crucial to the success of the project. To facilitate and promote this involvement, several series of public meetings will be held at key stages of the planning process. The first will be scoping meetings to give the public an opportunity to tell the NPS what is special that should be promoted and preserved at Wolf Trap Farm Park, and about any issues or concerns they may have regarding the management of the park.

The meetings will be led by officials of the NPS. Representatives from the Wolf Trap Foundation also will be present.

The National Park Service invites interested persons to attend any meetings from the following schedule:

November 29, 7 p.m. Department of the Interior, Cafeteria Conference Room, 18th & C St., NW., Washington, DC

November 30, 2 p.m. Wolf Trap Farm Park, Filene Center, 1551 Trap Road, Vienna, VA

November 30, 7 p.m. Wolf Trap Farm Park, Filene Center.

For further information please contact Joe Lawler, Director, Wolf Trap Farm Park at (703) 255–1808. Written comments may be sent to Mr. Lawler at Wolf Trap Farm Park, 1551 Trap Road, Vienna, VA 22182. To have comments represented in the scoping newsletter, please mail them no later than December 31, 1993.

The responsible official for this EIS is Robert Stanton, Regional Director, National Capital Region, National Park Service. All written comments and requests for further information should be directed to: William Shields, Superintendent, Rock Creek Park, 5000 Glover Northwest, Washington, DC 20015.

Dated: November 12, 1993.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 93–28767 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 13, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 9, 1993.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Diego County

Olivenhain Town Meeting Hall, 423 Rancho Santa Fe Rd., Olivenhain, 93001395

Yuba County

Wheatland Masonic Temple, 400 Front St., Wheatland, 93001396

CONNECTICUT

Hartford County

Terry's Plain Historic District, Roughly bounded by Pharos, Quarry and Terry's Plain Rds. and the Farmington R., Simsbury, 93001417

INDIANA

Brown County

Brown County Bridge No. 36, Hickory Hill Rd. across the N. Fork of Salt Cr., Nashville vicinity, 93001430

Jefferson County

Eleutherian College, IN 250, Lancaster 93001410

Kosciusko County

Winona Lake Historic District, Roughly bounded by Kings Hwy., Chestnut Ave., Twelfth St. and Park Ave., Winona Lake, 93001411

Lawrence County

Indiana Limestone Company Building, 405 I St., Bedford, 93001412

Rush County

Gowdy, John K., House, 619 N. Perkins St., Rushville, 93001414

Rushville Commercial Historic District, Roughly bounded by Fourth, N. Morgan, First and N. Perkins Sts., Rushville, 93001416

Willkie, Wendell Lewis, House, 601 N. Harrison St., Rushville, 93001415

Starke County

Starke County Bridge No. 39, Jct. of Main and Water Sts., across the former Pennsylvania RR cut, Knox, 93001413

LOUISIANA

Orleans Parish

Mid-City Historic District, Roughly bounded by Derbigny St., Conti St., City Park Ave. and I–10, New Orleans, 93001394

MICHIGAN

Ingham County

Emery Houses (Lansing Downtown MRA), 320–322 and 326–328 W. Ottawa, Lansing, 93001409

Iron County

Camp Gibbs (Iron County MRA), 129 Camp Gibbs Rd., Iron River Township, Ottawa NF, Gibbs City vicinity, 93001408

NEBRASKA

Douglas County

Military Road Segment, Jct. of 82nd and Fort Sts., Omaha, 93001400

Lancaster County

President and Ambassador Apartments, 1330 and 1340 Lincoln Mall, Lincoln 93001401

Nuckolls County

Kendall, Wallace Warren and Lillian Genevieve Bradshaw, House, 412 E. Seventh St., Superior, 93001402

Superior Downtown Historic District, Roughly, along Central and Commercial Aves. from 3rd to 5th Sts. and 3rd, 4th, and 5th from Central to Commercial, Superior 93001405

Pawnee County

Lloyd, Harold, Birthplace, Jct. of Pawnee and 4th Sts., NW corner, Burchard, 93001403

Webster County

Auld Public Library, 537 N. Webster, Red Cloud, 93001404

NEW MEXICO

Eddy County

Dam—Sitting Bull Falls Recreation Area (Public Works of the CCC in the Lincoln National Forest MPS), Sitting Bull Falls, Lincoln NF, Carlsbad vicinity, 93001420

Group Picnic Shelter—Sitting Bull Falls Recreation Area (Public Works of the CCC in the Lincoln National Forest MPS), Sitting Bull Falls, Lincoln NF, Carlsbad vicinity, 93001419

Picnic Shelter—Sitting Bull Falls Recreation Area (Public Works of the CCC in the Lincoln National Forest MPS), Sitting Bull Falls, Lincoln NF, Carlsbad vicinity, 93001418

Rio Arriba County

Forest Service Site No. AR–03–10–01–374 (Archaic Sites of the Northwest Jemez Mountains MPS), Address Restricted, Coyote vicinity, 93001421

Forest Service Site No. AR–03–10–01–521 (Archaic Sites of the Northwest Jemez Mountains MPS), Address Restricted, Coyote vicinity, 93001422

Forest Service Site No. AR–03–10–01–832 (Archaic Sites of the Northwest Jemez Mountains MPS), Address Restricted, Coyote vicinity, 93001423

Forest Service Site No. AR–03–10–01–390 (Archaic Sites of the Northwest Jemez Mountains MPS), Address Restricted, Coyote vicinity, 93001424

OHIO

Auglaize County

Fledderjohann, H.E., House, Doctor's Office and Summer Kitchen, 107 E. German St., New Knoxville, 93001388

Clermont County

New Richmond Water Works and Electric Station, 701 Washington St., 93001389

Montgomery County

Insco Apartments Building, 255 N. Main St., Dayton, 93001390

United Brethren Publishing House, 40–46 S. Main St. (7–21 E. Fourth St.), Dayton, 93001391

Portage County

Nelson, Luman, House, 8219 OH 44, Ravenna vicinity, 93001393

Washington County

Kaiser, John, House, 300 Bellevue, St., Marietta, 93001392

PUERTO RICO

Mayaguez Municipality

Isla de Mona (Lighthouse System of Puerto Rico MPS), Address Restricted, Mayaguez vicinity, 93001398

SOUTH CAROLINA

Anderson County

Pelzer Presbyterian Church, 13 Lebby St., Pelzer, 93001407

Saluda County

Saluda Theatre, 107 Law Range, Salude, 93001406

TENNESSEE

Rutherford County

Landsberger—Gerhardt House, 435 N. Spring St., Murfreesboro, 93001397

WISCONSIN

Chippewa County

Cornell Pulpwood Stacker, Cornell Mill Yard Park, Cornell, 93001425

Dane County

Schumann, Frederick, Farmstead, 8313 WI 19, Berry, 93001426

Kewaunee County

Dettman, Art, Fishing Shanty, Church St. at the Ahnapee R., Algoma, 93001428

Milwaukee County

Brown Deer School, 4800 W. Green Brook Dr., Brown Deer, 93001427

Rock County

Look West Historic District (Boundary Increase), Roughly bounded by Laurel Ave. and N. Madison, W. Court and N. Palm Sts., Janesville, 93001429

[FR Doc. 93–28765 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–356]

Certain Integrated Circuit Devices, Processes for Making Same, Components Thereof, and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Designating the Investigation "More Complicated"

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation is extended by six months, *i.e.*, until March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3108.

SUPPLEMENTARY INFORMATION: On October 12, 1993, respondents Mitsubishi Electric Corp. and Mitsubishi Electronics America, Inc. moved that the subject investigation be designated more complicated. The Commission investigative attorney supported the motion and complainants National Semiconductor Corp. and Fairchild Semiconductor Corp. opposed it.

The ALJ issued an ID granting Mitsubishi's motion on October 21, 1993. The ALJ designated the investigation more complicated due to the involved nature of the integrated circuit subject matter, the large number of patents and claims, the large number of affirmative defenses, and the large number of accused products.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

Issued: November 15, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–28871 Filed 11–23–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–358]

Certain Recombinantly Produced Human Growth Hormone; Commission Determination Not To Review an Initial Determination Granting the Motion of Eli Lilly Co. to Intervene for the Limited Purpose of Seeking Disqualification Counsel for Complainant Genentech, Inc.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting a motion for intervention for the limited purpose of seeking disqualification of counsel for complainant Genentech, Inc.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On September 21, 1993, Eli Lilly Co. (Lilly) moved pursuant to Commission interim rule 210.26, 19 CFR 210.26, for limited intervention in this investigation for the purpose of seeking disqualification of Fish and Richardson, the law firm serving as counsel for complainant Genentech, Inc. (Genentech). In the same motion, Lilly moved to disqualify Genentech's firm on conflict of interest grounds.

Genentech responded to Lilly's motion by stating that it did not oppose the motion for the sole and limited purpose seeking to disqualify Fish & Richardson. The Commission investigative attorney (IA) responded that he did not oppose the motion for intervention as long as Lilly's counsel was not given access to confidential business information under the administrative protective order. Both Genentech and the IA opposed the portion of the motion concerning disqualification. Some respondents in the investigation notified the presiding ALJ that they had no objection to Lilly's motion; the remaining respondents notified the ALJ that they did not intend to respond to the motion.

On October 20, the ALJ issued Order No. 23, which granted the portion of Lilly's motion concerning intervention, but denied the portion of the motion requesting disqualification. On October 22, 1993, the ALJ reissued the portion of his order granting intervention as an ID (Order No. 28). No petitions for review of the ID or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 15, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–28870 Filed 11–23–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337-TA-357]

Cerain Sports Sandals and Components Thereof; Notice of Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Fang Chun Ind. Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on November 19, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: November 19, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-28874 Filed 11-23-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation 332-347]

Global Competitiveness of U.S. Environmental Technology Industries: Municipal & Industrial Water and Wastewater

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 15, 1993.

SUMMARY: Following receipt of a request on October 15, 1993, from the Senate Committee on Finance, the Commission instituted investigation No. 332-347, Global Competitiveness of U.S. Environmental Technology Industries: Municipal & Industrial Water and Wastewater, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. David Ingersoll (202-205-2218) or Ms. Elizabeth Nesbit (202-205-3355), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202-205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205-1107.

Background

This is the first of two competitiveness studies requested by the Committee on Finance in its letter of October 14, 1993. The second study concerns air pollution prevention and abatement equipment and services and will be instituted at a later date. The Commission expects to submit its first report to the Committee within 12 months of the release of final report in the series on American Industry and the Environment being conducted by the Office of Technology Assessment (OTA). The Commission expects to submit its second report not later than 12 months after delivery of its first report.

In its report, the Commission will, as requested by the Committee in its October 14, 1993, letter, seek to examine factors found by the Commission to be relevant to the global competitiveness of the environmental technology industry, including but not limited to government policies such as export promotion and market development, environmental regulation, technology transfer, technical development assistance, economic development or other financial assistance, and intellectual property protection.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 26, 1994. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 12, 1994. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 15, 1994; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 10, 1994.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on June 30, 1994. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

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.

List of Subjects

Environmental protection, environmental technology, water supply, wastewater treatment, export promotion, air pollution.

Issued: November 17, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–28873 Filed 11–23–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 394]

Cost Ratio for Recyclables—1980 Determination

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Rate reduction order in connection with recyclables aggregate compliance proceeding.

SUMMARY: The ICC, after reopening the proceeding in which it determined that rates for recyclable commodities shipped by railroad were in aggregate compliance with the rate ceiling set pursuant to 49 U.S.C. 10731(e), has found that movements of non-ferrous scrap metal from the former southern to the former eastern ratemaking territories during the period between 1982 and 1985 were not in aggregate compliance with the rate ceiling. The Commission has ordered rate reductions.

EFFECTIVE DATE: The Commission's decision will be effective on December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Craig Keats, (202) 927–6046 or Thomas Schmitz (202) 927–5720; 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, Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD Services (202) 927–5721].

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. Rather, we are simply assuring that railroad rate levels are consistent with the Interstate Commerce Act. The economic impact of our action, if any, is not likely to be felt by a substantial number of small entities.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

Decided: November 16, 1993.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28882 Filed 11–23–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32406]

City of Dallas, City of Fort Worth, and D/FW Railtran—Petition For Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a petition filed by the Cities of Dallas and Fort Worth, TX (Cities) and D/FW RAILTRAN (RAILTRAN), this proceeding is instituted to determine whether the Cities and RAILTRAN are now or will become carriers under the Interstate Commerce Act (Act) and whether regulatory approvals are required for (1) a Joint Use Agreement (JUA) with Missouri Pacific Railroad Company (MP) and (2) and a Trackage Rights Agreement (TRA) with Burlington Northern Railroad Company (BN). Interested persons are invited to file comments. Petitioners have requested expedited action.

DATES: Written comments (original and 10 copies) must be filed by December 6, 1993, and concurrently served on the representative of petitioners.

ADDRESSES: Send comments referring to Finance Docket No. 32406 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) David A. Hirsh, Harkins Cunningham, suite 600, 1300 Nineteenth Street, NW., Washington, DC 20036–7600.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10321, the Commission has authority to issue declaratory and interpretive orders and in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty under 5 U.S.C. 554(e) and 49 U.S.C. 10321. This proceeding is instituted at the request of petitioners to clarify their status as noncarriers. According to the petition, the Cities acquired the 34-mile rail line between Dallas and Fort Worth from the Trustee of the former Chicago, Rock Island and Pacific Railroad Company (RI). RI had previously been authorized to abandon the line. RAILTRAN was formed in 1984 to preserve the rail corridor between Fort Worth and Dallas for commuter rail service. At present MP and BN operate freight service on the RAILTRAN corridor.

Petitioners indicate that they are about to implement rail commuter operations over the line and negotiated new agreements with MP and BN to accommodate the proposed passenger service. They primarily want the Commission to clarify whether they would become common carriers under the Act by executing the new agreements with MP and BN and by contracting with a passenger operator. They also want the Commission to determine whether regulatory approval is required for the agreements with MP and BN and an agreement with a passenger operator. Also they want the Commission to determine whether a contract with a designee other than MP or BN to dispatch and maintain the RAILTRAN corridor requires Commission approval and whether that designee is eligible for a modified certificate under 49 CFR 1150 subpart C.

Petitioners indicate that under the JUA, RAILTRAN would reassign MP's maintenance and dispatching obligations to its designee by no later than January 1, 1994. They request expedited action on the petition and indicate they have served copies of the petition on interested persons. Copies of the petition are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Decided: November 17, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28883 Filed 11–23–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32339]

Jackson, Gordonville, and Delta Railroad Co.—Acquisition and Operation Exemption—Portion of the Golden Cat Railroad Corporation's Delta Branch

The Jackson, Gordonville, and Delta Railroad Co. (JGDR) has filed notice of exemption to acquire an approximately 0.05-mile segment of The Golden Cat Railroad Corporation's (GCRC) former "Delta Branch" between mileposts 149.5 and 150.0 at or near Delta, in Cape Girardeau County, MO.[1] The parties planned to consummate the transaction on October 5, 1993, the effective date of this notice.

Any comments must be filed with the Commission and served on: Robert B. Hebert, 1800 INB Tower, One Indiana Square, Indianapolis, IN 46204.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 18, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28884 Filed 11–23–93; 8:45 am]

BILLING CODE 7035–01–P

[1] In Finance Docket No. 32328, *Jackson, Gordonville, and Delta R. Co.—Acq. & Oper. Exempt.—Line in Cape Girardeau County, MO* (not printed), served and published in the **Federal** Register on August 12, 1993 (58 FR 42986), JGDR's acquisition and operation of another GCRC line was exempted under 49 CFR 1150.31, from the prior approval requirements of 49 U.S.C. 10901. In a supplementary verified letter filed on November 9, 1993, JGDR states that no action has been taken to consummate the August 12 notice of exemption and that it was the intention of the parties that both of these exemption proceedings be handled contemporaneously while JGDR remained a noncarrier. Because the Commission's records indicate that JGDR has no tariffs on file and it does not appear that JGDR has otherwise consummated the transaction exempted in Finance Docket No. 32328, section 1150.31 appears applicable to this transaction as well.

In a related proceeding, Docket No. AB–399X, GCRC has sought an exemption with respect to the remainder of its Delta Branch, between milepost 150.0 and the end of the line at milepost 160.3.

[Docket Nos. AB–32 (Sub-No. 62X) and AB–355 (Sub–No. 14Xx)]

Boston and Maine Corp.–Abandonment Exemption—In Hartford County, CT, and Hampden County, MA; Springfield Terminal Railway Co.—Discontinuance Exemption—In Hartford County, CT, and Hampden County, MA

Boston and Maine Corporation (B&M), as owner, and Springfield Terminal Railway Company (ST), as lessee, have filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments and Discontinuances for B&M to abandon and ST to discontinue service over approximately a 12.50-mile segment of B&M's Hazardville Branch rail line between milepost 0.00 and milepost 12.50, in Springfield, Hartford County, CT, and Hazardville, Hampden County, MA.

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (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) that the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 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 this exemption, any employee adversely affected by the abandonment and discontinuance of service 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 December 24, 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 requests under 49 CFR 1152.29[3] must be filed by December 6, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 14, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Kevin J. O'Connell, Boston and Maine Corporation, Springfield Terminal Railway Company, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses the effects of the abandonment and discontinuance of service, if any, on the environmental and historic resources. SEE will issue an environmental assessment (EA) by November 29, 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) 927–5449. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 17, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28885 Filed 11–23–93; 8:45 am]

BILLING CODE 7035–01–P

[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 a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Arctic Fisheries, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 8, 1993, a proposed Consent Decree in *United States* v. *Arctic Fisheries, Inc.*, Civil Action No. C91–548W (W.D. Wash.),

was lodged with the United States District Court for the Western District of Washington. The Consent Decree resolves the United States' allegations against Arctic Fisheries, Inc. for violations of the Clean Water Act, 33 U.S.C. 1301 *et seq.*, by Arctic Fisheries, Inc. in this civil action. The Decree requires Arctic Fisheries, Inc. to pay a civil penalty in the amount of $725,000 to the United States; to comply with the provisions of the Clean Water Act in the future; to implement sampling of the affluent from the Defendant's fish meal plant; and to eliminate all but incidental discharges of seafood processing waste to the waters of Lost Harbor, Alaska.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Arctic Fisheries, Inc.*, D.J. No. 90–5–1–1–3569.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Washington, 3600 Seafirst Building, 800 Fifth Avenue, Seattle, Washington 98104; the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005 (Tel: 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 enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–28778 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree in Action Brought Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on November 5th, 1993, a proposed consent decree in *United States* v. *Columbia Aluminum Corporation*, Civil Action No. CY–93–3125–AAM, was lodged with the United States District Court for the Eastern District of Washington.

This action was brought by the United States of America on behalf of the Environmental Protection Agency ("EPA") pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) for injunctive relief and assessment of civil penalties against Columbia Aluminum Corporation ("Columbia"). The complaint alleges that Columbia violated section 113 of the CAA, 42 U.S.C. 7413, and the conditions and limitations of its Prevention of Significant Deterioration ("PSD") permit, No. PSDD–X–88–01. Pursuant to the proposed consent decree, defendant Columbia will pay to the United States a civil penalty of $90,160 and will operate its Goldendale facility in compliance with the CAA and the conditions and limitations of its PSD permit. The Department of Justice, for a period of thirty (30) days from the date of this publication, will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Columbia Aluminum Corporation*, DOJ number 90–5–2–1–1633.

The proposed consent decree may be examined at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101, 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 enclose a check in the amount of $2.75 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–28781 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

Consent Judgment Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; United States v. Endicott Johnson Corp. et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Endicott Johnson Corporation, International Business Machines Corp., the Village of Endicott, New York, and the Town of Union, New York*, (N.D.N.Y.), Civil Action No. 93CV–1409, was lodged with the United States District Court for the Northern District of New York on November 4. 1993. The proposed consent decree requires the Defendants to implement remedial measures for the Endicott Wellfield Superfund Site, located in the Village of Endicott, Broome County, New York, set forth in the September 30, 1992 Record of Decision (Operable Unit 2), to reimburse the United States for $1,263,773 is past response costs incurred in connection with the Site, and to pay the United States' future oversight costs to be incurred in connection with the Operable Unit 2 remedy. The remedy consists of capping the Endicott Landfill with a low permeability barrier cap which will decrease the leaching of contaminants from the Landfill.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be address 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. *Endicott Johnson Corp, et al.*, D.O.J. Ref. No. 90–11–3–299B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 319 Federal Building, Binghamton, New York 13901, c/o Thomas Walsh, (607) 772–2888; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, room no. 437, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the 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 enclose a check in the amount of $52.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–28777 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Oklahoma Ordnance Works Authority and the State of Oklahoma

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Oklahoma Ordnance Works Authority and the State of Oklahoma*, Civil Action No. 93–C 969B,

was lodged on October 29, 1993 with the United States District Court for the Northern District of Oklahoma. The proposed consent decree resolves the United States' ("U.S.") claims under the Clean Water Act for violations of National Pollutant Discharge Elimination System ("NPDES") permits issued to Oklahoma Ordnance Works Authority ("OOWA") for its publicly-owned treatment works and water supply facility located at the Mid-America Industrial Park in Pryor, Mayes County, Oklahoma. The consent decree also resolves the U.S.'s claims for OOWA's failure to submit a timely permit application. The consent decree provides for OOWA's payment of a civil penalty of $750,000 and construction of additional treatment facilities.

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. *Oklahoma Ordnance Works Authority and the State of Oklahoma*, Civil Action No. 93-C 969B, DOJ Ref. No. 90–5–1–1–3819.

The proposed consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse, room 3900, 333 west forth Street, Tulsa, Oklahoma 74103; Office of the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the 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.

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 93–28780 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Sunshine Biscuits, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Sunshine Biscuits, Inc. and International Dismantling and Machinery Corporation*, Civil Action No. 93–2448–JWL, was lodged on November 2, 1993, with the United States District Court for the District of Kansas. The complaint alleges that defendants violated the Clean Air Act and the work practice standards of the asbestos NESHAP during two asbestos removals at defendant Sunshine's facility located at 801 Sunshine Road, Kansas City, Kansas.

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. *Sunshine Biscuits, Inc. and International Dismantling and Machinery Corporation, DOJ Ref.* # 90–5–2–1–1769.

The proposed consent decree may be examined at the office of the United States Attorney, 812 N. 7th, Kansas City, Kansas 66101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Ave., Kansas City, Kansas 66101, 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 $5.25 payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–28779 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of the Annual List of Labor Surplus Areas; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Correction.

SUMMARY: In FR document 93–25627, beginning on page 53954 in the issue of Tuesday, October 19, 1993, the following areas were omitted and should be inserted in the third column in the table entitled "Labor Surplus Areas Eligible For Preference October 1, 1993 Through September 30, 1994," under the State of Texas, following the entry of "Balance of Cameron County."

Eligible labor surplus areas	Civil jurisdictions included
Texas	
Cass County	Cass County.
Del Rio City	Del Rio City In.
	Val Verde County.
Dimmit County	Dimmit County.
Duval County	Duval County.
Eagle Pass City	Eagle Pass City In.
	Maverick County.
Balance of Ector County.	Ector County Less.
	Odessa City.
Edinburg City	Edinburg City In.
	Hidalgo County.
El Paso City	El Paso City In.
	El Paso County.
Balance of El Paso County.	El Paso County Less.
	El Paso City.
Frio County	Frio County.
Ft. Worth City	Ft. Worth City In.
	Tarrant County.
Galveston City	Galveston City In.
	Galveston County.
Harlingen City	Harlingen City In.
	Cameron County.
Henderson County	Henderson County.
Balance of Hidalgo County.	Hidalgo County Less.
	Edinburg City.
	McAllen City.
	Mission City.
	Pharr City.
	Weslaco City.
Jasper County	Jasper County.
Jim Hogg County	Jim Hogg County.
Jim Wells County	Jim Wells County.
Killeen City	Killeen City In.
	Bell County.
La Salle County	La Salle County.
Laredo County	Laredo City In.
	Webb County.
Liberty County	Liberty County.
Longview City	Longview City In.
	Gregg County.
	Harrison County.
Loving County	Loving County.
Marion County	Marion County.
Matagorda County	Matagorda County.

Dated: November 17, 1993.

Doug Ross,

Assistant Secretary.

[FR Doc. 93–28813 Filed 11–23–93; 8:45 am]

BILLING CODE 4510–30–M

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of Addition to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: The addition to the annual list of labor surplus areas is effective December 1, 1993.

SUMMARY: The purpose of this notice is to announce an addition to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: Richard Hardin, Chief, Division of Planning, USES, Employment and Training Administration, 200 Constitution Avenue, NW., room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-219-5185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 19, 1993. (58 FR 53943).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is effective December 1, 1993.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on November 17, 1993.

Doug Ross,

Assistant Secretary.

Addition to the Annual List of Labor Surplus Areas

December 1, 1993.

Labor surplus areas	Civil jurisdictions included
New York:	
Town of Wappinger	Wappinger Town in Dutchess County.

[FR Doc. 93-28814 Filed 11-23-93; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-9442 et al.]

Proposed Exemptions; Donohoe Restated Profit Sharing Plan and Trust 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.

Donohoe Restated Profit Sharing Plan and Trust (the Plan) Located in Washington, DC

Exemption Application No. D–9442

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 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 406(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 cash sale by the Plan of shares of common stock of the Federal Center Plaza Corporation (FCPC) to FCPC; provided that:

(1) As the result of the sale, the Plan will receive in cash the greater of $25.00 per share or the fair market value of the shares of FCPC, as determined by an independent, qualified appraiser as of the date of the sale;

(2) The Plan will pay no commissions or fees in regard to the transaction; and

(3) The terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.[1]

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which was established by FCPC and which has been in effect since December 31, 1963. Thereafter, the Plan was restated and amended on September 25, 1990. It is represented that, as of June 14, 1993, the Plan had 370 participants and beneficiaries.

2. On December 30, 1986, FCPC, the original sponsor of the Plan, was subject to a reorganization, pursuant to section 368(a)(1)(D) of the Code. As a result of this reorganization, FCPC transferred certain assets to a newly created Delaware corporation, the Donohoe Companies, Inc. (Donohoe). It is represented that pursuant to the terms of the reorganization of FCPC, each shareholder of FCPC, including the Plan, in addition to retaining shares of FCPC, also received for each share of FCPC one share of Donohoe common stock and three shares of Donohoe preferred stock. However, it is represented that Donohoe and FCPC are not members of a controlled group of corporations within the meaning of section 1563(a) of the Code. As a result, FCPC and Donohoe are not affiliates within the meaning of section 407(d)(7) of the Act. Both Donohoe and FCPC are engaged in the business of developing, constructing, owning, and managing real estate.

After the reorganization of FCPC, Donohoe adopted the Plan on January 12, 1987, and became a participating employer along with FCPC. As of December 30, 1987, FCPC had eight (8) employees, and Donohoe had 426 employees. As of December 31, 1989, six (6) employees remained on the FCPC payroll who also performed services for Donohoe. It is represented that, as of December 31, 1989, those six (6) FCPC employees were transferred exclusively to Donohoe and thereafter received compensation solely from Donohoe. Since the transfer of these employees, FCPC, which still is in existence, no longer has any employees and has made no contributions to the Plan, even though FCPC is listed as one of the corporations and affiliates who are defined as employers, pursuant to Article 1.12 of the Plan document.[2] However, it is represented that employees of FCPC who transferred to Donohoe retained the same accounts in the Plan and received vesting credit in the Plan for all years of service with FCPC. It is represented that two (2) employees of FCPC who retired before December 31, 1986, and eight (8) beneficiaries of deceased participants who were former employees of FCPC are currently receiving benefits under the Plan.[3]

3. The provisions of the Plan provide for an administrative committee (the Administrative Committee) which is responsible for the operation and administration of the Plan. The Administrative Committee has the power to delegate fiduciary responsibility among its members or to other designated persons, including the power to direct the trustees of the Plan (the Trustees) concerning certain matters. The Trustees are responsible under the provisions of the Plan to receive contributions, and to hold, invest, and disburse the assets of the Plan for the benefit of the participants and beneficiaries.

The members of the Administrative Committee are shareholders of both FCPC and Donohoe. One of the members of the Administrative Committee, James A. Donohoe III is a director, president, and chief executive officer of both FCPC and Donohoe. The Trustees of the Plan, John E. Stinchfield and Robert A. Plitt, are officers, directors, and shareholders of both FCPC and Donohoe.

4. As of December 31, 1992, the aggregate fair market value of the total assets of the Plan was $12,316,859. It is represented that approximately 1.6% of the assets of the Plan consist of the common stock of FCPC and approximately 3% of the Plan's assets consist of shares of common and preferred stock in Donohoe. It is represented that the Plan acquired the shares of FCPC through purchases from various shareholders and from contributions by FCPC.[4] The contributions occurred on June 7, 1978, and August 31, 1979, when FCPC contributed in kind 24,000 and 7,237 shares of common stock of FCPC, respectively. The purchases by the Plan occurred between 1965 and 1980 when the Plan purchased approximately 28,763 shares of common stock of FCPC for various prices ranging from $4.50 to $12.50 per share.[5] It is represented that as of June 19, 1980, the Plan held 60,000 shares of common stock of FCPC.

5. It is represented that on approximately ten (10) separate occasions between December 31, 1990, and August 23, 1993, some of the shares of FCPC held by the Plan were distributed to terminating participants,

[1] For purposes of this exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The Department expresses no opinion as to whether FCPC is an employer, as defined by section 3(14)(C) of the Act, any of whose employees are covered by the Plan or whether the shares of stock of FCPC constitute qualifying employer securities.

[3] The applicant, citing to Treasury regulation 1.414(l)–1(b)(1), maintains that the Plan is a single plan and will not fail to remain so because two employers, whether or not affiliated, contribute. In this regard, it is represented that all the assets of the Plan are available to pay benefits to all participants and beneficiaries and forfeitures are and were allocated to participants, regardless of the corporation for which the employee performed services.

[4] The applicant represents that the in kind contributions to the Plan of shares of FCPC were not prohibited transactions, under section 406 of the Act, because there was no obligation on the part of FCPC to make monetary contributions to the Plan in those years under the terms of the Plan or pursuant to a corporate resolution. The Department expresses no opinion as to whether the shares of stock of FCPC were qualifying employer securities, as defined by section 407(d)(5) of the Act, or whether the contributions or the purchases of such shares by the Plan were covered by the statutory exemption provided by section 408(e) of the Act, nor is the Department offering relief for transactions other than those proposed. Further, the Department notes that the Trustees' decision to acquire and hold the shares of FCPC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act.

[5] The applicant represents that all of the sellers of shares of FCPC to the Plan (including Joseph E. Donohoe) after 1974 were stockholders who were not employees, Plan participants, or parties in interest under section 3(14) of the Act.

pursuant to certain elections made by such participants. In this regard, section 12.04 of the Plan document provides that terminating participants shall upon distribution of benefits receive in kind the whole number of shares then allocated to their account and the balance in cash, including the value of any fractional shares. All shares so distributed are subject to a "right of first refusal" which provides that prior to any subsequent sale, the terminating participant must first offer such shares to FCPC or Donohoe, as appropriate. It is represented that upon receipt of election forms signed by terminating participants authorizing the sale of such shares to Donohoe and FCPC, the Plan instead of distributing in kind to the terminating participants the shares of FCPC and Donohoe, paid in the aggregate approximately $118,024 to such participants in cash for such shares. It is represented that thereafter, within 23 to 86 days after the Plan had made such payments to such participants, Donohoe and the FCPC paid the Plan for the purchase of their respective shares of stock. It is further represented that, as of November 2, 1993, there are no outstanding account receivables due to the Plan with respect to such distributions.[6] As of the date the application was filed, it is represented that the Plan holds 35,877 shares of common stock of FCPC which constitutes approximately 7% of the issued and outstanding shares of FCPC.

6. FCPC proposes to purchase in full and for cash the remaining 35,877 shares of FCPC common stock held by the Plan at a price of $25.00 per share. This proposed price of $25.00 per share which the Plan will receive for the sale of the shares to FCPC exceeds the per share fair market value of such shares, as determined by an independent, qualified third party appraiser. In this regard, Peter J. Phalon and William L. Leffler of Arthur Andersen & Co. prepared an appraisal report, dated March 31, 1993, which established the fair market value of a minority interest in FCPC at $16.00 per share.

It is represented that the transaction is administrative feasible, because FCPC will purchase the shares for cash in a single one time transaction. It is further represented that the transaction is in the interest of the Plan, as it will permit the Plan to liquidate its minority holding in FCPC and invest the proceeds in more productive assets. The Plan will pay no commissions as a result of the sale of shares of FCPC common stock to FCPC. It is represented that the transaction is protective of the rights of the participants and beneficiaries, because the per share price the Plan will receive from the sale exceeds the cost of between $4.50 to $12.50 per share expended by the Plan when it acquired such shares. In this regard, the proposed sale is part of a larger transaction pursuant to a proposed merger under which the shares of all but approximately thirty-five (35) shareholders of FCPC will be redeemed at a price of $25.00 per share. It is anticipated that the Trustees of the Plan will also redeem the shares of FCPC which each of the Trustees holds in his individual capacity at the price of $25.00 per share. After the merger is completed, FCPC through its remaining shareholders intends on January 1, 1994, to elect to become a subchapter S corporation under section 1361 of the Code.

7. In summary, the applicant, represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) The sale of the shares of FCPC will be a one time transaction for cash;

(b) As the result of the sale, the Plan will receive an amount per share which will be greater than the fair market value of the shares of FCPC, as determined by an independent, qualified appraiser as of the date of the sale;

(c) The amount the Plan will receive as the result of the sale of the shares of FCPC will be greater than the cost to the Plan when such shares were acquired;

(d) The Plan will be able to convert a minority interest in FCPC into liquid assets;

(e) The Plan will be able to invest the proceeds from the sale in more productive assets; and

(f) The Plan will pay no commissions or fees in regard to the transaction.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including section 401(a)(4), 404, and 415.[7]

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the requested exemption are all present employees of Donohoe, all participants in the Plan and former participants (including retirees) who have account balances in the Plan, all beneficiaries of deceased participants who have account balances in the Plan, and investment managers of the Plan.

It is represented that, within three (3) days of the publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register**, all interested persons will receive a copy of the Notice, the beginning and ending information that appears with the Notice, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), either by hand delivering to all interested persons who are currently employed by Donohoe or by mailing Federal Express guaranteed overnight delivery to the last known mailing address to all other interested persons. All interested persons are invited to submit written comments or requests for a hearing on this proposed exemption within thirty-three (33) days from the date the Notice is published in the **Federal Register**.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

NCR Corporation Savings Plan (the Plan) Located in Dayton, Ohio

[Application No. D–9536]

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 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 (1) an interest-free loan to the Plan (the Loan) by NCR Corporation (the Employer), the sponsor of the Plan, with respect to guaranteed investment

[6] The Department, herein, is providing no relief for any extension of credit or other transaction between the Plan and FCPC and Donohoe as a result of execution of the arrangements described above. In this regard, FCPC represents that within sixty (60) days of the grant of this proposed exemption, it will file the FORM 5330 with the Internal Revenue Service, and will pay any applicable excise tax deemed to be due and owing with respect to such transactions between the Plan and FCPC and Donohoe.

[7] The applicant represents that to the extent the Plan will receive greater than the fair market value for its shares of FCPC, the limitations, as set forth in section 415 of the Code, if applicable, will not be exceeded. It is further represented that the allocation of any gain on the sale of the shares will not violate the discriminations provisions of section 401(a)(4) of the Code.

contract number GA-GIC-01226 (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plan's potential repayment of the Loan (the Repayment); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Loan is made to reimburse the Plan for amounts invested with Executive Life under the terms of the GIC;

(C) The Repayment is restricted to cash proceeds paid to the Plan (the GIC Proceeds) by Executive Life and/or any other responsible third party with respect to the GIC, and no other Plan assets are used to make the Repayments; and

(D) The Repayments will be waived to the extent the Loan exceeds the GIC Proceeds.

Summary of Facts and Representations

1. The Plan is a defined contribution savings plan with provisions for individual participant accounts (the Accounts) and participant-directed investment of the Accounts, the assets of which are held in trust by the State Street Bank and Trust Company of Boston, Massachusetts (the Trust). The Plan had approximately 22,500 participants and total assets of approximately $461,883,532 as of December 31, 1992. The Plan is sponsored by the Employer, a Maryland public corporation with its principal offices in Dayton, Ohio.

2. Prior to January 1, 1992, the Plan offered four different investment funds (the Funds) for the investment of Accounts by Plan participants. The Funds included a Guaranteed Investment Fund (the GI Fund) which invested in a pooled collective investment fund, the Selection Fund, maintained by the Trustee. Assets of many employee-benefit plans subject to the Act were pooled in the Selection Fund, and each investing plan owned shares of the pooled fund assets as well as assets purchased specifically on behalf of the individual investing plan. Among the assets of the Plan in the Selection Fund is the GIC, a guaranteed investment contract purchased by the Trustees from Executive Life in April 1987. The GIC was purchased as an individual asset of the Plan's GI Fund, and is owned solely by the Plan. The terms of the GIC provide for an initial principal deposit of $4,765,544.41, a deposit limit of $21.6 million, a guaranteed annually compounded interest rate (the Contract Rate) of 7.85 percent, and a maturity date of November 1, 1991 (the Maturity Date). Upon the Maturity Date, Executive Life was obligated to make a final maturity payment (the Maturity Payment) in the amount of total principal deposits plus interest at the Contract Rate through maturity, less previous withdrawals. As of the Maturity Date, the accumulated book value of the GIC was $5,108,613.82, representing the Plan's total principal deposits under the GIC, plus accrued interest at the Contract Rate, less previous withdrawals. The Employer represents that as of the Maturity Date, the GIC constituted approximately 3.9 percent of the GI Fund's assets and approximately 1.0 percent of the Plan's total assets.

3. On April 11, 1991, Executive Life was placed into conservatorship by the Commissioner of Insurance of the State of California, and a moratorium was imposed on payments on Executive Life contracts, including the GIC.[8] Since the commencement of the moratorium, the Plan has received only a partial payment from Executive Life, in the amount of $950,570.61, with respect to the Maturity Payment which was due on the Maturity Date. Effective January 1, 1992, the Funds, which were offered by the Plan for Account investments, were replaced by six new investment funds, including a Conservative Strategy Fund (the CS Fund). The CS Fund consists largely of investment contracts issued by insurance companies and banks, with additional assets consisting of fixed income securities including, but not limited to, obligations of the U.S. Government, domestic or foreign corporations and other investment-grade debt. All assets of the GI Fund, other than assets invested in the GIC, have been transferred to the CS Fund. The Employer represents that it is uncertain whether, or to what extent, the Plan will recover the full amounts of principal and interest remaining due under the GIC. The Employer desires to alleviate the Plan's participants of risks associated with continued investment in the GIC, to prevent any losses of Account investments in the GIC, and to provide the Plan with the cash which otherwise would have been provided by the full Maturity Payment. Accordingly, the Employer proposes to make the Loan to the Plan in the amount due the Plan with respect to the GIC, plus interest through the date of the Loan, and is requesting an exemption for the Loan, and for its potential repayment by the Plan (the Repayment), under the terms and conditions described herein.

5. The Loan will be made pursuant to a written agreement between the Employer and the Trustee (the Agreement) embodying all terms of the extension of credit and its repayment. The Agreement provides for the Employer to make the Loan in one lump-sum payment in the amount of the total principal deposits under the GIC plus interest at the Contract Rate through the Maturity Date, plus interest from the Maturity Date through December 31, 1991 at the rate paid by the GI Fund for the same period (the GI Rate), plus interest from January 1, 1992 through the date of the Loan at the rate paid by the CS Fund for the same period (the CS Rate), reduced by the sum of all previous withdrawals from the GIC and all previous payments received by the Plan with respect to the GIC. The GI Rate is determined by averaging the return for the period on all investments in the GI Fund, consisting solely of guaranteed investment contracts issued by insurance companies. The CS Rate will be determined by averaging the return for the period on all investments in the CS Fund. The Agreement provides that in the event the aforementioned post-maturity interest rates are not acceptable to the Internal Revenue Service (the Service), they will be replaced by the highest interest rate allowed by the Service under a closing agreement between the Service and the Employer pursuant to Revenue Procedure 92-16. The Agreement specifies that the Loan proceeds shall be used for the payment of benefits, loans to participants, withdrawals, and transfers between investment funds offered by the Plan, in the same manner that the amounts attributable to the GIC would be permitted to be used if available to the Plan. The Loan will not bear interest, and the Employer shall not charge any fees, commissions or other charges for the Loan.

5. Repayment of the Loan under the Agreement is limited to payments made to the Plan pursuant to the GIC by Executive Life, any state guaranty association, any successor in interest to Executive Life, or any other source making payment with respect to Executive Life's obligations under the GIC (collectively, the GIC Payors). No other Plan assets will be available for repayment of the Loan. If payments from the GIC Payors are not sufficient to repay fully the Loan, the Agreement provides that the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives amounts with respect to

[8] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GIC.

the GIC from the GIC Payors in excess of the total amount of the Loan, such additional amounts will be retained by the Plan.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons:

(1) The Loan will enable the Plan to recover the full Maturity Payment which was due on the Maturity Date, plus interest at the GI Rate and the CS Rate or the highest rate allowed by the Service;

(2) The Plan will pay no interest or incur any expenses with respect to the Loan;

(3) Repayment of the Loan will be restricted to payments by the GIC Payors and no other Plan assets will be involved in the transactions; and

(4) Repayment of the Loan will be waived to the extent the Plan recoups less from the GIC Payors than the total amount of the Loan.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department (202) 219–8881. (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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 19th day of November, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–28898 Filed 11–23–93; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 93–82; Exemption Application No. D–9385]

Grant of Individual Exemption; Gary Tax Advantaged Savings Program and Profit Sharing Plan

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.

Gary Tax Advantaged Savings Program and Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Prohibited Transaction Exemption 93–82; Exemption Application No. D–9385]

Exemption

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 in regard to 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 September 22, 1993, at 58 FR 49329.

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 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 are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 19th day of November 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–28899 Filed 11–23–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before January 10, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture (N1–16–93–2). Call detail summaries for use of telecommunications equipment.
2. Department of the Army (N1–AU–94–1). Records relating to health promotion activities.
3. Department of the Army (N1–AU–94–3). Alcohol and Drug Abuse Prevention and Control Program clinical certification files.
4. Department of the Army (N1–AU–94–4). Alcohol and Drug Abuse Prevention and Control Program rehabilitation files.
5. Department of Education, National Council on Education Standards and Testing (N1–441–93–7). Subject files.
6. Department of Health and Human Services, Centers for Diseases Control and Prevention (N1–442–93–2). Comments on notices of proposed and final rulemaking published in the **Federal Register.**
7. Department of the Interior, Office of the Solicitor (N1–48–93–3). Surface Mining Control and Enforcement Act Case Files.
8. Department of Justice (N1–60–93–15). Dallas Bank Fraud Task Force case files.
9. Department of the Treasury, Internal Revenue Service (N1–58–92–4).

Microfilm copies of wage documents, known as the Wage Information Retrieval System.

10. Bureau of Labor Statistics, Office of Safety, Health and Working Conditions (N1–257–93–3). Census of fatal occupational injuries survey respondent data.

11. Defense Contract Audit Agency (N1–372–94–1). Training Course Manuals.

12. National Archives and Records Administration (N2–255–93–1). Patent files and other administrative and facilitative records from the National Aeronautics and Space Administration.

13. President's Commission on White House Fellowships (N1–220–93–14). Applications and Education Program Records.

Dated: November 8, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–28782 Filed 11–23–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and committee code: Special Emphasis Panel in Materials Research (1203).

Date and Time: December 13, 1993 8:30 a.m. to 5 p.m.

Place: Room 380, National Science Foundation, Arlington, VA.

Type of Meeting: Closed.

Contact person: Dr. Robert Reynik, Head, Office of Special Programs, Division of Materials Research, National Science Foundation, 2401 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–9791.

Purpose of meeting: To provide advice and recommendations concerning support of REU Site Awards submitted to NSF for financial support.

Agenda: To review and evaluate DMR 1994 REU Site Awards Competition as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 19, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–28864 Filed 11–23–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and committee code: Special Emphasis Panel in Mathematical Sciences (1204).

Date and time: December 10–11, 1993; 8:30 a.m. to 5 p.m.

Place: Providence Marriott Hotel, Orms and Charles Streets, Providence, RI 02904.

Type of meeting: Closed.

Contact person: Dr. H. Jean Thiebaux, Office of Special Projects, Division of Mathematical Sciences, room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–3453.

Purpose of meeting: To provide advice and recommendations for applications submitted to NSF for financial support.

Agenda: To review and evaluate Mathematical Sciences Postdoctoral Research Fellowships applications as part of the selection process for awards.

Reason for closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 19, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–28863 Filed 11–23–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Meeting

In accordance with the Federal Advisory Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences (# 66).

Date & time: December 14, 1993, 9:30 a.m.–5:30 p.m., room 390; December 15, 1993, 8:30 a.m.–12:00 Noon, room 380.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of meeting: Open.

Contact person: Judith S. Sunley, Executive Officer, MPS, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–9742 or (703) 306–1856.

Minutes: May be obtained from the contact person listed above.

Meeting purpose: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

Agenda:

December 14, 1993

AM—Introductory Remarks, MPS Budget & Priorities

PM—Strategic Working Groups

December 15, 1993—AM

Continuation of Working Groups

Discussion/Summary of Issues

Dated: November 19, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–28862 Filed 11–23–93; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Ypsilanti, Michigan: Aviation Accident

In connection with the investigation of the American International Airways, Inc. DC–8–61, Flight 808, accident at Guantanamo Bay NS, Cuba, on August 18, 1993, the National Transportation Safety Board will convene a public hearing at 9 a.m. (eastern standard time), on Wednesday, January 5, 1994, in the Lakeshore Ballroom of the Radisson on the Lake, Ypsilanti, Michigan. For more information, contact Mike Benson, Office of Public Affairs, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594, telephone (202) 382–0660.

Dated: November 19, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93–28839 Filed 11–23–93; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 70–3070]

Louisiana Energy Services, L.P.; Availability of the Draft Environmental Impact Statement for The Claiborne Enrichment Center; Homer, LA

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a Draft Environmental Impact Statement (DEIS) (NUREG–1484) regarding the proposed construction and operation of the Claiborne Enrichment Center to be located near Homer, LA. The DEIS describes and evaluates the potential environmental consequences of granting Louisiana Energy Services, L.P. (LES) a license to construct and operate a uranium enrichment facility. The facility would use the gaseous

centrifuge enrichment process. Natural uranium hexafluoride would be used as the feed material, the product would be uranium hexafluoride enriched up to 5 percent in the isotope uranium-235.

The DEIS is available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC and the Local Public Document Room at the Claiborne Parish Library, 901 Edgewood Drive, Homer, LA. A free single copy of draft NUREG–1484 may be requested by those considering public comment by writing to the Director, Division of Information Support Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any interested party may submit written comments on the DEIS for consideration by the staff. To be certain of consideration, comments on this report must be received by January 10, 1994. Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Comments on the DEIS should be sent to the Chief, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, Mail Stop 4–E–4, U.S. Nuclear Regulatory Commission, Washington, DC 20555. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, DC and the Local Public Document Room at the Claiborne Parish Library, 901 Edgewood Drive, Homer, LA.

FOR FURTHER INFORMATION, CONTACT: Merri Horn, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 504–2606.

Dated at Rockville, Maryland, this 18th day of November 1993.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Enrichment Branch, Division of Fuel Cycle Safety, and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–28877 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on ABB-CE Standard Plant Designs; Meeting

The ACRS Subcommittee on ABB-CE Standard Plant Designs will hold a meeting on December 8, 1993, in Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 8, 1993—9 a.m. until the conclusion of business

The Subcommittee will begin its review of the Standard Safety Analysis Report for the ABB-CE System 80+ design. The purpose of this meeting is 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. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, 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.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review. Further information regarding topics to be discussed, 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 therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas H. Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 18, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–28876 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 1, 1993, through November 12, 1993. The last biweekly notice was published on November 10, 1993 (58 FR 59743).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission

take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 27, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: November 1, 1993Description of

amendment request: The proposed amendment would revise the heatup and cooldown curves for the Calvert Cliffs Nuclear Power Plant, Unit No. 2, to allow operation beyond 12 effective full power years (EFPY). Operation within the appropriate heatup and cooldown curves ensure that the 10 CFR part 50, appendix G, Pressure-Temperature limits for the reactor pressure vessel will not be violated.

The current 12 EFPY heatup and cooldown curves for Unit 2 will expire, at the earliest, in mid-June 1994. This proposed changes will extend the applicability of these curves to mid-1996. During the 1995 refueling outage, a variable-setpoint low temperature overpressure protection (VLTOP) system is scheduled to be installed at Unit 2 to increase the allowable operating pressure band in the Minimum Pressure and Temperature region. A license amendment request will be submitted at a later date proposing new heatup and cooldown curves and Low Temperature Overpressure Protection (LTOP) controls for Unit 2 to support the scheduled modifications to the LTOP system (a similar request has already been submitted for Unit 1). This proposed change to extend the current curves will allow the use of these current curves until the VLTOP system is implemented.

The specific Technical Specification (TS) changes proposed are:

1. TS Figures 3.4.9-1 and 3.4.9-2 are modified to reflect the current fluence predictions which will extend the applicability of the existing curves to approximately 13.8 EFPY. The expected fluence number will replace the projected EFPY number.

2. TS 3/4.4.9.3 is modified to include an additional overpressure requirement which will ensure that when the operable high pressure safety injection (HPSI) pump is not in use, its handswitch is in the pull-to-lock position. This prevents the pump from automatically starting. This is for clarification only in that it is currently required as specified in a footnote to TS 3/4.5.3 and Table 3.3-3. TS 3/4.4.9.3.3 is also modified to reflect this change.

3. TS Bases 3/4.4.9 is revised to reflect the requested changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation within the appropriate heatup and cooldown curves ensures that the 10 CFR part 50, appendix G, Pressure-Temperature (P-T) limits for the reactor pressure vessel will not be violated while operating at low temperature. The heatup and cooldown curves are conservatively developed in accordance with the fracture toughness requirements of 10 CFR part 50, appendix G, as supplemented by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section III, appendix G. New values for the copper and nickel content have been approved for the critical Unit 2 weld, which substantially improve the embrittlement projections for the limiting weld in the P-T limit calculations. This change extends the applicability of the current heatup and cooldown curves until mid-1996. The proposed change will not result in any changes to the LTOP controls. Adding the requirement to Specification 3/4.4.9.3 to ensure the operable high pressure safety injection (HPSI) pump's handswitch will be placed in pull-to-lock when not in use is only a clarification and does not change the intent of the specification. This requirement for the operable HPSI pump is currently in footnotes for Specification 3.5.3 and Table 3.3-3. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change to extend the current curves to allow operation beyond 12 effective full power years (EFPY) does not represent a significant change in the configuration or operation of the plant. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, nor are any different types of operations being introduced. The approval of the new chemistry for the limiting weld facilitates an extension of the applicability of the existing Unit 2 heatup and cooldown curves. This proposed change will not change any of the existing Unit 2 LTOP controls. The addition of the requirement to have the HPSI pump's handswitch in pull-to-lock when not in use is only a clarification of the existing requirements. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change will not affect the existing Appendix G limits. The extension of the heatup and cooldown curves is a consequences of the new chemistry values for the limiting weld. The proposed change will not affect any margin of safety since the heatup and cooldown curves will continue to protect the Appendix G limits for all postulated transients. The clarification to Specification 3/4.4.9.3 to require the operable HPSI pumps handswitch be placed in pull-to-lock when not in use does not change the intent of the Specification. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 19, 1993Description of amendment request: The proposed amendment would remove the scram and Group I isolation value closure functions associated with the main steam line radiation monitors (MSLRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed technical specification changes associated with removal of the isolation and the reactor scram functions of the MSLRM do not involve a significant increase in the probability of an accident previously-evaluated. The trip function was in place only to react to a previously-evaluated accident, the CRDA (Control Rod Drop Accident), and as such, cannot increase the probability of occurrence of previously evaluated accidents.

The consequences of a previously evaluated accident are not significantly increased. There is no accident analysis that relies on the high radiation scram of the reactor protection system. The Pilgrim design basis accident analysis currently takes credit for the MSIV (main steam isolation valve) closure function to mitigate a CRDA. The NEDO-31400A analysis assumes that all activity calculated to be available for release is transported to the condenser before the closing of the MSIVs. The increase in dose for this scenario is considered not significant because the results for PNPS (Pilgrim Nuclear Power Station) are bounded by the NEDO and Standard Review Plan results. For PNPS, it is possible that the Mechanical Vacuum Pump will be in service. However, the offsite doses for the release from the condenser are bounded by the SRP (Standard Review Plan) and NEDO. These dose rates are still significantly below the 10 CFR part 100 limits.

(2) Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed changes do not involve any plant hardware changes which could

introduce any new failure modes or effects. The MSLRM monitors will remain active and will still alarm in the control room. The direct impact on the plant is that this particular trip function (i.e., isolation valve closure and reactor scram) will no longer actuate. The new design basis accident analysis, per NEDO-31400A, does not take credit for this trip function to demonstrate acceptable radiological consequences. The proposed changes were evaluated specifically for PNPS and are enveloped by the NEDO analysis. In the CRDA, all activity available for release from failed fuel rods is assumed to be immediately transported to the condenser and is available for leakage from the condenser. Thus, the removal of the isolation and scram functions does not create the possibility of a new or different kind of accident than those previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not affect the calculated off-site dose consequences. Furthermore, the changes will improve the overall reliability of the plant when compared to the existing system, since the proposed changes will reduce the changes of an unnecessary plant transient occurring as a result of an inadvertent MSIV closure.

A reliability assessment of the elimination of the MSLRM scram function on reactivity control failure frequency and core damage frequency was performed in NEDO-31400A. The results of this analysis indicate a negligible increase in reactivity control failure frequency with the deletion of the MSLRM trip function. However, this increase is offset by the reduction in the transient initiating events (inadvertent scrams). This reduction in transient initiating events represents a reduction in core damage frequency and, thus, results in a net improvement to safety.

Removal of the MSLRM scram and isolation valve closure functions does not significantly increase the consequences of any design basis accident, including CRDA. Other trip signals for the RPS (reactor protection system) and isolation valves remain unaffected. Therefore, there is no significant reduction in the margin of safety as a result of this Technical Specification change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

NRC Project Director: Walter R. Butler

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: October 22, 1993, as revised October 28, 1993

Description of amendment request: The proposed revision will (1) remove the title-specific organizational listing of Plant Nuclear Safety Committee (PNSC) membership in TS 6.5.2.2 and replace it with a functional description of PNSC composition, (2) add specific PNSC member qualification requirements in TS 6.5.2.3, and (3) revise Section 6.5.2.2 to stipulate that PNSC members shall be designated by the Plant General Manager and shall be limited in number to between seven and nine members.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes to Technical Specification 6.5.2 are administrative changes to allow greater flexibility in establishing PNSC membership while maintaining the necessary qualifications of the committee to adequately advise the Plant General Manager on matters related to nuclear safety. The qualification requirements will continue to ensure that the committee has the necessary expertise to consider matters pertaining to nuclear safety and that the appropriate functional areas will be represented. Given that the effectiveness of the PNSC is maintained and that the PNSC has no direct impact on the factors which may initiate or mitigate accidents previously evaluated, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to Technical Specification 6.5.2 are administrative changes to allow greater flexibility in establishing PNSC membership while maintaining the necessary qualifications of the committee to adequately advise the Plant General Manager on matters related to nuclear safety. The qualification requirements will continue to ensure that the committee has the necessary expertise to consider matters pertaining to nuclear safety that the appropriate functional areas will be represented. Given that the effectiveness of the PNSC is maintained and that the PNSC has no direct impact on the factors which may initiate or mitigate accidents, the proposed changes do not created the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The changes to technical Specification 6.5.2 are administrative changes to allow greater flexibility in establishing PNSC membership while maintaining the necessary qualifications of the committee to adequately advise the Plant General Manager on matters related to nuclear safety. The qualification requirements will continue to ensure that the committee has the necessary expertise to consider matters pertaining to nuclear safety [and] that the appropriate functional areas will be represented. Given that the effectiveness of the PNSC is maintained, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois; Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois; Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois.

Date of amendment request: November 10, 1993

Description of amendment request: The proposed amendments would revise the "Radioactive Effluent Controls Program" described in Section 6.0 of the Braidwood, Byron, LaSalle, and Zion Technical Specifications to be consistent with the revised 10 CFR part 20. The changes specifically address the limitation on radioactive material release of liquid and gaseous effluent. This amendment supersedes the licensee's previous request dated June 29, 1993, as published in the **Federal Register** on September 15, 1993 (58 FR 48380).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the radioactive material concentration limits in liquid and

gaseous effluent releases do not impact previously evaluated accidents because there is no change in the types and amounts of effluents that will be released. There will be no increase in individual or cumulative occupational radiation exposures.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no effect on the probability of an accident. The changes are administrative in nature and do not affect plant design or operation. There is no change to the types and amounts of effluent that will be released, nor is there an increase in individual or cumulative occupational radiation exposures.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed revision to the radioactive material concentration limits in the liquid effluents will not reduce a margin of safety. There is no change in the types and amounts of effluents released. The current 10 CFR part 20, Appendix B, Table II, Column 2 limits allow a maximum annual dose of 500 mrem. The revised 10 CFR part 20 allows a maximum total effective dose equivalent of 50 mrem/year. Using a factor of 10 multiplier on the new Column 2 values has no impact on the ability to meet the 10 CFR part 50, Appendix I limits, or the annual dose limit specified in 10 CFR part 20. Use of the instantaneous dose limit, in conjunction with the more restrictive quarterly and annual dose limits in 10 CFR part 50, Appendix I, will ensure that the requirements of 10 CFR 20.1302 are met. It also ensures continued operational flexibility. Controls are in place to prevent total dose from exceeding the 10 CFR part 20 and 10 CFR part 50 limits.

The proposed revision which specifies the limit of radioactive material concentration in the gaseous effluents will not reduce a margin of safety. There will be no change in the types and amounts of effluents released. The revision proposes a dose limit of 500 mrem/year to the whole body. This limit is currently used in the Commonwealth Edison Offsite Dose Calculation Manual (ODCM) and is also consistent with the current 10 CFR part 20, appendix B, Table II Column 1 limits. The revised 10 CFR part 20 allows a maximum total effective dose equivalent of 50 mrem/year. Using a value of 500 mrem/year as an instantaneous release limit has no impact on the ability to meet the 10 CFR part 50, Appendix I limits, or the annual dose limit in 10 CFR part 20. Use of the instantaneous dose limit, in conjunction with the more restrictive quarterly and annual dose limits in 10 CFR part 50, Appendix I, will ensure that the requirements of 10 CFR 20.1302 are met. It also ensures continued operational flexibility. Controls are in place to prevent total dose from exceeding the 10 CFR part 20 and 10 CFR part 50 limits.

The only other proposed change involves updating a 10 CFR part 20 paragraph reference to the applicable paragraph in the revised 10 CFR part 20. This revision entails no change to the types and amount of effluents that will be released and has no effect on the margin of safety related to effluent releases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481; for Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for LaSalle, the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348; for Zion, the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of amendments request: September 29, 1993

Description of amendments request: The proposed amendments request would revise the Technical Specifications to clarify the control of keys for the doors of High Radiation Areas in which the intensity of radiation is greater than 1000 mrem/hr. The keys would be administratively controlled by the Radiation Protection Manager and/or the Senior Watch Supervisor on duty.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

This is an administrative change being proposed by the Company. The change clarifies current implementation of Technical Specifications, the same criteria for high radiation access as are currently in place and as previously evaluated would still be met under the proposed change.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change is purely administrative in nature. The change does not modify plant configuration or operation, and therefore, the identical postulated accidents as analyzed prior to this submittal are the only ones that required analysis and resolution. Nothing would be added or removed that would conceivably introduce a new or different kind of accident mechanism or initiating circumstance than that previously evaluated.

3. There has been no reduction in the margin of safety.

All safety criteria previously evaluated are still met at the same margins since the change is simply a clarification of the administrative control of High Radiation Area keys. Both the Radiation Protection Manager and the Senior Watch Supervisor are qualified by training to control these keys.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Units No. 1 and No. 2, Westchester County, New York

Date of amendments request: September 29, 1993

Description of amendments request: The proposed amendments request would revise the Technical Specifications to change the submittal frequency of the Radioactive Effluent Release Report from semiannually to annually in accordance with the amended regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration because:

1. There is no significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is designed to conform the Indian Point Unit No. 1 (IP1) and Indian Point Unit No. 2 (IP2) Technical Specifications to the NRC regulation 10 CFR 50.36a. The proposed action "will not reduce the protection of the public health and safety or the common defense and security" (57 Fed Reg. [FR] 39354). The proposed change to the IP1 and IP2 Technical Specifications is consistent with this intent in that it is designed to conform IP1 and IP2 Technical Specifications with 10 CFR 50.36a and does not affect plant operation, plant systems,

accident conditions or assumptions. The proposed change is to the frequency of a reporting requirement only and does not affect possible initiating events for accidents previously evaluated or any system functional requirements. Therefore, the proposed change to the subject Technical Specifications cannot increase the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously evaluated has not been created.

As stated above, the proposed change is administrative in nature. The proposed change does not affect the reactor coolant pressure boundary or any other Plant system or structure, nor does it affect any system functional requirements or operability requirements. Consequently, no new failure modes are introduced as a result of the proposed change. Therefore, the proposed change cannot initiate any new or different kind of accident.

3. There has been no significant reduction in the margin of safety.

The proposed change is administrative in nature and does not affect the Updated Final Safety Analysis Report (UFSAR) design bases, accident assumptions, or Technical Specification Bases. There is no change to effluent release limits, monitoring equipment or practices. Therefore, the proposed change does not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 29, 1993

Description of amendment request: The proposed amendment request would revise the Technical Specifications to remove cycle-specific core parameter limits and reference a Core Operating Limits Report containing these limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The proposed amendment is administrative in nature, merely relocating cycle-specific parameter limits from the Technical Specifications to the Core Operating Limits Report. NRC-approved methodologies will continue to be used as the basis for establishing these limits. The Core Operating Limits Report will be submitted to the NRC for its use in trending the values of cycle-specific limits. The proposed changes are in accordance with the guidance provided by NRC Generic Letter 88-16 and do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

No safety-related equipment, function, or plant operational practice will be altered as a result of the proposed changes. The changes are administrative in nature and do not create any new accident mode. The level of document control and quality assurance applied to the preparation and use of the Core Operating Limits Report will be equivalent to that applied to the Technical Specifications.

3. There has been no reduction in the margin of safety.

The proposed changes are administrative in nature and do not impact the operation of the plant in a manner that will reduce the margin of safety. The proposed amendment still requires operation within the limits determined using NRC approved methods, and the appropriate remedial actions to be taken if the limits are violated remain in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 29, 1993

Description of amendment request: The proposed amendment request would revise the Technical Specifications to delete controls for three Boron Monitor Tanks which are no longer in service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The deletion of the three boron monitor tanks from the Technical Specifications will remove the quantity limitation on radioactive contents and the requirements for level monitoring capability and instrument surveillance. Level monitoring will no longer be required because the tanks are empty, and the inlet and outlet piping will be cut and capped to preclude any liquid addition. Since no addition can be made, the contents limitation is no longer necessary.

In accordance with the requirements of 10 CFR 50.92, the proposed technical specification changes are deemed to involve no significant hazards consideration because operation of Indian Point Unit No. 2 (IP-2) in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The safety concerns with these tanks were the size of a potential release and the possibility of uncontrolled leakage of radioactive liquid effluent. Since the permanent isolation of these empty tanks eliminates these possibilities, the limit on quantity of contents will be superfluous, and the tank level indicating devices will not be needed to detect and control leakage. Thus, the probability and consequences of release or leakage are not affected.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The limit on quantity of contents served only to limit the potential dose due to a release. Level monitoring was used only to assure detection and control of leakage from the tanks. Elimination of contents limitation and monitoring requirements will have no adverse impact on any other plant system or equipment and thus is not capable of creating the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Replacement of the quantity limitation and tank level monitoring requirements with permanent isolation of the empty tanks will have no effect upon the margin of safety against release or uncontrolled leakage.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 4, 1993

Description of amendment request: The proposed amendments change the Technical Specifications to allow extended outage time for each train of the control area ventilation system to allow system maintenance to improve system reliability. The one time extension to 14 days (for each train, one at a time) will allow completion of the maintenance activities while one or both units are on-line; otherwise, it would be necessary to shut down both units to complete the maintenance activities or to divide the maintenance activities into less than 7-day segments, which would increase unavailability of the control area ventilation system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will affect only the VC (control area ventilation system) system which is designed to maintain the habitability of the Control Room area as described in the FSAR [Final Safety Analysis Report], Section 6.4 and will not affect the probability of an accident. One train is fully adequate for all conditions, either train can draw outside air from either independent intake, and one train will be operable at all times, or the station will reduce poweror shutdown in accordance with Technical Specification 3.0.3. As the trains are totally redundant, including the ability of each train to draw outside air from either independent intake (should one intake become contaminated), or place the system in recirculation, Control Room doses due to inleakage as presented in Chapter 15 of the McGuire FSAR (Table 15-12) and the NRC Safety Evaluation Report for Facility Operating License amendments numbers 122 (NPF-9, Unit 1) and 104 (NPF-17, Unit 2) dated July 15, 1991 are unaffected. The additional allowed outage time thus will not affect the probability or consequences of an accident.

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed allowed outage time extension is to allow system maintenance to enhance system reliability. Neither the extension or the planned maintenance activities are of a nature which could lead to any new accident scenarios.

The proposed changes would not involve a significant reduction in a margin of safety. With one train of VC operable, all margins are satisfied; Control Room doses are unaffected. Presently, one train may be inoperable for up to seven days before a station shutdown would be required. The addition of seven days allowed outage time on a one time basis for each train will not have an impact on any safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242Acting

NRC Project Director: Robert A. Hermann

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 24, 1993

Description of amendment request: The proposed amendment would revise Technical Specification Table 4.2-2, "Minimum Test and Calibration Frequency for Core and Containment Cooling Systems," to remove a testing requirement for the Containment Cooling Subsystem. Specifically, note 9 on Table 4.2-2 currently requires calibration of time delay relays and timers in the logic system functional test for the Containment Cooling Subsystem. The proposed amendment would remove the requirement of note 9 since the Containment Cooling Subsystem does not contain time delay relays or timers and the requirement is, therefore, unnecessary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Use of the Containment Cooling Subsystem as an accident mitigation system is unaffected by the proposed change. The Containment Cooling Subsystem is a manually initiated system which removes heat from the containment in the event of testing, transients or accidents that add heat to the containment. The proposed change removes a testing requirement Table 4.2-2, note 9 to calibrate time delay relays and timers as part of the logic system functional test. The Containment Cooling Subsystem does not contain time delay relays or timers. Plant accident analyses, operations, hardware and procedures are not affected by the Technical Specification change. The nature of this change will not cause any increase in the probability or consequences of previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves no modifications to hardware, analyses, operations or procedures. The Containment Cooling Subsystem is manually initiated and does not contain time delay relays or timers. The proposed change makes Technical Specification Table 4.2-2 consistent with the previously reviewed and approved system design. The nature of this change is such that no new or different kind of accident can be created.

3. Involve a significant reduction in the margin of safety.

The results of the plant accident analyses continue to bound operation under the proposed changes so there is no reduction in the margin of safety. The Containment Cooling Subsystem is manually initiated and does not contain time delay relays or timers. Therefore system operation and surveillance testing remain unaffected by the proposed change. A revision of this nature will not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 24, 1993

Description of amendment request: The proposed revisions would make miscellaneous administrative changes including typographical and editorial corrections to the Appendix A Operating Technical Specifications (TSs) and Appendix B Radiological Effluent TSs. The proposed changes are intended to clarify and improve the quality of the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The intent of the proposed changes is to clarify and correct the Technical Specifications. The changes are administrative in nature and include: clarifying a specification to reflect system design; changing specifications for consistency with previous Amendments; revising a specification to accurately reflect surveillance testing, and; correction of typographical and editorial errors. There are no setpoint changes, safety limit changes, surveillance requirement changes, or limiting conditions for operation. These changes have no impact on plant safety or operations. The changes will have no impact on previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes are purely administrative in nature and involve only correcting typographical and editorial errors. These proposed changes are intended to clarify and improve the quality of the Technical Specifications. This cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed changes correct errors which currently exist in the Technical Specifications. The changes are all administrative in nature and will clarify the Technical Specifications by eliminating errors such as typographical and editorial errors. These changes do not change any setpoint or safety limit changes regarding isolation or alarms. The proposed changes do not affect the environmental monitoring program. These changes do not affect the plants safety systems and do not reduce any safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 28, 1993

Description of amendment request: The proposed changes would revise the surveillance requirement for Emergency Service Water System (ESWS) pumps delineated in Technical Specification (TS) 4.11.D.1.b. The changes are intended to address the limitations of the "shut off head" pump test currently required. The proposed changes would add a flow requirement and test the pumps in accordance with the plant Inservice Testing (IST) Program, which is designed to address appropriate portions of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code. The licensee has also proposed to modify the description of the ESWS contained in Bases Sections 3.11 and 4.11 D.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes identified in the proposed amendment revise pump surveillance testing for the ESWS to require flow testing under the IST [Inservice Testing] program using Section X1 of the ASME B&PV Code as a basis. This change involves no hardware modifications to the plant or changes in the capability of the system to perform the intended functions. The existing Surveillance Test procedure is used to perform the test.

The changes in the proposed amendment revise the flow requirements of the pumps to meet system requirements based on actual heat loads without excessive conservatisms, an assumed 82°F lake water temperature and a revised valve lineup to isolate loads not required to receive cooling water during normal operation. The isolation of the RHR [residual heat removal] pump seal water coolers and recirculation pump motor and seal does not affect the performance of any safety related function. There is no change to the capability of the ESWS to perform its intended functions. The proposed changes provide operational flexibility to deal with the microbiologically induced corrosion (MIC) which can restrict flow to the crescent area coolers. The reduced flow requirements were based on calculations. The capability of the ESWS to remove the required heat was demonstrated by testing. Since the ESWS continues to perform its intended functions, there is no increase to the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes involve no hardware changes and do not change the capability of the ESW system to perform the intended functions.

The procedure for testing the ESW pumps to meet the proposed Surveillance Requirement is currently used to meet IST requirements. The changes to the system lineup were considered and the changes do not affect the performance of any plant safety function. The flow rate used to establish the acceptance criteria for the new ESW test is based on current accident analyses.

3. Involve a significant reduction in the margin of safety.

These changes do not affect the capability of the ESWS to perform its intended functions. The ESW system flow rate requirements for individual components have been reduced by calculation and the system alignment has been changed to isolate most systems not required to receive cooling water following a design basis event. With reduced flow there is ample margin in coolers for degradation so the change does not prevent the system from performing the required safety functions. Testing demonstrates this capability. Isolation of systems not required to receive cooling water provides additional cooling water for other components without affecting the operability of safety related systems or components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 18, 1993

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 6.5.2.2 to change the membership of the Safety Review Committee (SRC). This portion of the proposed amendment, in part, resulted from an organizational change within the licensee's headquarters office which eliminated the position of Vice President—Nuclear Support. The proposed amendment

would also modify TS 6.5.2.10 to change the time limit for providing the Executive Vice President - Nuclear Generation with SRC meeting minutes and reports of review from 14 days to 30 days, consistent with the BWR/4 Standard TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is purely administrative and does not involve plant equipment or operating parameters. There is no effect on any accident analysis assumptions or other conditions which could involve the probability or consequences of previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

Since the proposed change is administrative in nature and does not involve hardware design or operation, it cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The role of the Safety Review Committee as an independent reviewer of safety and regulatory aspects of plant operations remains unchanged. Specific responsibilities of the SRC as stated in Technical Specification subsection 6.5.2.7, remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: September 13, 1993

Description of amendments request: The proposed amendment would eliminate the low feedwater reactor trip and reduce the steam generator low-low water level reactor trip and safeguard actuation setpoint from 17 percent to 15 percent of narrow range span with a corresponding reduction in allowable value to 14.4 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed elimination of the low feedwater flow trip and the reduction in the steam generator low-low water level trip setpoint does not significantly increase the probability or consequences of an accident previously evaluated in the FSAR. The low feedwater flow reactor trip is no longer needed as a primary trip for any FNP accident analyses, since FNP (Farley Nuclear Plant) is installing a MSS (median signal selector) which will select the median (middle) level signal for SGWLC on each steam generator. The MSS will eliminate the potential adverse control/protection interaction that necessitated the need for the low feedwater flow trip. No analysis previously performed in the FSAR required reanalysis. All acceptance criteria to be met. Therefore, there is no increase in the consequences of any previously evaluated accident. The MSS will be added to reduce susceptibility to spurious trips caused by failure of one level channel. This is a direct application of using MSS for trip reduction. The reduction in the steam generator low-low water level setpoint affords additional margin to spurious trips. The plant response to postulated accident scenarios involving fission product barrier integrity is unaffected. Therefore, the proposed modifications to the Technical Specifications do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR.

(2) The proposed changes to the Technical Specifications do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new limiting single failures or accidents scenarios have been created or identified due to the proposed changes. All safety-related systems will continue to perform as designed. No new challenges to any installed safety system have been created by the proposed RPS (reactor protection system) modification and the previously postulated single failure scenario has been eliminated by use of the MSS. Qualified isolation devices are utilized for MSS input signals. The safety analysis limit for steam generator low-low water level remains unchanged; therefore, all remaining analyses using this set point remain unaffected. Therefore, the possibility of a new or different accident is not created.

(3) The proposed elimination of the low feedwater flow trip and reduction of the low-low steam generator water level setpoint does not involve a significant reduction in the margin of safety. No reanalysis was necessary because of the proposed RPS modification and setpoint change; therefore, all margin associated with the current acceptance criteria continue to be unaffected. In addition, RPS diversity for loss of heat sink events is provided by pressurizer high pressure, overtemperature delta-t reactor trip signals and the safety injection signals. Therefore, there is no significant reduction in the margin of safety due to elimination of the low feedwater flow trip and the setpoint reduction of the inclusion of the MSS for feedwater control.

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 NBC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

Vermont Yankee Nuclear Power Corporation, Docket NO. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 4, 1993

Description of amendment request: The proposed amendment would modify the periodic surveillance of the emergency diesel generators (EDGs) to permit a slow start in place of the existing requirement to perform a monthly fast start. A fast start shall be performed every 6 months. The proposed amendment would also allow engine prelubrication and warmup when an EDG is started for surveillance testing. This is intended to improve engine reliability and availability by reducing engine wear.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change only affects diesel generator periodic testing. The diesel generators are not accident initiators and the method of testing of the diesels cannot initiate an accident and therefore will not increase the probability of an accident. This change to the diesel generator testing method does not impact any FSAR (final safety analysis report) safety analysis. The proposed surveillance will still provide assurance that

the diesel generator is available to mitigate the consequences of accidents previously evaluated. We believe, as (Generic Letter 84-15) states, that "an overall improvement in diesel engine reliability and availability can be gained by performing diesel generator starts for surveillance testing using engine prelube and other manufacturer recommended procedures to reduce engine stress and wear." In addition, the test duration of one hour is sufficient to demonstrate that during loaded operation proper cooling of the emergency diesel generators occurs. Thus the consequences of an accident previously evaluated are not increased.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will only affect diesel generator periodic testing. The diesel generators are not accident initiators and the method of testing of the diesels cannot initiate an accident. This change does not relieve the operation of the diesel generator from existing requirements and the diesel generator is still bounded by the assumptions in the accident analysis. The method of testing provides assurance that the diesel generators are available when needed. The proposed change does not involve any changes in Technical Specification setpoints, plant equipment, plant operation, protective functions or design basis of the plant. Therefore, change in the method of starting, load application and test duration during periodic testing would not create a different type of accident than previously evaluated.

3. The change does not involve a significant reduction in the margin of safety. The proposed change is made to increase the reliability and availability of the EDGs thus enhancing the safety of the plant. Assurance that the diesel generators operate within limits determined to be acceptable continues to be provided. We believe, as (Generic Letter 84-15) states, that "an overall improvement in diesel engine reliability and availability can be gained by performing diesel generator starts for surveillance testing using engine prelube and other manufacturer recommended procedures to reduce engine stress and wear." In addition, the test duration of one hour is sufficient to demonstrate that during loaded operation proper cooling of the emergency diesel generators occurs. Thus improvement in diesel generator reliability and availability does not involve a reduction in the margin of safety.

Based on the above, Vermont Yankee concludes that the proposed change does not constitute a significant hazards consideration as defined in10 CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 1993

Description of amendment request: The proposed amendment revises Technical Specification 6.3.1 related to the qualification requirements for the position of Manager Operations and revises Technical Specification 6.5.1.2 to delete specific title designations from the Plant Safety Review Committee (PSRC) membership. Technical Specification 6.3.1 currently requires members of the unit staff to meet or exceed the minimum qualifications of ANSI/ANS 3.1-1978, "American National Standard for Selection and Training of Nuclear Power Plant Personnel". The proposed change would revise the Manager Operations qualification requirements from those listed in the standard (holding a senior reactor operator license) to requiring that the Manager Operations shall hold or have previously held a senior operator license for a similar unit. The revision to Technical Specification 6.5.1.2 involves replacement of the description of PSRC membership from a list of specific position titles to management responsible for various areas of expertise.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only an administrative control, which was based on the existing industry guidance in ANSI/ANS 3.1-1978, that recommended the operations manager hold a senior reactor operator license. The current guidance in ANSI/ANS 3.1-1987 recommends, as one option, that the operations manager have held a license on a similar unit with the "Operations Middle Manager" holding a senior reactor operator license. The proposed change in this license amendment request is consistent with the current guidance.

The proposed change does not alter the design of any system, structure, or component. It does not change the way any plant systems are operated. It does not reduce the knowledge, qualifications, or skills of any watchstander, and does not affect the way the Operations Division is managed other than to allow the Manager Operations to focus his efforts on maintaining the effective performance of his personnel and to ensuring the plant is operated safely and in accordance with the requirements of the Operating License.

The proposed change does not detract from the Manager Operations ability to perform his primary responsibilities. By having previously held a senior reactor operator license he will have gained the necessary training, skills, and experience to fully understand the operation of plant equipment and the requirements for proper watchstanding.

The proposed change does not weaken the supervisory chain that presently exits in the Operations Division. Control Room operators will continue to be supervised by NRC licensed personnel. The proposed change is intended to improve the ability of the Manager Operations to provide the plant oversight required of his position.

The change to the PSRC membership is administrative in nature only. The requirements for quorum, for representation by management, and for specified areas of expertise remain unchanged.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not affect the design or function of any plant system, structure or component. It does not affect in any way the performance of NRC licensed operators, nor does it change the way any plant equipment is operated. Operation of the plant in conformance with technical specifications and other license requirements will continue to be supervised by personnel who hold an NRC senior reactor operator license. The proposed changes do not introduce any new failure modes.

The proposed change to Section 6.3.1 is intended to remove an administrative requirement which adds a significant burden to the Manager Operations without significantly contributing to his effectiveness in managing plant operation and ensuring that the plant is operated safely and in accordance with the requirements of the Operating License. Deletion of specific title designations of the PSRC membership does not impact the performance or effectiveness of the PSRC.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes involves only an administrative control which is not related to the margin of safety as defined in the technical specifications. The proposed change to Section 6.3.1 does not reduce the level of knowledge or experience required of an individual who fills the Manager Operations position, nor does it affect the conservative manner in which the plant is operated. Control Room operators will continue to be supervised by personnel who hold a senior reactor operator license.

The change to the PSRC membership is administrative in nature only. The requirements for quorum, for representation by management, and for specified areas of expertise remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 1993 Description of amendment request: The proposed amendment revises Technical Specification Sections 6.5.1, Plant Safety Review Committee (PSRC) and 6.8, Procedures and Programs, in order to allow implementation of a Qualified Reviewer Program for the review and approval of new procedures and procedure changes. The proposed approval process would require review of changes by a qualified reviewer and approval by the responsible manager for the functional area associated with the procedure. Some changes would continue to require review and approval by the PSRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change is administrative in nature and provides for (1) procedural reviews through the use of qualified personnel designated by the PSRC Chairman and (2) procedural approval through the use of Managers designated by the Administrative Control Procedures. As part of this program, the Qualified Reviewer will be required to consider, document, and implement (if necessary) cross-discipline reviews prior to approval. The program will be controlled by Administrative Control Procedures that will be reviewed by the PSRC and approved by the Vice President Plant Operations. The PSRC will continue to review new procedures and procedure changes for which an Unreviewed Safety Question Determination (i.e., 10 CFR 50.59 safety evaluation) is required to be performed. The proposed change requires review of any new procedure and procedure change by a qualified individual (other than the preparer) who is knowledgeable in the functional area affected. Therefore, an independent technical review conducted by an individual whose qualification and knowledge encompasses the areas affected by the procedure combined with the added expertise contributed by the cross-disciplinary review will establish an equivalent level of review to that currently provided by the PSRC. The proposed change does not affect any plant hardware, plant design, limiting safety system settings, or plant systems and therefore, does not alter or add any initiating parameters that would cause a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed technical specification change will implement a procedural review and approval process and is strictly administrative in nature. The Qualified Reviewer Program will be controlled by Administrative Control Procedures. These Administrative Control Procedures will be reviewed by the PSRC and approved by the Vice President Plant Operations. The PSRC will continue to review those new procedures and procedure changes for which an Unreviewed Safety Question Determination (i.e., 10 CFR 50.59 safety evaluation) is required to be performed. Therefore, the proposed administrative change does not reduce the safety review function performed by the PSRC. The proposed change does not involve physical changes to the plant, changes to setpoints, or operating parameters. There are no potential initiating events that would result in the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change is administrative and is limited to (1) the transfer of procedure review responsibilities to designated Qualified Reviewers and (2) the transfer of procedure approval responsibilities to designated Managers. The PSRC will continue to review and approve those new procedures or procedure changes for which an Unreviewed Safety Question Determination (i.e., 10 CFR 50.59 safety evaluation) is required to be performed. The change does not alter WCNOC's commitment to maintain a management structure that contributes to the safe operation and maintenance of WCGS.

No position qualifications are being reduced. The level and quality of PSRC review are maintained, because there will be no change in the collective expertise of the PSRC. The independent review of those items important to nuclear safety by the PSRC will continue. Sufficient controls are included in the proposed review methodology to insure that the plant conditions and equipment availability required to support the integrity of the analyses and hence the margin to safety will continue to be maintained. It is therefore concluded that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 27, 1993

Description of amendment request: The proposed amendment revises Technical Specification Table 4.3-1, Note 5, to reflect that integral bias curves, rather than detector plateau curves, are used to calibrate the nuclear instrumentation system (NIS) source range detectors. The power range and intermediate range nuclear instrumentation channels will continue to be calibrated using detector plateau curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Plant equipment is not modified by calibrating the NIS source range instrumentation using the integral bias curve. Using the integral bias curve is a more inclusive calibration than the plateau curve and provides the same information, i.e., the high voltage operating point. The change does not affect accident initiators or assumptions. The consequences due to accidents previously evaluated are not being changed.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

No new accidents are created by the changes being made. No new equipment is being added. No new modes of operation or means of control are being made. The probability of a malfunction of equipment important to safety is unchanged since the calibration of the NIS source range instrumentation using the integral bias curve, rather than the plateau curve, provides the same information. The consequences of malfunctions of equipment important to safety are not changed. No new malfunctions are being created. No new controlling modes or equipment operations are being created.

3. The proposed changes do not involve a significant reduction in the margin of safety

Using the integral bias curve is a more inclusive calibration than the plateau curve and provides the same information, i.e., the high voltage operating point.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Towbridge, 2300 N Street, NW., Washington, DC 20037

NRR Project Director: Suzanne C. Black

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: October 1, 1993

Description of amendment request: The proposed amendment would permit an increase in the allowable leak rate for the main steam isolation valves (MSIVs) and would delete the Technical Specification requirements for the MSIV leakage control system.

Date of publication of individual notice in **Federal Register:** November 5, 1993 (58 FR 59081)

Expiration date of individual notice: December 6, 1993

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Tennessee Valley Authority, Docket No. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendment: August 27, 1993 (TS 335)

Brief description of amendment: Revise the Browns Ferry Technical Specifications to implement the latest revision of 10 CFR Part 20, incorporating guidance from Regulatory Guide 8N10, and making some minor editorial changes.

Date of publication of individual notice in the **Federal Register:** October 29, 1993 (58 FR 58203)

Expiration date of individual notice: November 29, 1993

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Notice of Issuance of Amendment to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 1, 1993, as supplemented on July 22, 1993

Brief description of amendments: The amendments revise Technical Specification 3/4.8.2, "Onsite Power Distribution Systems AC Power Distribution - Operating," in relation to the actions to be taken if any of the 120 volt alternating current vital busses are not operable. The allowed outage time of 8 hours for an inoperable vital bus can be extended to 24 hours when the vital bus is being powered from the inverter backup bus.

Date of issuance: October 29, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 183 and 160

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28052) and renoticed on September 29, 1993 (58 FR 50965)

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 20, 1993

Brief description of amendment: This amendment reduces the main steam isolation valve low turbine inlet pressure setpoint from greater than or equal to 880 pounds per square inch gage (psig) to greater than or equal to 810 psig, and reduces the minimum pressure in the definition of RUN mode from 880 psig to 785 psig.

Date of issuance: November 3, 1993

Effective date: November 3, 1993

Amendment No.: 150

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36425)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1993

No significant hazards consideration comments received: No Coordinator

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: August 18, 1993

Brief description of amendment: The amendment changes the Haddam Neck Technical Specifications (TS) by incorporating a new TS Section 3/4.8.3.1.2, "ONSITE POWER DISTRIBUTION." The new TS will incorporate an additional limiting condition of operation (LCO) into the TS which will require that the 480 VAC motor control center 5 and its automatic bus transfer scheme be operable during Modes 1, 2, 3, and 4. In addition, the LCO currently numbered 3.8.3.1 and the surveillance requirement currently numbered 4.8.3.1 will be renumbered 3.8.3.1.1 and 4.8.3.1.1, respectively, to support the incorporation of the additional LCO.

Date of issuance: November 1, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 169

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48380)

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 2, 1992, as supplemented in letters dated February 23, 1993, June 28, 1993, July 9, 1993, August 16, 1993 (two letters), September 3, 1993, September 8, 1993, and October 8, 1993.

Brief description of amendment: This amendment revises Technical Specifications (TSs) 3/4.9.14, the Bases Section for 3/4.9.14, and TS 5.6.1 and 5.6.3. The spent fuel pool (SFP) storage capacity is increased to 1627 locations and divided into three regions of specified enrichment and burnup. Table 3.9-2 is added to restrict the enrichment and burnup for the third region of the modified SFP. The Bases sections are revised to provide a description of the basis for the changes. The Bases section is also revised to clarify the boron concentration uncertainty for the SFP.

Date of issuance: November 1, 1993

Effective date: To be implemented within 60 days of issuance.

Amendment No: 178

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 4, 1993 (58 FR 7161) as revised September 8, 1993 (58 FR 47303)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 7, 1993

Brief description of amendment: The amendment changed the Appendix A Technical Specifications (TSs) by revising the limiting conditions for operation, action requirements, and surveillance requirements of TS 3/4.5.1 to reflect changes in the operation of the safety injection tanks.

Date of issuance: November 8, 1993

Effective date: November 8, 1993

Amendment No.: 152

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34075)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 5, 1993

Brief description of amendment: The amendment revised the Technical Specifications to change the frequency from once per 31 days to once per 92 days for the Control Element Assembly freedom of movement test.

Date of issuance: November 1, 1993

Effective date: November 1, 1993

Amendment No.: 87

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48383)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 6, 1993

Brief description of amendment: The amendment revised the Technical Specifications by increasing the voltage during load rejection tests on the emergency diesel generators (EDGs).

Date of issuance: November 2, 1993

Effective date: November 2, 1993

Amendment No.: 88

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34078)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: May 20, 1993

Brief description of amendments: These amendments change the surveillance interval specified for performing an air or smoke flow test through the Containment Spray headers from 5 years to 10 years.

Date of issuance: November 8, 1993

Effective date: November 8, 1993

Amendment Nos.: 124 and 62

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32382)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 8, 1993

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, Docket Nos. 50-250, 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendment: April 23, 1993

Brief description of amendment: These amendments implement a Relaxed Axial Offset Control methodology for axial flux difference control and relocate cycle-specific parameter limits from the Technical Specifications to a Core Operating Limits Report.

Date of issuance: November 12, 1993

Effective date: November 12, 1993

Amendment Nos.: 156 and 150

Facility Operating License No. DPR-31: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30195)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: December 15, 1992

Brief description of amendment: The amendment increases the allowed outage time for differential temperature instruments associated with the containment and reactor vessel isolation control system (CRVICS) as described in CPS Technical Specification Table 3.3.2-1, CRVICS INSTRUMENTATION.

Date of issuance: November 5, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 85

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 6999)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: May 21, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) Table 2.2.1-1, "Reactor Protection System Instrumentation Setpoints," to increase the setpoints for the Average Power Range Monitor (APRM) Flow-Biased Simulated Thermal Power - Upscale scram. The amendment also revises TS 3/4.2.2, "Average Power Range Monitor Setpoints;" TS Table 3.3.6-1, "Control Rod Block Instrumentation;" TS Table 3.3.6-2, "Control Rod Block Instrumentation Setpoints;" TS Table 4.3.6-1, "Control Rod Block Instrumentation Surveillance Requirements;" and TS 6.9.1.9, "Core Operating Limits Report," to delete references to APRM rod block instrumentation. These TS changes are required to facilitate operation in the Extended Load Line Limit region. The amendment also makes a minor editorial correction in parameter 3.a of TS Table 3.3.6-2 and revises TS Bases 3/4.2.2, "APRM Setpoints," to reflect the deletion of references to the APRM rod block instrumentation.

Date of issuance: November 9, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 51

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34080)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: March 22, 1993, as supplemented July 14, 1993, and September 14, 1993.

Brief description of amendment: The amendment revises Technical Specification (TS) Section 6.9.1.9, "Core Operating Limits Report," to incorporate the SAFER/GESTR-LOCA methodology for accident analyses. The amendment also revises TS Bases Section 3/4.2 to reflect the addition of the SAFER/GESTR-LOCA methodology and to more clearly describe certain actions taken to avoid operation in excess of thermal limits.

Date of issuance: November 10, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 52

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25858)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1993. The supplemental submittals provided additional information to support the licensee's application and did not change the initial proposed no significant hazards consideration determination.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of application for amendment: June 18, 1993.

Brief description of amendment: The amendment revises the Appendix A Technical Specifications (TS) relating to the condensate storage tank (CST). The amendment modifies the Seabrook Station TS to reduce the frequency of surveillances that are required to verify the integrity of the CST enclosure. Specifically, surveillance requirement TS 4.7.1.3 is changed to require verification of CST enclosure integrity at least every 18 months vice every 12 hours.

Date of issuance: November 10, 1993

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 26

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43928)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: July 27, 1993

Brief description of amendment: The amendment rewords the description of the May 10, 1985, Appendix J exemptions described in Millstone Unit 1 Operating License Section 2.D(2), deleting the reference to low pressure tests of the containment access air locks. The amendment also: (1) Replaces Technical Specification Section 4.7.A.3.d(2) with wording consistent with paragraph III.D.2(b) of 10 CFR part 50, Appendix J, and (2) revises the Technical Specification Bases Section 4.7.A to state that personnel air lock door seal testing is performed in accordance with 10 CFR part 50, Appendix J requirements.

Date of issuance: November 1, 1993

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 67

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications and Facility Operating License.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46239)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: September 1, 1993

Brief description of amendment: The amendment revises the surveillance requirements for local leak rate testing which are included in Technical Specification Section 4.7.A, to remove the 5% L_{to} limit. Removing the limit will allow Millstone Unit 1 to address individual penetration leakage while maintaining the overall leakage rate for Type B and C tests below the Appendix J acceptance criterion of 0.60 L_a. In addition, the amendment: (1) Makes editorial changes and deletes the exclusion of main steam isolation valves from Section 4.7.A.3.e.(1), and (2) revises the applicable Bases section.

Date of issuance: November 10, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 68

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50968)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 9, 1992

Brief description of amendment: The amendment changed Technical Specification 2.10.4, to establish a limit for cold-leg temperature to maintain departure from nucleate boiling ratio margin during power operation above 15 percent of rated power and to make an administrative change. The other changes requested in your October 9, 1992, application were granted in

Amendment No. 154, dated August 10, 1993.

Date of issuance: October 29, 1993

Effective date: October 29, 1993

Amendment No.: 156

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55584)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 25, 1993, as supplemented by letter dated September 1, 1993

Brief description of amendments: These amendments revise the Technical Specifications to make the Effluent Report an annual submittal in accordance with the revision to 10 CFR 50.36a that was published on August 31, 1992.

Date of issuance: November 1, 1993

Effective date: November 1, 1993Amendments Nos.: 180 and 185

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50973)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: May 10, 1993

Brief description of amendments: The amendments revise the Technical Specifications to change the frequency of reporting of radioactive effluents from a semiannual basis to an annual basis pursuant to 10 CFR 50.36a.

Date of issuance: October 29, 1993

Effective date: October 29, 1993

Amendment Nos.: 102 and 95

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36447)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: August 28, 1992

Brief description of amendments: The amendments make several administrative changes to section 6.0 of the Technical Specifications.

Date of issuance: November 4, 1993

Effective date: November 4, 1993

Amendment Nos.: 103 and 96

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45089)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: March 19, 1993, as supplemented on September 2, 1993 (TS 332)

Brief description of amendments: Amendment will change technical specifications to extend the surveillance frequency for emergency diesel generator maintenance inspections from once per 12 months to once per 24 months.

Date of issuance: October 25, 1993

Effective date: October 25, 1993

Amendment Nos.: 200 - Unit 1, 218 - Unit 2, and 173 - Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34095)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendments: September 15, 1993, as supplemented by letter dated October 26, 1993 (TS 343T).

Brief description of amendments: The amendment adds a footnote to Table 3.2.B, "Instrumentation that Initiates or Controls the Core and Containment Cooling Systems", of the Browns Ferry Nuclear Plant, Unit 2, Technical Specifications to facilitate modification of the reactor vessel water level instrumentation system. The purpose of the modification is to eliminate level indication errors caused by dissolved, noncondensible gases in the instrumentation reference legs coming out of solution during plant depressurizations. Such level indication errors were the subject of NRC Bulletin 93-03, "Resolution of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs".

Date of issuance: November 12, 1993

Effective date: November 12, 1993

Amendment No.: 219

Facility Operating License No. DPR-52: Amendment revises the technical specifications.

Date of initial notice in **Federal Register:** September 30, 1993 (58 FR 51120). The October 26, 1993 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: September 8, 1993 (TS 93-12)

Brief description of amendment: The amendment adds Operating License Condition 2.C.(17) to provide limited extension of the surveillance test intervals for certain specified instrumentation on Unit 2 to coincide with the completion of the Cycle 6 refueling outage. The surveillance intervals that are affected will not exceed 25 months.

Date of issuance: November 9, 1993

Effective date: November 9, 1993

Amendment No.: 162

Facility Operating License No. DPR-79: Amendment revises the technical specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50976)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment requests: April 30, 1993, as supplemented by letter dated July 30, 1993.

Brief description of amendment: The amendments change the Technical Specifications by removing references to the source range boron dilution flux doubling instrumention and its associated action statement, surveillance, and implementation footnotes.

Date of issuance: November 3, 1993

Effective date: November 3, 1993, to be implemented within 15 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 20; Unit 2 - Amendment No. 6

Facility Operating License Nos. NPF-87 and NPF-89: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43933). The July 30, 1993, submittal provided additional clarifying information and did not change the initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evalution dated November 3, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 4, 1993 as clarified on October 19, 1993

Brief description of amendment: The amendment revises the Technical Specification Tables 2.2-1 and 4.3-1 and associated Bases 3/4.2.2 and 3/4.2.3 by changing the axial flux difference (AFD) penalty function f_1 (delta - I) defined in Note 1 of Table 2.2-1 for the Overtemperature Delta-T reactor trip.

Date of issuance: November 8, 1993

Effective date: November 8, 1993

Amendment No.: 84

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46240)The clarifying information did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 22, 1993

Brief description of amendment: The amendment changes the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) Section 1.0 to define frequency notations for surveillance requirements. Sections 3.2 and 3.3 have been revised to incorporate formatting changes and to correct minor typographical errors as part of converting the TS document to the WordPerfect software. In Section 3.10, "every shift" has been changed to "at least once per 8 hours" as applicable. Section 4.2 has been changed to revise an incorrect reference, and Section 6 has been revised to remove audit frequencies, define "vital areas," and extend the reporting period for the Radioactive Effluent Release Report from semiannual to annual.

Date of issuance: November 5, 1993

Effective date: November 5, 1993

Amendment No.: 103

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41520)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Rockville, Maryland, this 17th day of November 1993.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 93-28750 Filed 11-23-93; 8:45 am]

BILLING CODE 7590-01-F

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Notice of Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published on October 21, 1993 (58 FR 54382). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 1993 ACRS and ACNW full Committee meetings can be obtained by contacting the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., (EST).

ACRS Subcommittee Meetings

ABB–CE Standard Plant Designs, December 8, 1993, Bethesda, MD. The Subcommittee will begin its review of the Standard Safety Analysis Report for the ABB–CE System 80+ design.

Planning and Procedures, December 8, 1993, Bethesda, MD (4 p.m.–6 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors, December 15, 1993, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design and related matters.

Materials and Metallurgy, December 16, 1993, Bethesda, MD. The Subcommittee will discuss with representatives of the NRC staff and NUMARC, the steam generator operating experiences and relating rulemaking activities.

Thermal Hydraulic Phenomena, January 4 and 5, 1994, Bethesda, MD. The Subcommittee will continue its review of the NRC RELAP5/MOD 3 code. The focus of the discussion will be on the use of the code in support of the AP600 passive plant design certification review.

Planning and Procedures, January 5, 1994, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS

activities and related matters. Also, it will discuss qualifications of candidates nominated for appointment to the ACRS. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors, January 25–26, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on ABWR issues for consideration by the full Committee.

ACRS Full Committee Meetings

404th ACRS Meeting, December 9–11, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Proposed Supplement to Generic Letter 86–10 on Fire Endurance Testing*—Review and comment on the proposed supplement to Generic Letter 86–10 on Fire Endurance Testing, and the technical differences between NUMARC and the NRC Staff on the NUMARC test program related to the thermo-lag fire barrier. Representatives of the NRC staff and industry will participate.

B. *EPRI Passive LWR Requirements Document*—Discuss proposed ACRS report on the EPRI Passive LWR Requirements document. Representatives of the NRC staff will participate, as appropriate.

C. *ABWR Certified Design Material*—Review and comment on the Certified Design Material for the ABWR in the areas of piping design, human factors, and radiation protection. Representatives of the NRC staff and General Electric Nuclear Energy (GE) will participate.

D. *ABWR and SBWR Water-Level Instrumentation*—Review and comment on the NRC staff's recommendation that diversity of reactor pressure vessel water-level measurement be required for the ABWR and SBWR. Representatives of the NRC staff and industry will participate.

E. *Insights Gained from the NRC Staff Reassessment of the Fire Protection Program*—Hear a briefing by and hold discussions with representatives of the NRC staff on the lessons learned from the staff's recent reassessment of the fire protection program. Representatives of the industry will participate, as appropriate.

*F. *Report on the Extended Station Blackout Event at Narora Atomic Power Station (India)*—Hear a briefing by and hold discussions with representatives of the NRC staff on the lessons learned from the severe turbine building fire that resulted in an extended station blackout on March 31, 1993, at the Narora Atomic Power Station (India). A portion of this session may be closed pursuant to 5 U.S.C. 552 b(c)(4) to discuss information provided in confidence by a foreign source.

G. *Status of Individual Plant Examination (IPE) Program*—Hear a briefing by and hold discussions with representatives of the NRC staff on the status of the IPE program, the methodologies used by the licensees in performing IPEs and the insights gained from these studies, and the use of the IPE/IPEEE programs to resolve generic issues.

H. *First-of-a-Kind Engineering*—Hear a briefing by and hold discussions with representatives of the DOE and EPRI on a program at Advanced Reactors Corporation in the area of first-of-a-kind engineering.

I. *Resolution of ACRS Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

*J. *Report of the Planning and Procedures Subcommittee*—Hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business. A portion of this session may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

K. *ACRS Subcommittee Activities*—Hear reports and hold discussions regarding the status of ACRS subcommittee activities, including reports from the Subcommittees on Advanced Boiling Water Reactors and ABB–CE Standard Plant Designs.

L. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

*M. *Election of Officers*—Elect new officers (Chairman, Vice-Chairman, and Member-at-Large to the Planning and Procedures Subcommittee) for calendar year 1994. A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(6) to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

N. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of the Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

405th ACRS Meeting, January 6–8, 1994, 7920 Norfolk Avenue, Bethesda, MD, Room P–110. Agenda to be announced.

406th ACRS Meeting, February 10–12, 1994, 7920 Norfolk Avenue, Bethesda, MD, Room P–110. Agenda to be announced.

ACNW Full Committee Meetings

59th ACNW Meeting, December 13, 1993, Las Vegas, NV. During this meeting the Committee plans to consider the following:

A. *Activities at the Proposed Yucca Mountain High-Level Waste Repository*—Hear a briefing by and hold discussions with representatives of DOE management on current activities at the proposed HLW repository at Yucca Mountain. Representatives of the NRC staff will participate, as appropriate.

B. *Yucca Mountain Project—Technical Issues*—Hear a briefing by and hold discussions with DOE & M&O representatives on selected technical areas, i.e., surface-based testing, ESF status and design, and the status of resolution of selected issues.

C. *Yucca Mountain Project—Interested Party Comments*—Hear comments from and hold discussions with state, county, and local government officials. Representatives from Indian tribes and others interested in the proposed HLW repository may also present comments.

D. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

*E. *Election of Officers*—Elect Chairman and Vice-Chairman for calendar year 1994. A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(6) to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

F. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

60th ACNW Meeting, January 19–20, 1994, Bethesda, MD. Agenda to be announced.

61st ACNW Meeting, February 23–24, 1994, Bethesda, MD. Agenda to be announced.

ACNW Working Group Meeting

Unsaturated Zone Working Group, December 14, 1993, Las Vegas, NV. The Working Group will examine the relationship between precipitation, recharge, and flux through the unsaturated zone at the proposed Yucca Mountain site, and the adequacy of ongoing field studies to ascertain these relationships. Emphasis will be placed on the modeling of flow in the unsaturated zone, alternative conceptual models of fracture versus matrix flow, and conditions under which fracture flow can be shown to predominate. The Working Group will also focus on the recharge term in hydrogeologic models, alternative conceptual models for how and where regional recharge occurs, and the effect of assumptions about recharge on model results.

Dated: November 18, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–28875 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–529]

Arizona Public Service Co., Palo Verde Nuclear Generating Station, Unit 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

In notice document 93–28122 beginning on page 60223, in the issue of Monday, November 15, 1993, make the following correction:

In the third full paragraph, in the first column, on page 60225, in line 1, the statement "By November 30, 1993" should be corrected to read "By December 15, 1993."

Dated at Rockville, Maryland, this 17th day of November 1993.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Project Manager, Project Directorate, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93-28879 Filed 11-23-93; 8:45 am]

BILLING CODE 7590-01-M

[License SNM-561; Docket 70-622]

Finding of No Significant Impact and Opportunity For a Hearing Renewal of Special Nuclear Materials; Department of Army U.S. Army Armament Research, Development and Engineering Center, Picatinney Arsenal, Dover, NJ

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Materials License SNM-561 for the continued operation of the Department of Army, U.S. Army Armament Research, Development and Engineering Center (ARDEC), Picatinney Arsenal, in Dover, New Jersey for a period of 5 years.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of SNM-561 for a period of 5 years for the receipt, possession, storage, use, and transfer of sealed sources of plutonium-238, plutonium-239, and neptunium-237, and for the possession only of material test reactor-type (MTR) uranium fuel elements. The sealed sources may be used as calibration or check sources in research programs or as a tool in the study of other materials.

The MTR fuel elements are aluminum-clad, uranium aluminum alloy which is enriched to 93.27 percent in the ^{235}U isotope. The elements are for use with the Californium Flux Multiplication System (CFX) which is a subcritical assembly. The CFX serves as a multiplying medium to enhance the emission of a neutron flux for the purpose of conducting neutron radiography of activation analysis. The CFX is not currently authorized for use, however, should ARDEC decide to proceed with the process for which the MTR fuel elements were obtained, a request to amend the license authorizing usage of the CFX will be submitted for NRC approval.

The Need for the Proposed Action

Activities under this license serve a variety of research and development needs for the military. Research and development activities associated with the license are primarily in the areas of weapons, weapon systems, and munitions.

Environmental Impacts of the Proposed Action

The radioactive material authorized by this license is in a non-dispersible form and, therefore, no liquid or gaseous effluents are produced. No solid waste is generated by the use of the sealed sources or the storage of the fuel elements. There is no radiological impact to offsite or onsite populations due to either the storage or use of licensed material.

Conclusion

Based on the information presented above, the environmental impacts associated with the proposed license renewal will be insignificant. No gaseous or liquid effluents will be released to the environment. The radiological impact from the storage and use of licensed materials is insignificant.

Alternatives to the Proposed Action

The only feasible alternative to the proposed action of license renewal is the denial of the license renewal. Denying renewal of the license would cause ARDEC to cease operations authorized by License SNM-561, while activities authorized by other NRC licenses issued to the Army at this facility would continue. Not renewing the license would only be considered if there were issues of public health and safety that could not be resolved to the satisfaction of the NRC staff.

Agencies and Persons Consulted

Staff utilized the application dated August 28, 1993 in completing the environmental review.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License SNM-561. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Department of the Army, U.S. Army Armament Research, Development, and Engineering Center, Picatinney Arsenal, Dover, New Jersey, 07806-5000); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 16th day of November 1993.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, FCSS.

[FR Doc. 93-28878 Filed 11-23-93; 8:45 am]

BILLING CODE 7590-01-P

[Docket No. 50–320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station Unit 2); Exemption

I

GPU Nuclear Corporation (the licensee), is the holder of Facility Operating (Possession Only) License No. DPR–73 which authorizes possession and maintenance of the Three Mile Island Nuclear Station, Unit 2 (TMI–2 or the plant). The license provides, among other things, that the plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The plant is a permanently shut down light water reactor, currently in the process of being placed in Post-Defueling Monitored Storage (PDMS), and is located at the licensee site in Dauphin County, Pennsylvania.

II

TMI–2 permanently ceased power operations in March 1979, fuel has been removed from the reactor and from the site, and detailed plans to place the facility in Post-Defueling Monitored Storage have been developed. By Amendment No. 45, dated September 14, 1993, License No. DPR–73 was modified to a possession only status. This license allows the licensee to possess, but not operate the facility. In order to reflect the permanently shutdown and defueled status of the plant, the NRC, on its own initiative, is granting an exemption from the requirements of 10 CFR 50.120. This rule states the following:

> * * * each nuclear power plant licensee, by November 22, 1993, shall establish, implement, and maintain a training program derived from a systems approach to training as defined in 10 CFR 55.4.

This exemption will relieve the licensee from training program requirements of 10 CFR 50.120. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

III

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances.

Section 50.12(a)(2)(ii) of 10 CFR part 50 provides that special circumstances exist when application of the regulations in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The purpose of 10 CFR 50.120 is to ensure that civilian nuclear power plant operating personnel are trained and qualified to safely operate and maintain the facility commensurate with the safety status of the facility.

The licensee in its letter dated July 29, 1993, addressed the special circumstances related to the NRC requiring the TMI–2 training programs to comply with 10 CFR 50.120. The reactor has been defueled and the fuel removed from the site. The reactor vessel internals have been removed and shipped offsite. The reactor cannot be returned to operation.

The licensee has stated that the training requirements necessary to assure adequate protection of the public health and safety in a permanently shutdown and defueled facility are significantly less than the training requirements necessary to assure the public health and safety at an operating facility. The current TMI–2 training programs for the personnel categories required by 10 CFR 50.120 are as follows:

Non-Licensed Operators

The auxiliary operators currently assigned to TMI–2 were previously qualified to work in TMI–2. On entering PDMS, these individuals will become TMI–1 auxiliary operators and will be expected to complete the accredited non-licensed operator training and qualification program. In preparation for PDMS, TMI–1 auxiliary operators have begun classroom training and plant walkthroughs on selected TMI–2 systems. Prior to entry into PDMS, the TMI–1 auxiliary operators will have completed qualification on those systems.

Shift Supervisor

There are no Shift Supervisors at TMI–2. This category of personnel is not applicable to the current or future conditions at TMI–2.

Shift Technical Advisor (STA)

There are no Shift Technical Advisors at TMI–2. This category of personnel is not applicable to the current or future conditions at TMI–2.

Instrumentation and Control, Electrical, and Mechanical Maintenance

The licensee stated that there are two instrumentation and controls technicians, two electricians, and two mechanics assigned to TMI–2. These individuals were previously qualified to work in TMI–2 and possess years of TMI–2 specific experience. Additionally, these individuals have been qualified to the Systems Approach to Training (SAT) based training and qualification standards of the TMI–1 accredited training programs. Additional personnel assigned to the TMI–1 Maintenance Department, who were previously assigned to TMI–2, who possess the experience to work on TMI–2 equipment have also been qualified to TMI–1 SAT-based accreditation standards. As systems are turned over to TMI–1, additional training needs can be addressed, and TMI–1 maintenance department personnel trained, as appropriate.

Radiation Protection Technician

All GPU Nuclear radiation protection technicians at TMI have completed the SAT-based and accredited TMI–1 training and qualification program. All technicians attend continuing training which addresses changes to the plants (TMI–1 and TMI–2) and plant and industry experience. Basic technical skills required for TMI–2 support are addressed.

Chemistry Technician

All chemistry technicians supporting TMI–2 are assigned to TMI–1 and have completed the SAT-based and accredited TMI–1 training and qualification programs. All technicians attend continuing training which addresses changes to the plants (TMI–1 and TMI–2) and plant and industry experience. Basic technical skills required for TMI–2 support are addressed.

Engineering Support

There is no TMI–2 specific Engineering Support Personnel (ESP) Program. On entering PDMS, TMI–2 engineers will be assigned to TMI–1 Plant or to Technical Function Division. In addition, personnel in other departments will be transferred from TMI–2 to Site Services. These personnel will be enrolled in the TMI–1 ESP program, as appropriate.

In addition to the above training, all individuals having unescorted access to the Three Mile Island plant site receive general employee training annually.

Thus, for all categories of training described above, the licensee indicates that the existing training requirements and commitments provide the protection necessary to ensure public health and safety given the current shutdown and defueled status of the facility. With TMI–2 defueled and decontaminated to a safe and stable condition, the principal tasks and activities performed on the site are those

necessary to monitor and maintain remaining systems. The tasks and activities associated with maintaining the remaining systems are relatively simple compared to the tasks and activities required to maintain an operating nuclear power plant. Therefore, requiring TMI–2 to comply with the literal training requirements specified in 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule.

The NRC staff reviewed and agrees with the licensee analysis described above. In addition, the NRC has previously analyzed the limiting design basis accident for TMI–2, in this permanently shut down condition. The results of this analysis indicated that if a release of radioactive materials were to occur at TMI–2, the resulting offsite dose to the maximally exposed individual would be a small fraction of the 10 CFR part 100 offsite dose limits. The staff has also determined that the tasks that remain to be performed by the TMI–2 plant staff are fewer in number and significantly less complicated than the tasks performed by the staff of an operating nuclear plant. Thus, the NRC staff concludes the licensee justification for exemption is reasonable based on: (1) The significantly reduced risk to the public health and safety due to TMI–2 being permanently shut down, and (2) the reduced number and complexity of tasks to be performed by the TMI–2 plant staff.

IV

Based on the analyses presented in Section III above, the staff concludes that sufficient bases exist for approval of this exemption. In addition, the staff finds that the special circumstance present satisfies the requirement of 10 CFR 50.12(a)(2)(ii) in that requiring compliance with 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule.

V

Based on the above evaluation, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission, on its own motion, hereby grants TMI–2 an exemption to 10 CFR 50.120. This exemption does not relieve the licensee of any other training requirements or commitments which they have made to the NRC, including those set forth herein.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (58 FR 60704, dated November 17, 1993).

This exemption is effective on November 22, 1993, the implementation date of the rule.

Dated at Rockville, Maryland this 17th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28880 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co., et al. (Trojan Nuclear Plant); Exemption

I

The Portland General Electric Company, et al., (PGE or the licensee), is the holder of Facility Operating License No. NPF–1, which authorizes possession and maintenance of the Trojan Nuclear Plant (Trojan or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect. The facility is a permanently shutdown pressurized water reactor, currently in the process of being decommissioned, and is located at the PGE site in Columbia County, Oregon, on the west bank of the Columbia River.

II

The licensee, by letter dated February 2, 1993, informed the NRC that Trojan had permanently ceased power operations, all fuel had been removed from the reactor to the fuel pool, and that PGE had begun to develop detailed plans to decommission the facility. The NRC, in License Amendment 190, dated May 5, 1993, modified License No. NPF–1 to a Possession Only License (POL). The license is conditioned so that PGE is not authorized to operate the reactor or place fuel in the Trojan reactor vessel, thus formalizing the commitment of the licensee to permanently cease power operations.

By letter dated July 8, 1993, the licensee requested an exemption from the requirements of 10 CFR 50.54(w) which requires licensees to obtain and maintain a minimum of $1.06 billion of decontamination insurance coverage for radiological accidents at the reactor site. The level of coverage required by the regulation was based on an evaluation of potential accidents that could occur at an operating facility. The July 8, 1993 letter requested a full exemption to 10 CFR 50.54(w) but commits the licensee to maintain a minimum coverage of $5 million to stabilize and decontaminate the reactor and the reactor station site.

III

The PGE bases for the exemption request are that the reactor has been defueled, the fuel placed in the spent fuel pool, and that the reactor cannot be returned to operation. In addition, PGE stated that the types of accidents defined in the regulation, 10 CFR 50.54(w)(2)(i), can no longer occur at the plant. The licensee also stated that the potential risk to the public was therefore significantly reduced and that the range of credible accidents and accident consequences for Trojan was greatly diminished. The licensee analysis shows that the worst case design basis accident for this plant, in its permanently shutdown defueled state, is a fire in the radioactive waste annex building. The licensee calculated that a postulated fire in the Trojan radioactive waste annex would result in estimated cleanup costs of $4.9 million. To provide a conservative estimate, the licensee estimated the cost to recover from the fire and added a 25 percent cushion to arrive at the value of $4.9 million. The licensee also considered a second design basis accident scenario, a fuel handling accident. The licensee estimated site decontamination cost for the fuel handing accident at $0.5 million. This estimate also includes a 25 percent cushion. In both accident scenarios, the licensee estimated site boundary radiation doses to the public would be less than the U.S. Environmental Protection Agency (EPA) Protective Action Guidelines (PAG).

The NRC staff evaluated the hypothetical fire in the radwaste storage building located onsite. The staff concluded that, if such a highly unlikely event were to occur, the immediate impact would be the burning of dry activated waste. Because of the extremely low activity commonly associated with dry activated waste the staff concludes that the doses to the public resulting from a fire will not approach the EPA PAGs. Unsolidified resins could contribute to the offsite dose and site contamination; however, the staff concludes that a release from stored resins at the Trojan site would require a fire of significant magnitude and intensity to melt the resins. The staff concludes that a fire of such magnitude could not occur in or in the vicinity of the radwaste storage building and that such event is not credible. This conclusion is based on the location of the radwaste storage building in relation

to adjacent buildings, its construction, and the lack of a significant quantity of combustible material inside or in the general area of the building.

The NRC staff also evaluated the consequences of a fuel handling accident. In a hypothetical fuel handling accident, contamination would be restricted to the immediate vicinity of the fuel building since there is no credible energy source available to widely disperse the irradiated fuel onsite during the fuel handling accident. The staff has data on two comparable events. The first event, the dropping of a fuel bundle that resulted in some ruptured fuel rods, incurred costs in excess of $2 million; however, we determined that most of the costs consisted of the capital cost of the fuel assembly replacement and three days of lost power generation due to the accident. Neither of these costs is pertinent to Trojan in its permanently shut down status. The remaining costs of about $45,000 were for recovery from the accident and are applicable to evaluate the postulated decontamination costs associated with a fuel handling accident at Trojan. The second comparable accident, the dropping and rupturing of fuel rods during bundle reconstitution, occurred at a plant for which its licensee prepared an internal investigation report. The report contained detailed cost data and showed a recovery cost of $50,000. Therefore, with respect to a fuel handing accident at the Trojan plant, the historical data supports the licensee assertion that $5 million represents a conservative upper bound for recovery costs from a design basis fuel handling accident.

The NRC staff also independently calculated the offsite doses resulting from a fuel handling accident at Trojan. The staff analysis shows that the doses at the exclusion area boundary for the whole body, the thyroid, and the skin would be a small fraction of the EPA PAGs.

The NRC staff also requested that the licensee examine a hypothetical accident sequence involving the complete or partial loss of water from the Trojan spent fuel pool as a result of a major seismic event near the plant. This beyond design basis postulated accident sequence, described in NUREG–1353, could result in a zirconium fuel cladding fire in some of the recently irradiated spent reactor fuel stored in the pool that could then propagate through the spent fuel pool and result in a significant radioactive release, and associated site contamination. The licensee responded to the staff request for additional information and the staff conducted a review of the licensee submittal. The staff determined that the Trojan spent fuel pool will maintain, with an adequate margin, its structural integrity even for an earthquake with a resulting ground acceleration value of 0.5g. The 0.5g value was found to be appropriate for the geographic location of Trojan and could be used to evaluate plant vulnerabilities significantly beyond the design basis. Therefore, the staff concluded that there is an extremely low likelihood of a complete or partial loss of water from the Trojan spent fuel pool.

Furthermore, the staff has also determined that in view of the low likelihood of the postulated event and the time elapsed since shut down of the facility (one year), and the configuration of the fuel in the spent fuel pool, there would be sufficient time after a postulated loss of water and before the initiation of a cladding fire for the licensee to implement actions to cool the spent fuel and avert a cladding fire. The licensee has implemented procedures that provide this additional level of protection using a variety of cooling water sources. Thus, the staff concludes that the likelihood of a beyond design basis cladding fire in the spent fuel pool resulting in significant onsite contamination is extremely remote and insurance coverage to recover from this accident scenario is unnecessary.

Based on a thorough evaluation of potential accidents at the Trojan site, the staff concludes that a significant reduction in onsite liability coverage to stabilize and decontaminate the site is warranted.

The Commission will not consider granting an exemption unless special circumstances are present. In its letter of July 8, 1993, PGE addressed these special circumstances as follows:

10 CFR 50.12(a)(2)(ii)—"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule * * *."

Licensee response: PGE concludes that maintaining the $1.06 billion level of decontamination insurance stipulated in 10 CFR 50.54(w) is not required to achieve the underlying purpose of the rule. Since no accidents as defined in 10 CFR 50.54(w)(2)(i), can occur with the plant in the permanently defueled condition, it is no longer necessary to maintain coverage to ameliorate the consequences of an accident.

10 CFR 50.12(a)(2)(iii)—"Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, * * *"

Licensee response: PGE currently maintains $1.06 billion of decontamination insurance coverage at an annual premium of $2,017,585. Although valid for an operating power reactor, the cost of maintaining insurance coverage at the $1.06 billion required by the regulation is not justifiable for a permanently defueled power plan such as Trojan. The proposed exemption would allow PGE to establish insurance coverage commensurate with the need for onsite decontamination rather than the level of coverage needed for decontamination efforts associated with operating power reactor accidents. Operating power reactor accidents as stated in the regulation constitute the underlying basis for the regulation. PGE has determined that the level of coverage commensurate with onsite decontamination would be $5 million resulting in an annual premium of $250,000, a savings of $1,767,585 annually based on the current annual premium of $1.06 billion of coverage.

IV

The staff, based on its independent evaluation, finds the PGE analysis acceptable and concludes that there are special circumstances present that satisfy the requirements of 10 CFR 50.12(a)(2) (ii) and (iii).

V

Based on sections III and IV above, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security.

The staff also concludes that issuance of this exemption will have no significant effect on the safety of the public or the plant. Further, the licensee has shown special circumstances as described in the safety evaluation supporting this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (58 FR 60705, dated November 17, 1993).

Accordingly, the Commission hereby grants an exemption to 10 CFR 50.54(w) to PGE for the Trojan Nuclear Plant. However, the licensee shall either maintain a minimum limit of $5 million of property damage insurance or be able to demonstrate self-insurance of this amount. The PGE letter of July 8, 1993, contained a commitment to maintain this amount of protection.

This exemption is effective immediately.

Dated at Rockville, Maryland this 17th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93-28881 Filed 11-23-93; 8:45 am]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Public Hearing

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Board of Directors of the Overseas Private Investment Corporation (OPIC) on December 15, 1993. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATES: The hearing will be held on December 15, 1993, and will begin promptly at 2 p.m. Prospective participants must submit to OPIC before close of business December 10, 1993, notice of their intent to participate.

ADDRESSES: The location of the hearing will be: Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC.

Notices and prepared statements should be sent to James R. Offutt, Department of Legal Affairs, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527.

PROCEDURE: (a) Attendance; Participation. The hearing will be open to the public. However, a person wishing to present views at the hearing must provide OPIC with advance notice on or before December 10, 1993. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) Prepared Statements. Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on December 13, 1993. Prepared statements should be typewritten, double spaced and should not exceed twenty-five (25) pages.

(c) Duration of Presentations. Oral presentations should not exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) Agenda. Upon receipt of the required notices, OPIC will draw up an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) Publication of Proceedings. A verbatim transcript of the hearing will be compiled and published. The transcript will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for projects which confer positive developmental benefits upon the project country while avoiding negative effects on the U.S. economy and the environment of the project country. OPIC's Board of Directors is required by section 213A(b) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country)."

Based on consultations with Congress, OPIC complies with annual determations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC has agreed to provide a worker rights report to the Congress for any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Pub. L. 99-204) with reference to the Trade Act of 1974, as amended, and be supported by factual information. A list of non-GSP, OPIC-eligible countries may be obtained by calling the OPIC contact identified below

FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT: James R. Offutt, Department of Legal Affairs, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527 (202) 336-8414.

Dated: November 18, 1993.

Anne Smart,

Corporate Secretary.

[FR Doc. 93-28840 Filed 11-23-93; 8:45 am]

BILLING CODE 3210-01-M

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of amended routine use and editorial changes to a system of records.

SUMMARY: The purposes of this document are to publish notice of (1) an amendment to a routine use in the Postal Service's Privacy Act system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto) and (2) minor amendments to the description of that system. The amended routine use narrows the existing routine use to specify the exact data elements that may be disclosed about a current or former employee to an inquiring prospective employer. As amended, the routine use corresponds to the paralleling regulation which is published today as a final rule. The minor amendments correct organizational names changed during the recent Postal Service restructuring.

DATE: Comments on PART 1 must be received on or before December 27, 1993. PART 2 is effective November 24, 1993.

ADDRESS: Comments on the proposed amended routine use (PART 1) may be mailed to: UNITED STATES POSTAL SERVICE, RECORDS OFFICE, 475 L'ENFANT PLAZA, RM 8831, WASHINGTON DC 20260-5240.

Comments also may be delivered to Room 8831 at the above address between 8:15 a.m. and 4:45 p.m.,

Monday through Friday. Comments received also may be inspected during the above hours in Room 8831.

FOR FURTHER INFORMATION CONTACT:

Betty Sheriff, Records Office (202) 268–2924.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (e)(11) of the Privacy Act, the Postal Service is publishing at PART 1 notice of a revised routine use in its system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto). A statement concerning editorial corrections related to Postal Service restructuring is given at PART 2.

PART 1. Amended Routine Use

The Postal Service proposes to amend routine use No. 1 in its Privacy Act system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto). The proposal does not reflect a change in disclosure policy, but rather more specifically describes the information that may be given to an inquiring prospective employer of a current or former postal employee.

On March 31, 1993, the Postal Service published in the **Federal Register** (58 FR 16806) proposed changes to its regulations at 39 CFR 266.4 to specify the exact data elements that may be given to prospective employers without the employee's authorization to release. The final rule is published today. As amended, the regulation will allow disclosure of the grade, duty status, length of service, job title, salary, date, and "reason for separation." The routine use authority and supporting postal regulations are being amended to correspond to that regulation which limits disclosure without consent to public information and specific "reasons for separation" that do not have negative or personal connotations. Consequently, this notice amends existing routine use No. 1 of Postal Service system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto) as follows:

"1. To disclose to prospective employers the following information about a specifically identified current or former postal employee: (a) Grade, (b) duty status, (c) length of service, (d) job title, (e) salary, and (f) date and reason for separation, limited to one of the following terms: retired, resigned, or separated."

PART 2. Editorial Changes

This part makes editorial changes to the "System Location" and "System Manager(s) and Address" sections of system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto). The changes merely reflect the renaming of titles and offices under the recently restructured Postal Service. They do not in any manner alter the character, scope, location, or populations of the system as it exists. These sections are changed as follows:

SYSTEM LOCATION:

Personnel Offices of all USPS facilities; National Personnel Records Center, St. Louis, MO; Information Systems, Employee Relations, Headquarters; Information Systems Service Centers; National Test Administration Center, Merrifield, VA; and selected contractor sites.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Employee Relations, United States Postal Service, 475 L'Enfant Plaza SW., Washington DC 20260–4200.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–28831 Filed 11–23–93; 8:45 am]

BILLING CODE 7710–12–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 copies available from: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, Washington, DC 20549.

Extensions

Form 11–K—File No. 270–101
Form T–1—File No. 270–121
Form T–2—File No. 270–122
Form T–6—File No. 270–344
Form 13F—File No. 270–22

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted to the Office of Management and Budget request for approval of extensions on the following currently approved rules and forms:

Form 11–K is an annual report filed by employee stock purchase savings and similar plans. Approximately 774 respondents file Form 11–K annually at an estimated 30 burden hours per response with a total annual burden of 23,220 hours.

Forms T–1, T–2, and T–6 are statements of eligibility under the Trust Indenture Act of 1939 filed by individuals or entities designated to act as trustees. Approximately 500 respondents file Form T–1 annually at an estimated 15 burden hours per response with a total annual burden of 7,500 hours; 36 respondents file Form T–2 annually at an estimated 9 burden hours per response with a total annual burden of 324 hours; and 15 respondents file Form T–6 annually at an estimated 17 burden hours per response with a total annual burden of 255 hours.

Form 13F is used by certain large investment managers to report quarterly with respect to certain securities over which they exercise investment discretion. Approximately 1,100 respondents file Form 13F quarterly at an estimated 24.6 burden hours per response with a total annual burden of 108,240 hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are 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, (Project Number 3235–0082, 3235–0110, 3235–0111, 3235–0391, and 3235–0006), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 15, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28855 Filed 11–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-33212; File Nos. SR-Amex-93-39, SR-CBOE-93-52, SR-NYSE-93-42, SR-PSE-93-30, and SR-Phlx-93-46]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc., Relating to an Extension of Position Limit Exemption Pilot Programs

November 17, 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 October 28, 1993, the New York Stock Exchange, Inc. ("NYSE"); on November 5, 1993, the Chicago Board Options Exchange, Inc. ("CBOE"); on November 10, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx"); on November 16, 1993, the Pacific Stock Exchange, Inc. ("PSE"); and, on November 17, 1993, the American Stock Exchange, Inc. ("Amex") (each individually referred to as an "Exchange" and two or more collectively referred to as "Exchanges"), filed with the Securities and Exchange Commission ("Commission") proposed rule changes as described in Items I and II below, which items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes filed by the Amex and Phlx extend for one year (i.e., from November 17, 1993, to November 17, 1994) the Exchanges' pilot programs for exemptions from equity option position limits for certain hedged positions.[1] The proposed rule changes filed by the CBOE, NYSE, and PSE extend for one year (i.e., from November 17, 1993, to November 17, 1994) the Exchanges' pilot programs for position limit exemptions for certain hedged (1) equity option positions; and (2) stock index option positions. The text of the proposed rule changes are available at the Office of the Secretary of the respective Exchanges and at the Commission.

[1] Position limits impose a ceiling on the aggregate number of options contracts on the same side of the market that can be held or written by an investor or group of investors acting in concert.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchanges included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchanges have prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Commission has previously approved pilot programs proposed by the Amex and the Phlx providing exemptions from position limits for certain fully hedged equity option positions.[2] Additionally, the Commission has also previously approved pilot programs proposed by the CBOE, the NYSE, and the PSE providing exemptions from position limits for certain fully hedged (1) equity option positions; and/or (2) stock index option positions.[3] (The pilot programs being amended herein are collectively referred to as "Pilot Programs.") Each of the Pilot Programs allow the underlying hedged positions to include securities that are readily convertible into common stock.[4] Under all of the Pilot Programs, 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 Pilot Program.[5]

Each of the Pilot Programs, as subsequently amended, are scheduled to expire on November 17, 1993.[6] Accordingly, the Exchanges propose to extend their respective Pilot Programs for one year, until November 17, 1994.

The surveillance departments of the respective Exchanges have been monitoring the use of the Pilot Programs to detect any abuses or violations of the programs or any attempts at manipulation. Each of the Exchanges represent that they have not experienced any significant problems with the Pilot Programs since their inception:

During the duration of the Pilot Programs, the Exchanges will review each exemption application to determine a position's eligibility for the exemption and to track the positions and dollar values of the portfolios. The Exchanges will also monitor on a daily basis (1) the use of the exemptions to determine if the positions are being maintained in accordance with all conditions and requirements, and (2) the effects of the exemptions on the market.

The Exchanges believe that the proposed rule changes are consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[2] See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201.

[3] See Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201 (approving CBOE's equity option hedge exemption pilot programs); 25739 (May 24, 1988), 53 FR 20204 (approving CBOE's stock index option hedge exemption pilot program); 27786 (March 8, 1990), 55 FR 9523 (approving NYSE's equity option and stock index option hedge exemption pilot programs); 25811 (June 20, 1988), 53 FR 23821 (approving PSE's equity option hedge exemption pilot program); and 32900 (September 14, 1993), 58 FR 49077 (approving PSE's stock index option hedge exemption pilot program).

[4] The Commission expects the Exchanges to determine on a case-by-case basis whether an instrument that this being used as the basis for an underlying hedged position is readily and immediately convertible into the security underlying the corresponding option position. In this regard, the Commission has found 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 option position limit hedge exemption until the date it becomes convertible. Additionally, if the convertible security used to hedge an options position is 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. See, e.g., Securities Exchange Act Release No. 32904 (September 14, 1993), 58 FR 49339 ("Exchange Act Release No. 32904).

[5] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than the number of options contracts specified in the position limit rule within five consecutive business days. See, e.g., NYSE Rule 705.

[6] See Securities Exchange Act Release Nos. 32902 (September 14, 1993), 58 FR 49066 (approving extension of Amex's equity option hedge exemption pilot program); 32903 (September 14, 1993), 58 FR 49068 (approving extension of CBOE's equity option hedge exemption pilot program); 32904 (September 14, 1993), 58 FR 49339 (approving extension of CBOE's stock index option hedge exemption pilot program); 32901 (September 14, 1993), 58 FR 49076 (approving extension of NYSE's equity option and stock index option hedge exemption pilot programs); 32900 (September 14, 1993), 58 FR 49077 (approving extension of PSE's equity option hedge exemption pilot program, and approving PSE's stock index option hedge exemption pilot program until November 17, 1993); and 32174 (April 20, 1993), 58 FR 25687 (approving extension of Phlx's equity option hedge exemption pilot program).

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received by any of the Exchanges with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchanges have requested that the proposed rule changes be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule changes to extend the Pilot Programs are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) thereunder.[7] Specifically, the Commission concludes, as it did when originally approving each of the Pilot Programs, that providing for increased position and exercise limits for equity and stock index options in circumstances where those excess positions are fully hedged with offsetting 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 market or the underlying stock market.

The Commission also notes that before the Pilot Program(s) of an Exchange can be approved on a permanent basis, that Exchange must provide the Commission with a report on the operation of its Pilot Program(s). Specifically, an Exchange 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(s); (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(s); (6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members for any violation of any term or condition of the Pilot Program(s); (7) the market impact, if any, of the Pilot Program(s); and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the Pilot Program(s). In addition, the Commission expects each Exchange to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of its position limit hedge exemption rules.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** so that the Pilot Programs will not lapse. The Commission notes that the Exchanges have not experienced any significant problems with the Pilot Programs since their inception and that the Exchanges will continue to monitor the Pilot Programs to ensure that no problems arise. Finally, no adverse comments have been received by the Exchanges concerning the Pilot Programs since their implementation. As a result, because of the importance of maintaining the quality and efficiency of the Exchanges' markets, the Commission believes good cause exists for approving the extension of the Pilot Programs on an accelerated basis.

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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 Exchange to which it relates. All submissions should refer to file no. set forth in the caption to this filing and should be submitted by December 15, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule changes (File Nos. SR-Amex-93-39, SR-CBOE-93-52, SR-NYSE-93-42, SR-PSE-93-30, and SR-Phlx-93-46), are approved and, accordingly, the Pilot Programs are extended until November 17, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28854 Filed 11-23-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33221; File No. SR-BSE-93-13]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Adoption of Account Identification Codes

November 18, 1993.

I. Introduction

On July 22, 1993, 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 adopt account identification codes to enhance its audit trail capabilities. On September 20, 1993, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, together with Amendment No. 1, was noticed for comment in Securities Exchange Act Release No. 32965 (September 27, 1993), 58 FR 51393 (October 1, 1993). No comments were received on the proposal.

II. Description of the Proposal

The BSE is amending Chapter II, Section 15 of the BSE Rules of the Board of Governors to require member firms to specify the account type on all orders sent to the Exchange. In this regard, the BSE is adopting a set of account identification codes to be used when specifying the account type on the

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated September 14, 1993. Amendment No. 1 clarified that the language of the proposed rule would be added to Chapter II, section 15 of the Rules of the Exchange following the first paragraph.

orders. There will be three separate categories of trade types consisting of: (1) Program trade, index arbitrage; (2) program trade, non-index arbitrage; and (3) all other orders. Each category will be broken down by four customer types as shown below along with the account identification codes.

	Program trade index arbitrage	Program trade non-index arbitrage	All other orders
Member/member organization:			
—Proprietary	D	C	P
—As agent for other member.	M	N	W
Customer:			
—Individual (80A).	J	K	I
—Other agency.	U	Y	A

The Exchange also is adopting definitions for "program trade, index arbitrage,"[4] "program trade, non-index arbitrage,"[5] "member/member organization: proprietary,"[6] "member/member organization: as agent for other member,"[7] "individual (80A),"[8] and "other agency."[9]

The BSE believes that the proposal will enhance the efficiency and accuracy of audit trail[10] information and will facilitate surveillance investigations by readily identifying a member's own proprietary trading, thus reducing information requests to member firms.

The Exchange states that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public.

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, with the requirements of section 6(b)(5) of the Act.[11] Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Commission believes that the proposed identification codes should prevent fraudulent and manipulative acts by improving the accuracy and efficiency of audit trail information. Specifically, the Commission believes that the identification codes should facilitate surveillance investigations by clearly demarcating a member's own proprietary trades. In this regard, the Commission believes that fraud and manipulation would be more effective deterred by more focused surveillance investigations promptly revealing disciplinary violations. In addition, more accurate audit trail information should increase the effectiveness of the Exchange's automated surveillance procedures and provide Exchange staff with a more comprehensive reconstruction of trading activity.

The Commission notes that member firms will be given three months following Commission approval of the proposal to make changes to their systems to enable them to comply with the new order identification requirements.[12]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BSE–93–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28850 Filed 11–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33208; File No. SR–CBOE–93–28]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Bids and Offers for Stocks, Warrants, and Other Non-Option Securities, and Priority and Preference of Such Bids and Offers

November 17, 1993.

On June 22, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Exchange Rule 30.12, which defines bids and offers for stocks, warrants, and other non-option securities, and CBOE Rule 30.13, which establishes rules of priority and precedence for such bids and offers, to make these rules conform more closely to the comparable rules of certain other self-regulatory organizations ("SROs"). Notice of the proposal appeared in the **Federal Register** on September 20, 1993.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The Exchange proposed to amend Interpretation and Policy .01 under CBOE Rule 30.12 to provide that notwithstanding the provision of Exchange Rule 7.4 that prohibits orders in which a member, non-member joint venture participant, or non-member broker-dealer, has an interest, from being accepted in the limit order book, no such prohibition shall apply to orders for stocks, warrants, unit investment trust ("UIT") interests, and other nonoption securities. The proposal would also amend CBOE Rule 30.13 in order to eliminate the provision

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[4] "Program trade, index arbitrage" is defined as the purchase or sale of "baskets" or groups of stocks in conjunction with the intended purchase or sale of one or more cash-settled options or futures contracts in an attempt to profit by the price difference, as defined in NYSE Rule 80A.

[5] "Program trade, non-index arbitrage" is defined as a trading strategy involving the related purchase or sale of a group of 15 or more stocks having a total market value of $1 million or more, as defined in NYSE Rule 80A.

[6] "Member/member organization: Proprietary" is defined as a member/member organization trading for its own account.

[7] "Member/member organization: as agent for other member" is defined as a member/member organization trading as agent for the account of another member/member organization.

[8] "Individual (80A)" is defined as an account for an individual as defined by NYSE Rule 80A. NYSE Rule 80A(e)(iii) states that "account of an individual investor" means an account covered by section 11(a)(1)(E) of the Act. Section 11(a)(1)(E) states that section 11(a)(1) shall not make unlawful any transaction for the account of a natural person, the estate of a natural person, or a trust (other than an investment company) created by a natural person for himself or another natural person.

[9] "Other agency" is defined as any other non-member or non-member organization.

[10] An audit trail is a surveillance tool produced and utilized by a self-regulatory organization to detect fraudulent or illegal trading and for investigative purposes in disciplinary proceedings. It is comprised of trade-by-trade data, in chronological order, including the name of the security, quantity, price, execution time and parties to each trade.

[11] 15 U.S.C. 78f(b) (1988).

[12] Telephone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Louis A. Randazzo, Attorney, Commission, on July 28, 1993.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 32887 (September 14, 1993), 58 FR 48912.

of subparagraph (f)(1) that gives bids and offers in the limit order book priority over bids and offers in the trading crowd at the same price.

The Exchange believes that the foregoing rules, as they are currently written, differ from the rules of certain other SROs. Specifically, the CBOE believes that the proposed amendment to CBOE Rule 30.12 will make CBOE's rules more like New York Stock Exchange, Inc. ("NYSE") Rule 104 and American Stock Exchange, Inc. ("Amex") Rules 170 and 190, which only prohibit orders for non-options securities from specialists from being held in a specialist's limit order book. Similarly, the Exchange believes that the proposed amendment to CBOE Rule 30.13 will conform the Exchange's rules to those of the Amex which do not provide for book order priority for non-options orders, except (1) that a specialist must give precedence to orders in his limit order book before executing at the same price orders for an account in which he has an interest,[4] and (2) in certain other limited circumstances.[5] CBOE Rule 8.80(c)(7) incorporates Amex's specialist exception by giving booked orders priority over proprietary orders of Designated Primary Market-Makers who represent orders in the book. As a result, the CBOE believes the effect of the proposed amendments is to put the CBOE on parity with other SROs with respect to orders for non-options securities, and thus enhance its ability to compete with other SROs in stocks, warrants, UIT interests, and other non-option securities.

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),[6] in that the Exchange rules, as amended, will mirror the rules of various other SROs with respect to orders for stocks, warrants, UIT interests, and other non-options securities. Specifically, the proposed amendment to Interpretation .01 to CBOE Rule 30.12 will conform the Exchange's rules to NYSE Rule 104, and Amex Rules 170 and 190, which prohibit specialists' orders for non-option securities from being held in a specialist's limit order book.

Similarly, the proposed amendment to CBOE Rule 30.13 would conform the CBOE's rules to Amex's rules. Specifically, Amex Rule 108(d) which does not provide for book priority except to the extent the limit order book is entitled to participate with brokers on parity in stated percentages of unpaired orders at the opening. Additionally, this proposed amendment, in conjunction with CBOE Rule 8.80(c)(7), will conform CBOE's rules to Amex Rule 155 which provides that book order priority only exists in the case of specialists in that a specialist is required to give precedence to orders in his limit order book before executing at the same price orders for an account in which he has an interest.

The Commission believes that the proposed rule change may enhance the ability of the CBOE to compete with other SROs for orders for stocks, warrants, UIT interests and other non-option securities, which will ultimately benefit investors who trade these products. In addition, the Commission finds that the proposed rule change will solely affect orders for stocks, warrants, and other non-option securities and will have no affect on the priority given to options orders in the limit order book pursuant to CBOE Rule 6.45. As a result, the Commission finds that the proposed rule change is consistent with the provisions of the Act and may serve to increase competition between SROs for orders for non-option securities without raising any regulatory concerns.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR-CBOE-93-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28804 Filed 11-23-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33220; File No. SR-Phlx-93-40]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Conforming Certain Documents to Reflect Changes to Form BD Concerning Disclosure of Fines

November 18, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 2, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend both its Notice of Fine for Minor Violation(s) of Options Floor Procedure Advices ("Citation") and the-index of the Floor Procedure Advice Handbook ("index") to indicate that Form BD no longer requires disclosure of any uncontested fine of $2,500 or less imposed pursuant to the Exchange's minor rule plan.

The Phlx requests accelerated approval of the proposal. The Phlx stated that accelerated approval would enable the Exchange to conform its policy relating to the reporting of minor rule violations to the Commission's amendments to Form BD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

On July 27, 1992, the Commission adopted amendments to Item 7(E)(2) of Form BD, the uniform application form for broker-dealer registration under the Act.[3] The amendments eliminated the requirement that broker-dealers disclose on Form BD any violation of a self-regulatory organization ("SRO") rule

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[4] See Amex Rule 155.

[5] Limit book order priority would also exist to the extent that the limit order book is entitled to participate with brokers on parity in stated percentages of unpaired orders at the opening. See Amex Rule 108(d).

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See Securities Exchange Act Release No. 30958 (July 27, 1992), 57 FR 34028 (July 31, 1992).

that is designated as "minor" pursuant to an enforcement and reporting plan filed with, and approved by, the Commission pursuant to Rule 19d–1 under the Act.[4]

The Exchange, a self-regulatory organization with a plan approved under SEC Rule 19d–1[5] and codified in Exchange Rule 970,[6] proposes to amend the Citation and index to the Floor Procedure Advice Handbook to reflect the Commission's amendments to Form BD. Specifically, the Phlx proposes to add the following language to the Citation and index: The Securities and Exchange Commission does not require an amendment to Item 7 of Form BD for any fine of $2,500 or less imposed pursuant to the Exchange's Floor Procedure Advices.[7]

(b) Statutory Basis

The proposed rule change is consistent with section 6 of the Act in general, and in particular, with section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the fling will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–40 and should be submitted by December 15, 1993.

IV. Commission's Findings and Order Granting Accelerated Approved of Proposed Rule Change

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, with the requirements of sections 6(b) (1) and (7), 6(d)(1) and 19(d) of the Act and Exchange Act Rule 19d–1.[8]

The Commission believes that the proposal furthers the purposes of section 6(b)(1) of the Act by referencing the Commission's recent amendments to Form BD in the rules of the Exchange. An exchange's ability to enforce compliance by its members and member organizations with exchange and Commission rules is central to its self-regulatory function. In this regard, the proposal would amend the Exchange's Citation and the index in accordance with the Commission's amendments to Form BD by specifying that the Commission does not require an amendment to Item 7 of Form BD for any uncontested fine of $2,500 or less imposed pursuant to the Exchange's Floor Procedure Advices.[9] As noted above, the Commission determined to amend Question (E)(2) of Item 7 of Form BD to exclude SRO rule violations designated as minor pursuant to a plan approved by the Commission under Rule 19d–1.[10] The Commission has approved the Phlx's Floor Procedure Advices and, as a result, the Phlx files periodic reports in accordance with Rule 19d–1.[11] Accordingly, the Commission believes that it is appropriate for the Phlx to amend its Citation and the index to reflect the Commission's amendments to Form BD.

Because the revised Citation and index would specify the Commission's disclosure requirement, the proposal should assist members and member organizations in preparing accurate responses to Question (E)(2) of Item 7 of Form BD. The Commission, therefore, believes that the proposal is consistent with the section 6(b)(7) requirement that the rules of an exchange be consistent with section 6(d)(1) and provide fair procedures for the disciplining of exchange members and persons associated with exchange members.

Finally, the Commission notes that the proposed rule change preserves the regulatory benefits intended by the Act. Although the proposed rule change would conform Phlx rules to amend Form BD's disclosure requirements, the proposal would not alter the Exchange's reporting requirements under Rule 19d–1(c)(2). The Phlx will continue to have the obligation to report minor rule violation determinations to the Commission on a periodic basis.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Phlx proposal simply conforms the Phlx's Citation and index to the Commission's recent amendments to Form BD. Moreover, the Commission's proposed amendments to Form BD were published in the **Federal Register** for the full statutory period.[12]

[4] 17 CFR 240.19d–1 (1991). Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. An SRO is required, pursuant to paragraph (c)(1) of Rule 19d-1, to file promptly with the Commission any final disciplinary actions taken by the SRO. However, paragraph (c)(2) of Rule 19d-1 establishes that minor rule plan determinations not exceeding $2,500 are not final, thereby permitting the SRO to report on a periodic, as opposed to immediate, basis.

[5] The Phlx's minor rule plan consists of Floor Procedure Advices with accompanying fines.

[6] See Securities Exchange Act Release No. 23491 (August 1, 1986), 51 FR 28469 (August 7, 1986) (order approving File No. 4–289).

[7] Phlx Rule 970 authorizes the Exchange, in lieu of commencing a disciplinary proceeding, to impose a fine, not to exceed $2,500, on any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization, for any violation of a Floor Procedure Advice of the Exchange, which violation the Exchange shall have determined is minor in nature.

In accordance with SEC Rule 19d–1(c)(2), fines in excess of $2,500, assessed under Phlx Rule 970, are not considered pursuant to the minor rule violation plan and thus are subject to the current reporting requirements of Rule 19d–1(c)(1) of the Act.

[8] 15 U.S.C. 78f(b)(1) and (7), 78f(d)(1), 78s(d) and 17 CFR 240.19(d)–1 (1991).

[9] A party penalized pursuant to Rule 970 may properly contest the Exchange's determination, and the matter shall be referred to the Business Conduct Committee for their consideration and determination. See Phlx Rule 970(d).

[10] See Securities Exchange Act Release No. 30958, supra note 3. Prior to the Commission's adoption of amendments to Form BD, Question (E)(2) of Item 7 required applicants to disclose whether an SRO or commodities exchange ever found the applicant or a control affiliate to have been involved in any violation of its rules.

[11] See supra note 6.

[12] See Securities Exchange Act Release No. 29643 (September 6, 1991), 56 FR 44029. All of the comments that addressed the proposed amendment to Item 7 (E) (2) believed that it was appropriate.

Continued

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28853 Filed 11–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19884; 811–3926]

MFS High Yield Municipal Bond Fund; Application

November 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS High Yield Municipal Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 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 December 13, 1993, and should be accompanied by proof of service on 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 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On December 14, 1983, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on February 27, 1984, and the initial public offering commenced on or about that date.

2. On April 21, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Series Trust III (formerly, Massachusetts Financial High Income Trust), a registered open-end management investment company, on behalf of one of its series, MFS Municipal High Income Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On June 9, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on August 5, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 7, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class A shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class A share of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On September 7, 1993, applicant had 84,884,946.641 shares outstanding, having an aggregate net asset value of $796,730,121.10 and a per share net asset value of $9.39.

5. The Surviving Fund assumed all expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses were in the approximately amount of $13,674, $1,245, $11,695, $21,476, $4,253, and $8,017, respectively.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28856 Filed 11–23–93; 8:45 am]

BILLING CODE 8010–01–M

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice was given on the appointment of members of the Trade and Development Agency's (TDA) Performance Review Board in the **Federal Register** on November 3, 1993, 58 FR 58712.

Two members of TDA's Performance Review Board are being replaced.

FOR FURTHER INFORMATION CONTACT: Amey DeSoto, General Counsel, Trade and Development Agency, State Annex—16, Room 309, Washington, DC 20523–1602, (703) 875–4357.

SUPPLEMENTARY INFORMATION: The following names replace Nancy Frame and Lisa DeSoto as members of the Trade and Development Agency's Performance Review Board: Duff Gillespie, Acting Deputy Assistant Administrator for the Global Bureau, Agency for International Development; and Robert Perkins, Counsel to the Inspector General, Agency for International Development.

Dated: November 18, 1993.

J. Joseph Grandmaison,

Director, TDA.

[FR Doc. 93–28846 Filed 11–23–93; 8:45 am]

BILLING CODE 8040–01–M

See Securities Exchange Act Release No. 30958, supra note 3.0

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended November 12, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49249
Date filed: November 9, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1500 dated November 5, 1993, Within Europe Expedited Resos r–1 to r–16 (Not Applicable between EC Member States)
TC2 Reso/P 1501 dated November 5, 1993, Within Europe Expedited Resos r–17 to r–23 (Applicable between EC Member States)
TC2 Reso/P 1502 dated November 5, 1993, Within Europe Expedited Resos 4–24 to r–25 (Applicable between EC Member States)
Proposed Effective Date: January 1, 1994
Docket Number: 49250
Date filed: November 9, 1993
Parties: Members of the International Air Transport Association
Subject: Telex COMP Mail Vote 653, Amend Mileage Manual
Proposed Effective Date: December 1, 1993
Docket Number: 49251
Date filed: November 9, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1508 dated November 5, 1993, Within Africa Expedited Resos r–1 to r–7
Proposed Effective Date: January 1, 1994
Docket Number: 49264
Date filed: November 12, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Telex Mail Vote 654, Delete Cities from reso 015v Add-on Tables
Proposed Effective Date: December 1, 1993
Docket Number: 49265
Date filed: November 12, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1536 dated October 15, 1993, Mid Atlantic-Africa Resos r–1 to r–7
Proposed Effective Date: April 1, 1994
Docket Number: 49267
Date filed: November 12, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1534 dated October 15, 1993, North Atlantic-Africa Pass Resos r–1 to r–20
Proposed Effective Date: April 1, 1993

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–28792 Filed 11–23–93; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended November 12, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49244

Date filed: November 8, 1993

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 6, 1993

Description: Application of Sociedad Anonima Ecuatoriana De Transportes Aereos, S.A., pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in regular foreign air transportation with respect to persons, property and mail, between the Republic of Ecuador and the United States.

Docket Number: 42081

Date filed: November 9, 1993

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 7, 1993.

Description: Application of Martinair Holland N.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for amendment of its foreign air carrier permit so that it may engage in scheduled and charter foreign air transportation to the full extent permitted by the Open Skies Agreement concluded by the United States and The Kingdom of the Netherlands on September 4, 1992. Martinair requests implementation of the new authority on December 4, 1993 in conjunction with the inauguration of its Amsterdam-Denver service.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–28793 Filed 11–23–93; 8:45 am]
BILLING CODE 4910–62–P

Coast Guard

[CGD 93–076]

Draft Environmental Impact Statement; Bridges Across Arthur Kill, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent.

SUMMARY: The U.S. Coast Guard, as the Federal lead agency and in cooperation with the Port Authority of New York and New Jersey, intends to prepare and circulate a Draft Environmental Impact Statement (DEIS) for a proposed parallel bridge south of the existing Goethals Bridge crossing the Arthur Kill and other crossings between New Jersey and New York for the proposed modernizing or enhancing the vehicular capacity of the Staten Island Bridge System. A Coast Guard bridge permit approving the location and plans of bridge projects crossing navigable waters of the United States is required before construction can begin.

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Governors Island, Bldg. 135A, New York, NY 10004–5073.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Smart, Environmental Protection Specialist, Bridge Administration Branch, at the address shown above or by telephone at (212) 668–7994.

SUPPLEMENTARY INFORMATION: This notice of intent is published as required by regulations of the Council on Environmental Quality at 40 CFR 1501.7.

The proposed project is intended to provide additional capacity for interstate transportation in this section of the New York/New Jersey metropolitan area.

Selection of alternatives to be evaluated in the DEIS will be determined through a screening analysis of structural alternatives, including construction of a parallel bridge south of the existing Goethals Bridge and other crossings at various locations on the Arthur Kill, Raritan Bay and Newark Bay; nonstructural alternatives, including use of high-occupancy-vehicle lanes, intelligent vehicular

highway system options, and other traffic safety management measures; potential ferry routes across the Arthur Kill, Raritan Bay and Upper New York Bay; transit use, including the Delaware and Otsego Railroad crossing of the Arthur Kill, providing links between Amtrak's Northeast Corridor line and the Staten Island Rapid Transit; and a composite alternative of selected, complementary nonstructural, transit, and/or ferry actions. The no action alternative will evaluate the effects of not modernizing and enhancing capacity on the Staten Island Bridge System.

Potentially significant issues to be evaluated include relocation of residential, commercial and industrial displacements; relocation of hazardous wastes located within the proposed project right-of-way; existing and future land use and traffic patterns; threatened and endangered species and critical habitat; impacts on section 4(f) properties, historic and archaelogical resources, wetlands, water and air quality and navigation.

A formal interagency scoping meeting is planned for federal, state and local agencies to identify potential impacts, issues and concerns. Written comments are invited from all interested parties to assure that all significant issues are identified and the full range of alternatives and impacts of the proposed project are addressed.

Dated: November 12, 1993.

W.J. Ecker,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–28859 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 93–077]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Marine Occupational Safety and Health; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Occupational Safety and Health of the Chemical Transportation Advisory Committee will meet on Thursday, December 16, 1993 to determine the need to lower the threshold for regulating the human exposure to Benzene-containing mixtures. The Subcommittee will also review the need for additional comprehensive exposure standards for marine workers. This meeting will initiate the Subcommittee's work in both areas.

FOR FURTHER INFORMATION CONTACT: Mr. G.R. Colonna, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, (617) 984–7435, or Dr. A.L. Schneider, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–1217.

SUPPLEMENTARY INFORMATION: The meeting will be held at Houston Airport Marriott, 18700 Kennedy Boulevard, Houston, TX 77032, phone number (713) 443–2310. The meeting will begin at 9 a.m. and end at 5 p.m. Attendance is open to the public. Members of the public may present oral statements at the meetings.

Persons wishing to present oral statements should notify Mr. Colonna, National Fire Protection Association, or Dr. Schneider, U.S. Coast Guard Headquarters no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

Dated: November 15, 1993.

K.L. Ervin,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–28860 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

National Award for the Advancement of Motor Vehicle Research and Development

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of award; request for nominations.

SUMMARY: This notice announces the National Award for the Advancement of Motor Vehicle Research and Development, describes its background and basis, and solicits nominations for the award. It also identifies the required content for nominations and describes the evaluation process and criteria to be used in making selections.

DATES: Nominations must be postmarked not later than December 31, 1993.

ADDRESSES: Send complete nominations with supporting information to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. For further information, contact Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590, phone: 202–366–4730, fax: 202–366–5930.

SUPPLEMENTARY INFORMATION: The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 establishes a National Award for the Advancement of Motor Vehicle Research and Development. It sets the basis for the award as follows:

> The Secretary of Transportation shall periodically make and present the award to domestic motor vehicle manufacturers, suppliers, or Federal laboratory personnel who, in the opinion of the Secretary of Transportation, have substantially improved domestic motor vehicle research and development in safety, energy savings, or environmental impact. No person may receive the award more than once every 5 years. (15 U.S.C. 3711c.)

This announcement is to solicit nominations for the National Award for the Advancement of Motor Vehicle Research and Development and to provide relevant information. The award consists of a medal and citation from the Secretary of Transportation. It will be presented at an appropriate ceremony.

Nominators

Any person may nominate individuals or organizations he or she believes are worthy of receiving the award by reason of accomplishments.

Eligibility

Eligibility for the National Award for the Advancement of Motor Vehicle Research and Development is limited to domestic motor vehicle manufacturers, domestic suppliers to the motor vehicle industry, their employees, and personnel of Federal laboratories. See the *Definitions* section below for the definitions of the following terms:

> Domestic motor vehicle manufacturer, Domestic supplier, and Federal laboratory.

Qualifying Work

The award will recognize work that has substantially improved domestic motor vehicle research and development in the areas of motor vehicle safety, motor vehicle energy savings, or environmental impacts of motor vehicles. The work may be a singular one-time accomplishment or it may be a series of accomplishments that have had substantial effect over time. Examples of the types of achievements that fall into the three categories are:

1. Safety Improvement—Vehicular technology that reduces the likelihood of crashes (crash avoidance) or the likelihood of serious injury when a crash occurs (crashworthiness) or otherwise improves the chances of post-

crash survival/recovery of crash victims. This could include research and development of instrumentation or biomechanics.

2. Energy Savings—Technology that saves energy in the production or operation of motor vehicles by such means as light weight structures, engine and drive train improvements, reductions in tire rolling resistance or aerodynamic drag, and modifications of fuel characteristics.

3. Improvements in Environmental Quality—Motor vehicle technology that reduces emissions, reduces solid waste, reduces hazardous waste, reduces noise (e.g., tire noise), as well as technology that reduces waste byproducts of motor vehicle production, operation, or scrappage.

Required Contents of nomination

*Names and identification of specific individuals or organizations being nominated.
*Identification of nominator(s) with title(s), address(es) and phone number(s). At least one nominator must sign the nomination.
*Description of accomplishments, including the nature of the specific research and development accomplishment and reasons why it constitutes substantial improvement. Identify involvement of organization or individual(s) nominated.
*Reference for improvements (patents, awards, papers, other recognition).
*Establish eligibility of nominees. Individuals must be past or current employees of organization at which research and development was accomplished.
*Establish that improved technology is for motor vehicles offered for sale in the United States.

Limitation on length of nomination

The nomination is limited to 10 numbered pages of 8.5 inch x 11.0 inch paper with one inch margins and font size not less than 12 point.

Send an original and three copies of the complete nomination to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. Nomination will be returned to the nominator if it includes a written request.

Evaluation process and criteria

NHTSA and other Federal agency staff will make an initial screening of all nominations postmarked on or before December 31, 1993 to ensure that they contain the required information and meet the statutory requirements for eligibility and field of work. Subsequently, a special panel will evaluate the nominations. NHTSA intends that the evaluation panel will include experts in the fields of energy savings and environmental impact in addition to motor vehicle safety. The panel will make its evaluations according to the following criteria:

1. Quality of cited work.
2. Contribution of cited work to improved safety, energy savings or environmental quality.
3. Involvement of nominee with cited work.

The Secretary of Transportation will then select the awardee from among the nominees receiving high evaluations from the evaluation panel. The Secretary may also decide not to make an award. His decision is final.

Definitions

For the purposes of determining eligibility for the National Award for the Advancement of Motor Vehicle Research and Development, the following definitions will apply:

Domestic motor vehicle manufacturer—a company engaged in the production and sale of motor vehicles in the United States and that has majority ownership or control by individuals who are citizens of the United States. [Definition based on that of "United States-owned company" in 15 U.S.C. 278n(j)(2) as added by Public Law 102–245.]

Domestic supplier—a company that supplies research and development, design services, materials, parts and/or items of equipment or machinery to a motor vehicle manufacturer or subcontractor to a motor vehicle manufacturer or whose products are used in new motor vehicles and that has majority ownership or control by individuals who are citizens of the United States.

Personnel of Federal laboratory—Individuals employed by the Federal Government at a facility engaging in research and development activities or employed by a contractor at such a facility that is owned by the Federal Government and operated by that contractor.

Issued on: November 18, 1993.

Howard M. Smolkin,

Acting Administrator.

[FR Doc. 93–28806 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 17, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0004.

Form Number: TA–1.

Type of Review: Extension.

Title: Uniform Form for Registration and Amendment to Registration as a Transfer Agent.

Description: This form is used by national banks and national bank subsidiaries for registration and amendment to registration as a transfer agent.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 55.

Estimated Burden Hours Per Respondent: 28 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 26 hours.

Clearance Officer: John Ference, (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–28809 Filed 11–23–93; 8:45 am]

BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

November 17, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0939.
Form Number: IRS Form 8404.
Type of Review: Extension.
Title: Computation of Interest Charge on DISC-Related Deferred Tax Liability.
Description: Shareholders of Interest Charge Domestic International Sales Corporations (IC–DISCs) use Form 8404 to figure and report an interest on their DISC related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly figured and paid the interest charge on a timely basis.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeeping: 2,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hrs., 4 min.
Learning about the law of the form—2 hrs., 23 min.
Preparing and sending the form to the IRS—2 hrs., 34 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 18,020 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93–28810 Filed 11–23–93; 8:45 am]
BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Internship Capacity Building for Selected Countries of Central and Eastern European, Russia, and Central Asia Republics

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) requests proposals for the planning and conducting of a series of training workshops around the U.S. The workshops are intended to build the capacity of local organizations to run quality internship programs in diverse fields. In addition, the Agency seeks the development of internship program standards which will form the core of the workshop curriculum, and also be used later by USIA to evaluate internships completed by those organizations who have taken the workshop.

After the deadline for submitting the proposal, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NAME AND NUMBERS: All communications concerning this announcement should refer to the INTERNSHIP CAPACITY BUILDING INITIATIVE. This announcement number is E/P–94–16. Please refer to this title and number in all correspondence or telephone calls to USIA.

DATES: Deadlines for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on January 14, 1994. Faxed documents will not be accepted, nor will documents postmarked January 14,1994, but received at a later date.

It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Internship Capacity Building grant project activity should begin after April 1, 1994.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to U.S. Information Agency, Ref: ICBI–E/P–94–16; Office of Grants Management (E/XE); 301 4th Street, SW., room 336; Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations, institutions should contact: European Division of Citizens Exchanges (E/P), room 216, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, telephone 202/619–5326, fax 202/619–4350 to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Objectives of Internship Capacity Building Initiative

Overview

USIA has determined that internships are one of the most effective ways to provide skills to individuals from the other countries. As the demand for these placements increases, the Agency has determined that more opportunities for placements are needed. Since the increase in internships is mostly likely for participants from Central and Eastern Europe, Russia, and Central Asia, proposals should use these areas for geographic focus when planning training seminars. The purpose of this program is to increase the capacity of community-backed organizations within the U.S. for internships placements, primarily in the business field, but also including other fields such as journalism and local government.

For this program, an internship is defined as an exchange program of a minimum of one month, whose defining aspect is the placement of the foreign exchange within an institution for the purpose of professional improvement. This would include "shadowing" programs as well as those in which the intern is assigned, to greater or lesser extent, the tasks of a regular employee.

E/P will give strong consideration to proposals demonstrating a significant previous involvement in the development of internship programs as well as institutional experience in conducting community based training programs. Groups with internship experience but that lack expertise in organizing training workshops may wish to present a joint proposal with an organization whose specialty is training.

Programmatic Considerations

Pursuant to the Bureau's authorizing legislation, grant programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life.

The Workshops

The management of internships, in both a logistical and programmatic sense, is a complicated operation, but one with common challenges and problems regardless of U.S. location or field. Thus it is a program skill which can be taught to individuals and organizations that wish to start internships in their community or improve existing standards.

The trainer organization will send a training team to conduct workshops in ten cities selected for training. The trainer organization should develop a core workshop curriculum which covers all elements common to any internship program, but can be tailored to the needs of each city. For the purposes of curriculum planning, the workshop should use the program model of receiving a minimum of 25 interns in the community at the same time. The workshops should be planned to address all of the issues which arise during the management of internships, such as recruitment of interns, placements, transportation logistics, housing, training of mentors, cross-cultural sensitivity, monitoring, fund-

raising, pre-placement briefings of hosts and interns, post-placement debriefings and evaluation. Materials should be prepared for the workshop which highlight differing approaches to each one of these elements. Workshop leaders should be familiar with internship placements in different fields. Since many of the community-based organizations may have little international experience, particular emphasis must be placed on cross-cultural differences, particularly differences in work attitudes. The length of the workshops should normally not exceed three days, although flexibility to expand the core program should be considered.

Development of Standards of Performance

The Agency also seeks a method of measuring performance of organization's management of internship programs to assure that U.S. Government funds for internships are spent well. The organization selected to conduct the workshops will be expected to develop pre-set criteria which can be used to measure the performance of community based organizations. These standards will form the core of the workshop curriculum, must coincide with the topics listed above and should clearly assign minimal levels of performance in each sub-category. The workshops should be designed to teach community based organizations how to meet these minimal standards. Since it is expected that these organizations would compete for USIA internship program grants, the Agency would use these standards to evaluate how well those communities conducted USIA-funded internships. Organizations are encouraged to consult with the Office of Policy and Evaluations of the Bureau of Education and Cultural Affairs in developing these standards.

Selection of Trainees

The selection of the cities, and the organizations in them to receive the training, will be done separately. Proposals for this competition should assume that one or more non-profit organizations within a city will be taking the workshop, and that the city will have the minimum requirements to carry on internships, such as size, diverse economy, and community support.

Funding

USIA has budgeted approximately $250,000 for this project, but expects that competitive proposals will come in well under this amount. Exchange organizations with less than four years of successful experience in managing international exchange programs will not be eligible for this competition.

Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost-sharing and matching should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

USIA believes that the costs of this program will fall into two basic categories: (A) Development of the course curriculum and course materials, including the standards of performance, and (B) costs connected with the workshops themselves, mainly staff, travel and per diem. Proposals should separate the two categories, and give a "unit cost" per workshop in the second category. Workshop site costs should be included, however it may happen that some cities may provide a venue at no cost. Since cities have not yet been selected, proposals should include airfare costs to a city of "average" distance away from the grantee's base of operations.

The following project costs are eligible for consideration for funding:

1. Domestic air fares; ground transportation costs.

2. Per Diem. Organizations have the option of using a flat $140/day for non-staff workshop leaders or the published U.S. Federal per diem rates for individual American cities.

Note: Grantee staff must use the published federal per diem rates, not the flat rate.

3. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

4. Room rental, which generally should not exceed $250 per day.

5. Materials development. Proposals may contain costs to purchase and develop materials for the workshop participants.

6. Other costs necessary for the effective administration of the program, including salaries for grant organizations employees, benefits, an other direct and indirect costs per detailed instructions in the application package.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant all preparation and submission costs are at the applicants expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. Institutional Ability/Capacity/Record

Applicant institutions must demonstrate not only their experience in conducting successful internships, but also show that they can teach internship management in a workshop format. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants as determined by the Office of Contracts (M/KG) will be considered. Relevant program evaluation of previous projects may also be considered in this assessment.

2. Project Personnel

Personnel should have extensive experience in implementing internship programs in different fields. Previous experience by staff in conducting training workshops should be noted. Resumes must be provided for all individuals involved in this project; including those responsible for the development of workshop materials, management of workshops, and presenters at the workshops. Resumes for consultants and/or subcontractors must be included.

3. Program Planning

A detailed work plan should provide milestones for the accomplishment of each phase of the project and clearly demonstrate how the grantee institution will meet milestones. In addition, the work plan should indicate how the work plan will accomplish the overall project goals.

4. Cross-Cultural Expertise

Evidence of sensitivity to historical, linguistic, and other cross-cultural factors are prerequisites. Since most interns come from societies which are newly democratic and with only a tenuous knowledge of the free market/western business environment, the successful applicant should provide evidence that the core curriculum and workshop format will prepare participating community based organizations for interns from this environment.

5. Project Evaluation

Proposals should include a plan to evaluate each workshop. The applicant should indicate what technique or methodology will be used to meet this requirement. Reports are required after each workshop outlining success or failures and what if any changes in the core curriculum or workshop approach are needed.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: November 16, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-28543 Filed 11-23-93; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment of Vietnam and Other War Veterans; Meeting

ACTION: Notice of meeting; Advisory Committee on the Readjustment of Vietnam and Other War Veterans.

SUMMARY: The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 of a meeting of the Advisory Committee on the Readjustment of Vietnam and Other War Veterans. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives.

DATES: The meetings will be held on December 2 and 3, 1993. The meeting on December 2 will be held at Techworld in room 1105 located at 801 I Street, NW., Washington, DC. On December 3 the meeting will be conducted at the American Legion, Washington Office, 1608 K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202-535-7554).

SUPPLEMENTARY INFORMATION: The meeting on December 2 will begin at 8 a.m. and adjourn at 4:30 p.m. and on December 3 the agenda will commence at 8:30 a.m. and adjourn at 4:30 p.m. The agenda for December 2 will begin with a meeting with the Secretary of Veterans Affairs to provide national perspective to the Committee's plans and activities. The first day's agenda will also cover outreach and counseling issues related to serving Native American war veterans, a meeting with the Assistant Secretary for Policy and Planning to review and discuss VA services to minority veterans and a presentation by and discussion with the Director of VA's National Center for Post-traumatic Stress Disorder to review some current research on post-traumatic stress disorder.

On December 3 the Committee will review pending legislation of importance for the readjustment of war veterans. The second day's agenda will also include a briefing on the status of the Readjustment Counseling Service, Women Veterans Sexual Trauma Counseling Program. The Committee will conclude the day by reviewing Committee work in progress and formulating objectives and plans for the coming year.

Both day's meeting will be open to the public up to the seating capacity of the room.

Dated: November 16, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93-28785 Filed 11-23-93; 8:45 am]

BILLING CODE 8320-01-M

Special Medical Advisory Group; Meeting

ACTION: Notice.

SUMMARY: Notice is given that, under Public Law 92-463, there will be a meeting of the Special Medical Advisory Group. The purpose of the Special Medical Advisory Group is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. All sessions will be open to the public up to the seating capacity of the meeting room.

DATES: The meeting will be held December 9 and 10, 1993. The first

session will convene on December 9 at 6 p.m., and the session on December 10 will convene at 8:30 a.m. Because there will be limited seating capacity, those wishing to attend should contact Susan Hall, Office of the Under Secretary for Health, Department of Veterans Affairs, 202/535–7357, prior to December 6, 1993.

ADDRESSES: The meeting will be held at the Renaissance Hotel, located at 999 9th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan Hall, Office of the Under Secretary for Health, Department of Veterans Affairs, 202–535–7357.

Dated: November 15, 1993.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–28784 Filed 11–23–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 225
Wednesday, November 24, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 29, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. International banking matter. (This item was previously announced for a closed meeting on November 15, 1993.)
2. Request by the General Accounting Office for Board comment on a draft report regarding international banking supervision.
3. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 19, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–28935 Filed 11–19–93; 4:50 am]

BILLING CODE 6210–01–P

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, December 8, 1993, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Robert E. McCally,
Acting Executive Director.

[FR Doc. 93–28983 Filed 11–22–93; 11:40 am]

BILLING CODE 7630–01–M

federal register

Wednesday
November 24, 1993

Part II

Environmental Protection Agency

40 CFR Parts 51 and 93

Air Quality: Transportation Plans, Programs, and Projects; Federal or State Implementation Plan Conformity; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–4804–3]

Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action establishes the criteria and procedures for determining that transportation plans, programs, and projects which are funded or approved under title 23 U.S.C. or the Federal Transit Act conform with State or Federal air quality implementation plans. This action is required under section 176(c)(4) of the Clean Air Act, as amended in 1990.

Conformity to an implementation plan is defined in the Clean Air Act as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards. In addition, Federal activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations, or interfere with timely attainment or required interim emission reductions towards attainment. This final rule establishes the process by which the Federal Highway Administration and the Federal Transit Administration of the United States Department of Transportation and metropolitan planning organizations determine conformity of highway and transit projects.

EFFECTIVE DATE: This final rule is effective on December 27, 1993.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–92–21. The docket is located in room M–1500 Waterside Mall (ground floor) at the Environmental Protection Agency, Attention: Docket No. A–92–21, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 12 p.m. and from 1:30 p.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 741–7884.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

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II. Summary of the Final Rule
III. Background of the Final Rule
A. History of Conformity
B. Conformity Under the Clean Air Act As Amended in 1990
C. Interim EPA/DOT Conformity Guidance
D. Public Participation
E. Conformity of General Federal Actions
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2. Phase II of the Interim Period
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6. Multiple Stage Projects
7. Project-level Determinations
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B. Applicable Implementation Plans
C. Conformity SIP Revisions
D. Public Participation
E. Plan Content
1. Plan Specificity
2. Timeframe of the Transportation Plan
F. Relationship of Plan and TIP Conformity With the National Environmental Policy Act (NEPA) Process
G. Latest Planning Assumptions
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I. TCMs
J. Regional Emissions Analysis
1. Regionally Significant Projects
2. Projects Included in the Regional Emissions Analysis
3. Modeling Procedures
4. Build/no-build Test
K. Hot-spot Criteria and Analysis
L. Exempt Projects
VI. Environmental and Health Benefits
VII. Economic Impact
VIII. Administrative Requirements
A. Administrative Designation
B. Reporting and Recordkeeping Requirements
C. Regulatory Flexibility Act

I. Authority

Authority for the actions taken in this notice is granted to EPA and DOT by section 176(c) of the Clean Air Act as amended (42 U.S.C. 7521(a)).

II. Summary of the Final Rule

This rule requires metropolitan planning organizations (MPOs) and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans and transportation improvement programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT or an MPO.

This rule applies to nonattainment and maintenance areas. EPA will issue a supplementary notice of proposed

rulemaking to propose criteria and procedures for determining conformity in attainment areas.

The provisions of this rule apply with respect to those transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan approved under Clean Air Act section 175A (i.e., ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), and particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM–10)). The provisions of this rule also apply with respect to the following precursors of those pollutants: volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in ozone areas, NO_X in NO_2 areas, and VOC and NO_X in PM–10 areas.

This rule requires States to submit to EPA revisions to their State implementation plans (SIPs) establishing conformity criteria and procedures consistent with this rule by November 25, 1994. However, the requirements of this rule apply as a matter of Federal law beginning December 27, 1993. All conformity determinations made after this date must be made according to the requirements of this rule and, after the conformity SIP revision is approved by EPA, according to the requirements of the applicable SIP.

The criteria and procedures in this rule differ according to the pollutant for which an area is designated nonattainment or maintenance, and according to the type of action (i.e., transportation plan, TIP, project from a conforming transportation plan and TIP, or project not from a conforming transportation plan and TIP). The rule requires regional emissions analysis of transportation plans and TIPs. All regionally significant highway and transit projects, regardless of funding source, must either come from a conforming transportation plan and TIP, have been included in the regional emissions analysis of the plan and TIP which supports the plan or TIP's adoption, or be included in a newly performed regional analysis. Transportation projects funded or approved by FHWA or FTA must also be analyzed for their localized air quality impacts in PM–10 and CO nonattainment areas.

The criteria and procedures also vary according to the period of time in which the conformity determination is made. Transportation plans, TIPs, and projects must satisfy different criteria depending on whether a State has submitted a SIP revision which establishes control strategies to demonstrate reasonable further progress and attainment. Criteria and procedures also vary depending on whether the SIP revision has been submitted, approved, disapproved, or the Clean Air Act deadline for submission of the SIP revision has been missed.

The final rule is being placed in both 40 CFR part 51 and 40 CFR part 93. Part 93 applies to Federal agencies immediately, and part 51 establishes requirements for States in submitting SIPs. The requirements of the rule are the same in both parts, except that the rule does not require a conformity SIP revision in part 93.

The final rule has a variety of minor changes from the proposal based on comments received regarding specific details of the regulatory text. In addition, several major changes have been made in response to public comment. These include changes to the criteria and procedures during the intérim period and specific requirements for regionally significant "non-federal" projects (those not requiring FHWA or FTA funding or approval). The reader is referred to the Discussion of Major Issues and Discussion of Comments sections for details on these and other issues.

III. Background of the Final Rule

A. History of Conformity

Conformity provisions first appeared in the Clean Air Act Amendments of 1977 (Pub. L. 95–95). Although these provisions did not define conformity, they provided that no Federal department "shall: (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve any activity which does not conform to a [State implementation plan] after it has been approved or promulgated." Assurance of conformity was an affirmative responsibility of the head of each Federal agency. In addition, no MPO could approve any transportation project, program, or plan which did not conform to a State or Federal implementation plan.

Following enactment of the 1977 Amendments, DOT consulted with EPA to develop conformity procedures for programs administered by FHWA and the Urban Mass Transportation Administration (now FTA). The June 14, 1978 "Memorandum of Understanding Regarding Integration of Transportation and Air Quality Planning" provided EPA an opportunity to jointly review and comment on the conformity of transportation plans and TIPs.

In April 1980, EPA published an advance notice of proposed rulemaking on conformity (45 FR 21590, April 1, 1980). EPA maintained that the Congressional intent of Clean Air Act section 176(c) was to prevent Federal actions from causing a delay in the attainment or maintenance of the NAAQS. However, no further rulemaking action was taken.

In June 1980 EPA and DOT jointly issued a guidance document entitled "Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans." This guidance established that in nonattainment and maintenance areas (areas experiencing violations of the national ambient air quality standards (NAAQS) and required to develop air quality maintenance plans under 40 CFR part 51, subpart D), conformity determinations must be documented as a necessary element of all certifications, TIP reviews, and environmental impact statement findings. It was necessary to make certifications that the planning process had been conducted according to a continuous, cooperative, and comprehensive transportation planning process and consistent with Clean Air Act requirements.

Transportation plans and programs were considered to conform with the SIP if they did not adversely affect the transportation control measures (TCMs) in the SIP, and if they contributed to reasonable progress in implementing those TCMs. A transportation project would conform if it were a TCM from the SIP, came from a conforming TIP, or did not adversely affect the TCMs in the SIP.

Subsequently, DOT developed and issued an interim final rule (46 FR 8426, January 26, 1981) based upon the joint guidance. DOT established this rule to meet its obligations under section 176(c) of the Clean Air Act, and the rule was put into effect immediately upon publication. It amended 23 CFR part 770 (FHWA Air Quality Guidelines) and added 49 CFR part 623 (UMTA Air Quality Conformity and Priority Procedures).

The rule used the joint guidance's definition of conformity, interpreting conformity in the context of TCMs rather than emissions budgets or air quality analysis. Compliance with the conformity requirements was to be demonstrated as part of the planning and National Environmental Policy Act (NEPA) processes.

B. Conformity Under the Clean Air Act As Amended in 1990

In addition to adding specific provisions regarding the conformity of transportation actions, the Clean Air Act Amendments of 1990 expand the scope and content of the conformity

provisions by defining conformity to an implementation plan to mean

Conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Clean Air Act Amendments of 1990 emphasize reconciling the estimates of emissions from transportation plans and programs with the implementation plan, rather than simply providing for the implementation of TCMs. This integration of transportation and air quality planning is intended to protect the integrity of the implementation plan by ensuring that its growth projections are not exceeded without additional measures to counterbalance the excess growth, that progress targets are achieved, and that air quality maintenance efforts are not undermined.

C. Interim EPA/DOT Conformity Guidance

On June 7, 1991, EPA and DOT jointly issued guidance for determining conformity of transportation plans, programs, and projects during the period before the final rule is promulgated. This guidance was based on the interim conformity requirements in section 176(c)(3) of the CAA. This rule will supersede the June 7, 1991, interim guidance on its effective date.

D. Public Participation

The Notice of Proposed Rulemaking (NPRM) for this rule was published in the **Federal Register** on January 11, 1993 (58 FR 3768) as a proposed amendment to 40 CFR part 51. A March 15, 1993 **Federal Register** notice proposed the January 11 requirements for 40 CFR part 93. The comment period lasted from January 11 until March 12, 1993, and was subsequently reopened from March 15 until May 1, 1993, in order to allow comment in the context of the NPRM for conformity of general Federal actions (see next section). Over 300 written comments were received, including comments from Governors, State air agencies, State DOTs, MPOs and other local transportation agencies, local air agencies, the associations of these agencies, environmental interest groups, highway interest groups, and private citizens. Copies of the comments in their entirety can be obtained from the docket for this rule (see ADDRESSES). The docket also includes a complete Response to Comments document for this rule.

Three public hearings were held on the transportation conformity NPRM during the public comment period. In addition, opportunity to comment on the transportation conformity NPRM was provided at the public hearing for the NPRM on conformity of general Federal actions.

E. Conformity of General Federal Actions

Section 176(c) of the Clean Air Act applies to all departments, agencies, and instrumentalities of the Federal government. This rule applies only to the conformity of transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act. Criteria and procedures for determining the conformity of all other Federal actions ("general conformity"), including highway and transit projects which require funding or approval from a Federal agency other than FHWA or FTA, are promulgated in a separate rule. Criteria and procedures for determining conformity of general Federal actions were proposed in the **Federal Register** on March 15, 1993 (58 FR 13836).

IV. Discussion of Major Issues

A. Attainment Areas

1. EPA's Position

In the NPRM, EPA indicated that the statute was ambiguous with respect to whether conformity applied only in nonattainment areas, or in attainment areas as well. EPA received significant public comment arguing that the statute should be read to apply conformity also in attainment areas, based on the wording of Clean Air Act section 176(c)(1) and the policy merits of such applicability. Similar comments were received arguing that conformity did not apply in attainment areas.

EPA continues to believe that the statute is ambiguous, and that it provides discretionary authority to apply these transportation conformity procedures to both attainment and nonattainment areas. EPA plans to carry out a separate rulemaking proposing to apply transportation conformity procedures to certain attainment areas. EPA sees strong policy reasons not to apply conformity in all attainment areas, given the significant burden associated with making conformity determinations relative to the risk of NAAQS violations in clean areas. Thus EPA believes that it would be reasonable to propose applying conformity in attainment areas for which air quality is close to nonattainment levels, for example at 85% of nonattainment levels (see discussion below).

EPA intends to take comment on the basic proposal to apply conformity in attainment areas. EPA will also seek comment on the specific application of conformity in certain categories of attainment areas.

Therefore, EPA intends to issue in the near future a supplemental notice of proposed rulemaking dealing with conformity requirements in attainment areas.[1] The requirements of this final rule will apply only in nonattainment and maintenance areas, as proposed.

2. Supplemental Notice of Proposed Rulemaking

While EPA will solicit comments on other options, the supplemental notice of proposed rulemaking on transportation conformity will propose to require conformity determinations only in the metropolitan planning areas (the urbanized area and the contiguous area(s) likely to become urbanized within twenty years) of attainment areas which have exceeded 85% of the ozone, CO, NO_2, PM–10 annual, or PM–10 24-hour NAAQS within the last three, two, one, three, and three years, respectively. These periods are consistent with the way areas are designated as attainment or nonattainment. Further, the statistical form of the comparison to the 85% value would follow that specified for the relevant ambient standard.

Transportation plans, TIPs, and projects in all other areas, including all rural areas and all urbanized areas which are not subject to EPA requirements for ambient monitoring, would be exempt from the obligation to conduct transportation conformity determinations, based on the de minimis impact on air quality that would result from transportation activities in such areas. All attainment areas above 85% of the CO or PM–10 standard in which motor vehicles and transportation project construction do not contribute significantly to ambient levels of CO or PM–10 would also be exempt from transportation conformity requirements, for similar reasons. Because the merit of exempting certain

[1] For PM–10, the areas which would be addressed in the supplemental notice are designated "unclassifiable." The Clean Air Act Amendments of 1990 designated areas meeting certain qualifications as nonattainment for PM–10 by operation of redesignated to nonattainment, and for nonattainment areas to be redesignated to attainment. This rule refers to areas redesignated to attainment as "maintenance areas."

areas from conformity requirements will vary depending on the activities being regulated, the general conformity rule may propose different exemptions for applicability of conformity requirements in attainment areas than those for transportation conformity.

EPA intends to propose flexible, low-resource procedures and criteria for the attainment areas subject to the conformity requirements to demonstrate the conformity of transportation plans, TIPs, and projects.

B. Interim Period

1. Background

As discussed in the NPRM, there exists an "interim period" which lasts until EPA approves SIPs with control strategies demonstrating attainment and reasonable further progress, or maintenance. Once these control strategy SIPs are approved, conformity of plans and TIPs shall be demonstrated by comparing the emissions expected from the transportation system when the transportation plan and TIP are implemented to the emissions "budget" established in the SIP. However, during the interim period, section 176(c)(3)(A)(iii) of the Clean Air Act allows positive conformity determinations where transportation plans and TIPs contribute to annual emission reductions in ozone and CO nonattainment areas.

Although the interim period discussed in the Clean Air Act lasts only until the conformity SIP revisions are approved, EPA is extending the interim requirements until the control strategy SIPs are submitted, because it would be impossible to apply the emissions budget test prior to that time. EPA is also establishing interim criteria in PM–10 and NO_2 nonattainment areas because Clean Air Act section 176(c)(1)(ii) clearly refers to the Federal activity avoiding increases in the frequency or severity of any standard. Interim criteria for PM–10 and NO_2 areas are discussed in section IV.D. of this preamble. EPA sees no way to ensure that activities will not contribute to violations short of requiring reductions in emissions.

For ozone and CO areas, the NPRM proposed a "build/no-build" test which requires a regional emissions analysis to demonstrate that the emissions from the transportation system in future years, if it included the proposed action and all other expected regionally significant projects, would be less than the emissions from the current transportation system in future years.

EPA received substantial public comment on the adequacy of the "build/no-build test" as a demonstration of contribution to annual emission reductions. In particular, conformity determinations being made according to this test are showing insignificant emission reductions, which commenters claim are not consistent with the need to achieve reasonable further progress as necessary to attain, as required by sections 182(b)(1) and 187(a)(7) and referenced by section 176(c)(3)(A)(iii) of the Clean Air Act. In addition, EPA itself expressed concern in the NPRM's preamble that there might be long delays before emissions budgets are approved.

2. Phase II of the Interim Period

Phase I of the interim period, which ends December 27, 1993, was covered by the EPA/DOT joint guidance of June 7, 1991. The final rule defines Phase II of the interim period as beginning on December 27, 1993.

The final rule retains the criteria which the NPRM proposed for Phase II of the interim period. In particular, regional analysis of transportation plans and TIPs in ozone and CO areas will have to satisfy the build/no-build test proposed in the NPRM and demonstrate emissions reductions from 1990 levels. EPA continues to believe, as stated in the NPRM preamble, that it is not appropriate for EPA to require specific annual emissions reductions before they have been established by the State in the reasonable further progress and attainment demonstrations ("control strategy SIP revisions"). EPA believes the States should be allowed to decide how much reduction to require from motor vehicles and how much to require from stationary sources. Commenters also expressed substantial support for this approach.

However, in order to achieve emission reductions that are more consistent with the SIP's emission reduction targets as soon as possible, EPA is ending Phase II with either the submission of the control strategy SIP revision or the Clean Air Act deadline for submission of the control strategy SIP revision, whichever is earlier. In contrast, the NPRM proposed that Phase II would last until approval of the control strategy SIP.

3. Transitional Period

When a State submits to EPA a control strategy SIP revision which has been endorsed by the Governor and subject to a public hearing, Phase II ends and the "transitional" period begins. The final rule defines the transitional period to be the time between submission of the control strategy SIP revision and EPA final action on the control strategy SIP (i.e., full approval or disapproval).

During the transitional period, transportation plans and TIPs are required to be consistent with the emissions budget in the submitted control strategy SIP. EPA believes that an MPO should observe the emission budgets established by the State for its area once the SIP has been endorsed by the Governor and submitted to EPA, rather than apply only the build/no-build test while waiting for EPA approval of the budget, because of concern about the potential length of the interim period and the need for reasonable further progress by 1996. EPA believes it is appropriate to require the transportation community to begin contributing its part to the motor vehicle emissions reduction plan adopted by the State immediately, even before EPA approval.

In order to ensure that the SIP emission budget does not loosen the interim requirement for contribution to annual emission reductions while awaiting EPA approval, areas must demonstrate satisfaction of the build/no-build test in addition to consistency with the submitted emissions budget. Because it is the "build" scenario which is compared with the emissions budget, two separate emissions analyses are not necessary to demonstrate both the build/no-build test and consistency with the emissions budget.

Submission of a control strategy SIP revision triggers a requirement for the transportation plan and TIP to be found to conform according to the transitional period criteria and procedures. For control strategy SIP revisions which are submitted after November 24, 1993, the conformity of transportation plans and TIPs must be determined according to the transitional period criteria within 12 months from the Clean Air Act deadline for submission. During this 12-month period, the existing plan and TIP are still valid, and projects from the existing plan and TIP may proceed, provided the NEPA process is completed and the project has been found to conform. However, if the transportation plan and TIP have not been demonstrated to conform according to the transitional period criteria within 12 months from the Clean Air Act deadline for control strategy SIP submission, the transportation plan and TIP lapse, and no projects may proceed except for projects which had already completed the NEPA process and had a project-level conformity determination; projects which are exempted by the conformity rule; and non-federal projects which are not regionally significant or which do not involve recipients of Federal funds.

Although existing transportation plans and TIPs remain valid for 12 months following the Clean Air Act deadline, new transportation plans and TIPs which are approved more than 90 days following submission of the control strategy SIP revision must be found to conform according to transitional period criteria and procedures. During the first 90 days following submission of the control strategy SIP revision, new transportation plans and TIPs may be found to conform according to the Phase II interim period criteria and procedures. However, the conformity status of these transportation plans and TIPs will lapse 12 months from the Clean Air Act deadline for submission if conformity is not redetermined according to the transitional period criteria and procedures.

The 90-day period is intended to accommodate MPOs which are close to completing a long-scheduled plan and TIP adoption at the time the SIP revision is submitted, to provide DOT time to review and concur in those (and any pending previous) MPO actions which it must review, and to provide time for all involved parties to obtain and understand the budget implications of the SIP revision.

The 12-month period to redetermine conformity according to the transitional period criteria and procedures is an outside limit; EPA hopes that most MPOs will revise their TIPs as necessary and redetermine conformity even earlier than within 12 months. A date certain is provided (rather than starting the 12 months on the date of submission) to avoid creating an incentive for delay of the SIP revision.

For areas which submitted a control strategy SIP revision before November 24, 1993, transportation plans and TIPs must be redetermined according to transitional period criteria and procedures by November 25, 1994, or they will lapse. Conformity determinations on new transportation plans and TIPs must be made according to the transitional period criteria beginning February 22, 1994. New transportation plans and TIPs may be found to conform according to Phase II interim period criteria until February 22, 1994, but these conformity determinations will lapse November 25, 1994 if they are not redetermined according to transitional period criteria and procedures.

At any time during the transitional period when the currently conforming transportation plan and TIP have not yet been found to conform according to the transitional period criteria and procedures, the State air agency must be consulted regarding any new regionally significant project which would increase single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes). The State air agency must be consulted on how the emissions from the implementation of the currently conforming transportation plan and TIP (estimated in the "build" scenario in the transportation plan and TIP's conformity determination) compare to the motor vehicle emissions budget in the SIP, or the projected motor vehicle emissions budget in the SIP under development. The State air agency may escalate to the Governor any unresolved disputes, as with any State air agency comments on a conformity determination.

Because SIPs must contain specific measures to achieve the planned emissions reductions, and in the case of transportation the MPO should have assisted in developing these measures, the rule's transitional period requirements should not impose any unanticipated or impossible burden on the MPO. In fact, EPA anticipates that many control strategy SIPs will be developed from an emissions analysis of the transportation plan and TIP which are in place at the time of SIP submission. Where the MPO's analysis of the plan and TIP was used for the SIPs emissions projection and there are no projects in the SIP which are not from the transportation plan and TIP, the rule states that the MPO and DOT can determine conformity of the transportation plan and TIP according to the transitional criteria without new emissions modeling and without having to apply the criteria for current planning assumptions and latest emissions models. If the MPO and DOT avail themselves of this option, however, the three-year limit for full redetermination of the plan and TIP is not reset.

As described more completely in the next section of this preamble, the rule provides that a SIP submittal is sufficient to start the transitional period even if it includes only commitments to implement some parts of the control strategy. The MPO and DOT may assume future implementation of the committal measures when testing the transportation plan and TIP against the new budget.

A SIP containing only commitments for some measures may occur if a State has devised a strategy for meeting an emission reduction or attainment requirement of the Clean Air Act, but it has not adopted all measures in the strategy in an enforceable form suitable for EPA approval. For example, certain VOC limits for consumer products may not have been adopted yet, or an inspection program for diesel trucks aimed at PM–10 reductions may not have been put in regulatory form yet. However, emission reductions for these measures may have been quantified and included in the total emission reductions for the strategy.

EPA's tolerance of committed measures when starting the transitional period is intended to allow the transportation community to proceed with its part of the strategy while the State works to complete full adoption of the committed measures. (The State may be under a sanctions clock or even under sanctions during some or all of this period.) This respect for commitments in SIP revisions for conformity purposes is distinct from the possibility of EPA conditionally approving committals under section 110(k)(4). Today's rule does not prejudge EPA action in regard to completeness or incompleteness findings, approvals, conditional approvals, partial approvals, or disapprovals of SIP revisions.

Once EPA has approved the control strategy SIP revision, the transitional period ends and the control strategy period begins. During the control strategy period, the regional test for transportation plans and TIPs requires only consistency with the motor vehicle emissions budget in the approved SIP. Conditional approval or approval of specific control measures without approval of the SIP as a whole as meeting the applicable Clean Air Act requirement does not terminate the transitional period. 4. Control Strategy SIP Revisions EPA Finds State Failed to Submit, Finds Incomplete, or Disapproves.

EPA believes it is reasonable to interpret the requirement to contribute to emission reductions as demanding some greater contribution where the State has failed to establish emission budgets in a timely fashion, and as the time remaining before the attainment deadline decreases. EPA believes that in the prolonged absence of a control strategy SIP which allocates the emission reductions required by the Clean Air Act among sources, allowing no new conformity determinations and postponing new commitments of funds will prevent uncontrolled emissions increases by delaying projects with emissions impacts until the State has established control strategies consistent with reasonable further progress and attainment. This will also provide incentive for the relevant actors within the State to agree on control strategies and emissions budgets for the SIP.

If the control strategy SIP revision is not submitted, no new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline. If EPA finds the submission to be incomplete, no new transportation plans or TIPs may be found to conform beginning 120 days after the incompleteness finding. In both cases, the conformity status of the existing transportation plan and TIP lapses 12 months after the date that the Clean Air Act requires submission of the control strategy SIP revision.

Where a control strategy SIP revision has not been submitted, no new transportation plans and TIPs may be found to conform 120 days after the Clean Air Act SIP deadline provided EPA has notified the State, MPO, and DOT that the State had failed to submit the SIP revision. EPA will strive to issue findings of failure to submit the required SIP revision within 60 days following the Clean Air Act deadline. Such a finding starts a non-discretionary sanctions clock under section 179(b) of the Clean Air Act and EPA will so notify the State. In the case of such a failure, EPA will also consider whether it is appropriate to propose and impose discretionary sanctions under section 110(m).

The conformity status of the transportation plan and TIP will lapse 120 days after EPA's final disapproval of the control strategy SIP revision wholly or in part because it lacks an adequate control strategy, and no new project-level conformity determinations may be made. Because such disapproval will be proposed as a rulemaking action before it is final, affected parties will be provided adequate notice.

EPA has already made findings of failure to submit or failure to submit complete control strategy SIP revisions for some CO nonattainment areas and some moderate PM–10 areas, as these revisions were due for certain areas on November 15, 1992 and November 15, 1991, respectively. The conformity status of transportation plans and TIPs in these areas will lapse one year from today, i.e., November 25, 1994, if the failure has not been remedied by then and acknowledged by a letter from the EPA Regional Administrator. Also, if EPA has already disapproved or in the next 120 days disapproves any submission that has been made, the conformity status of transportation plans and TIPs will lapse March 24, 1994. These delays are intended to give MPOs and others in these areas equitable notice of this rule's requirements and reasonable opportunity to adjust to them.

EPA believes that the restrictions just stated following a finding that a control strategy submittal is incomplete or following disapproval of such a submittal are inappropriate if the only reason for these findings is that the State has not completed legislation or rulemaking to put all of the measures in its otherwise adequate strategy into enforceable legal forms. A State may submit a SIP revision (or may have already submitted one prior to today) to EPA which contains certain emission reduction measures in adopted rule or other legally enforceable form which are by themselves clearly inadequate to meet the relevant emission reduction requirement of the Clean Air Act (for example, the 15 percent rate-of-progress requirement for moderate and above ozone nonattainment areas), but accompanied by commitments to complete adoption of additional specifically identified measures which if implemented would bring the total emission reduction to an approvable level (according to calculations in the SIP submittal).

EPA may find such a SIP submittal incomplete and so notify the State, with an explicit statement that EPA nevertheless considers the revision to meet the description just given. In this case, the transitional period would continue. The consequences described above for failure to submit or for incompleteness (limited period for further conformity determinations, lapse of the plan and TIP) will not ensue on the timeframe described there. Rather, the MPO and DOT may treat the submittal as if it were complete and still being evaluated by EPA for substantive approvability, and continue to make conformity findings for new plans and TIPs and for projects using transitional criteria. However, EPA is concerned that the MPO not rely on the budget indefinitely if the State in fact does not complete adoption of the measures to which it committed or other equivalent measures. Therefore, the rule provides for the plan and TIP to lapse 12 months after the date of the EPA incompleteness finding, or 12 months from today in the case of an incompleteness finding made prior to today. This lapse will be avoided if the State remedies the failure and the EPA Regional Administrator recognizes that action by letter.

If the conformity status of the transportation plan and TIP lapse, no new project-level conformity determinations may be made until a control strategy SIP revision is submitted (thereby starting the transitional period). Also, although non-federal projects do not require conformity determinations, recipients of Federal aid may not approve or adopt regionally significant non-federal projects in the absence of a conforming plan and TIP (see section IV.L. of this preamble). Only projects which are exempted by the conformity rule, projects which have completed all plan, TIP, and project conformity determinations, and non-federal projects which are not regionally significant or which do not involve recipients of Federal funds may proceed.

5. Future SIP Revisions

For many ozone nonattainment areas, post-1996 reasonable further progress demonstrations and attainment demonstrations are required to be submitted by November 15, 1994. This constitutes a deadline for a control strategy implementation plan, and the requirements described above apply even if the 1996 reasonable further progress demonstration has been submitted or approved. For example, the conformity status of transportation plans and TIPs will lapse as described above if States fail to submit the post-1996 reasonable further progress and attainment demonstration within 120 days of this deadline. Similarly, the requirements of the transitional period will apply as described above once the post-1996 reasonable further progress and attainment demonstration is submitted.

Subsequent SIP revisions which adjust the control strategy and do not have a specific deadline established by the Clean Air Act trigger conformity redeterminations within an 18-month time period, as originally proposed in the NPRM. The transitional period requirements do not apply in the case of such SIP revisions.

C. Emissions Budgets

After SIPs which demonstrate reasonable further progress and attainment are submitted, conformity determinations will involve demonstrating consistency with the SIP's motor vehicle emissions budget. Section 176(c)(2)(A) of the Clean Air Act specifically requires conformity determinations to show that "emissions expected from implementation of plans and programs are consistent with estimates of emissions from motor vehicles and necessary emission reductions contained in the applicable implementation plan." SIP demonstrations of reasonable further progress, attainment, and maintenance contain these emissions estimates and "necessary emission reductions." The emissions budget is the mechanism EPA has identified for carrying out the demonstration of consistency.

While other mechanisms exist to show that Federal actions do not cause or contribute to a violation of an ambient standard for a regional pollutant—such as duplication of the SIP's dispersion modeling for the transportation network represented by the transportation plan or TIP—the Clean Air Act specifically requires an emissions-based comparison between the transportation plan/TIP and the SIP. EPA believes that with respect to regional-scale pollutants, such a comparison also suffices as the required showing that violations will not be caused or exacerbated, since the air quality analysis in the SIP can be relied upon to show that the SIP emission level is acceptable in this regard.

1. What Is a Motor Vehicle Emissions Budget?

Motor vehicle emissions budgets are the explicit or implicit identification of the motor vehicle-related portions of the projected emission inventory used to demonstrate reasonable further progress milestones, attainment, or maintenance for a particular year specified in the SIP. The motor vehicle emissions budget establishes a cap on emissions which cannot be exceeded by predicted highway and transit vehicle emissions.

SIPs for some nonattainment areas will not have budgets because there is no Clean Air Act requirement for a SIP revision demonstrating attainment, reasonable further progress, or annual emission reductions. The rule provides for such areas in § 51.464, "Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment."

Other SIPs submitted to EPA prior to today's rule which demonstrate attainment, reasonable further progress, or annual emissions reductions do have budgets as defined in the rule, although they may not have their emissions budgets explicitly labeled because the requirement for a comparison to an emissions budget is established in this rule and may not have been fully appreciated by the State. In such cases, the attainment or maintenance highway and transit mobile source inventory serves the purpose of a motor vehicle emissions budget (see "Locating the Motor Vehicle Emissions Budget in the SIP," below). EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13557, April 16, 1992) did indicate EPA's intent to require the use of SIP motor vehicle emissions budgets for conformity demonstrations. In future SIPs, explicit identification of the emissions budget is strongly preferred in order to reduce misinterpretation.

The SIP necessarily defines an emissions budget for the attainment year in an attainment demonstration, for the maintenance period in a maintenance plan, and for certain milestone years. The SIP may also set budgets for interim years as necessary to demonstrate attainment, and the SIP may explicitly provide for a NO_X budget on the dates for which ozone nonattainment areas are required to have VOC milestones.

The emissions budget applies as a ceiling on emissions in the year for which it is defined, and for all subsequent years until another year for which a different budget is defined or until a SIP revision modifies the budget. For example, an emissions budget for a milestone year remains in effect until the next milestone year, when another emissions budget supersedes it. The attainment demonstration establishes an emissions budget for the attainment year, and that budget remains in effect until the area is redesignated and EPA approves a maintenance plan, which may establish a different emissions budget. When a required SIP revision which should add additional budget years is late or disapproved, the conformity status of the transportation plan and TIP will subsequently lapse, and the existing budget ceases to apply for the purposes of demonstrating conformity.

The emissions budget included in the attainment demonstration may be different than that included in the maintenance demonstration since the geographic and temporal distribution of emissions may change between the two modeling efforts. Also, a State may choose to shift the balance between motor vehicles and other sources, provided such a shift is consistent with continuing maintenance.

At the State's option, a SIP may contain an early demonstration of maintenance following the attainment date, with a different motor vehicle emissions budget in each year. In all situations, the emissions budget in the SIP must be consistent with the attainment or maintenance demonstration and any interim requirements of the Clean Air Act.

In general, all pollutants and associated precursors for which an area is designated nonattainment or subject to a maintenance plan approved under Clean Air Act section 175A and which are associated with highway and transit vehicles should be explicitly identified in the emission budget and included in the SIP. Conformity determinations must demonstrate consistency with the motor vehicle emissions budget for each pollutant and precursor identified in the SIP.

However, in some nonattainment and maintenance areas, the SIP may demonstrate that highway and transit vehicle emissions are an insignificant contributor to the nonattainment problem, for example, CO or PM–10 violations near industrial sources. For areas with control strategy SIPs which have already been submitted and which demonstrate that motor vehicle emissions (including exhaust, evaporative, and reentrained dust emissions) are insignificant and reductions are not necessary for attainment, the conformity determination is not required to satisfy the criteria for regional emissions analysis of that pollutant. If the control strategy SIP demonstrates that motor vehicle emissions of a precursor are insignificant and reductions are not necessary for attainment, the conformity determination is not required to satisfy the criteria for regional emissions analysis of the precursor. In the future, the SIP must explicitly state that no regional emissions analysis of a particular pollutant or precursor is necessary for attainment, and therefore is not necessary for conformity.

All highway and transit related source categories that contribute to the nonattainment problem should be identified and included in the motor vehicle emissions budget, including exhaust, evaporative, and reentrained dust emissions (including emissions from antiskid and deicing materials, where treated as mobile source emissions by the SIP). States vary in whether they treat vehicle refueling emissions as mobile or stationary area sources. If the SIP is silent or ambiguous on intent regarding refueling emissions, these emissions should not be considered to be part of the motor vehicle emissions budget and the regional emissions estimates for a plan, TIP or project should not include them. It is more common to include refueling emissions in a non-mobile source category, and MPOs do not have control over refueling emissions.

2. Emissions Budget Test

A regional analysis must estimate the emissions which would result from the transportation system if the transportation plan and TIP were implemented, and compare these emissions to the motor vehicle emissions budget identified in the SIP. If the emissions associated with the transportation plan and TIP are greater than the motor vehicle emissions budget, the transportation plan and TIP do not conform. This may occur even

though all transportation measures in the SIP are being properly implemented; for example, if population and VMT growth are higher than predicted when the SIP was developed, motor vehicle emissions may exceed the SIP's budget for such emissions.

Under no circumstances may motor vehicle emissions predicted in a conformity determination exceed the motor vehicle, pollutant-specific emissions budget. If actual emissions of pollutants are lower than their SIP emissions budgets, or if the emissions budgets themselves are lower than actually necessary to demonstrate attainment, maintenance, or other milestones, the motor vehicle emissions budget may be increased only if the State submits a SIP revision which changes the various emissions budgets. Such a SIP revision must meet all applicable Clean Air Act requirements, including those of section 110(l). Conformity determinations may not trade emissions among SIP budgets for pollutants, precursors, or highway/transit versus other sources unless a SIP revision for the specific trade is submitted and approved by EPA or the SIP establishes mechanisms for such trading.

Today's final rule requires transportation plans and TIPs to demonstrate consistency with the SIP's motor vehicle emissions budget by performing a regional emissions analysis. This emissions analysis must include emissions from the nonattainment or maintenance area's entire existing transportation network (as described in the rule), in addition to all proposed regionally significant Federal and non-federal highway and transit projects. The regional emissions analysis must estimate total projected emissions for certain future years (including the attainment year), and may include the effects of any emission control programs which are already adopted by the enforcing jurisdiction (such as vehicle inspection and maintenance programs and reformulated gasoline and diesel fuel). In the transitional period, the effects of emission control programs which are committed to in the submitted SIP may also be included.

When performing the regional emissions analysis for the purpose of the budget test, attention must be paid to the season and time period for which the SIP defines the emissions budget, and the period used by the MPO and DOT to estimate regional emissions for a plan, TIP, or project. For example, reasonable further progress milestones for ozone areas are defined in the Clean Air Act based on annual emissions, but EPA interprets this to mean emissions when temperatures, congestion levels, and other conditions are typical of a day during the ozone season (a typical summer weekday), multiplied by 365 days, rather than actual annual emissions across all seasons. Further, EPA guidance in "Procedures for Emission Inventory Preparation Volume IV: Mobile Sources" (EPA 450/4–81–026d (revised), 1992) specifies a particular way to select temperature values for the emissions estimates. Also, SIPs may calculate emission reductions from fleet turnover using either July 1 of the milestone year, or November 15 (by interpolating between the July 1 and January 1 outputs of the emissions model). The MPO and DOT should duplicate the temperature, season, and time period inputs used in the SIP when estimating future emissions for comparison to the emissions budget, or must apply appropriate adjustments to avoid any distortion in the comparison.

Where a nonattainment area contains multiple MPOs, the control strategy SIP may either allocate emissions budgets to each metropolitan planning area, or the MPOs must act together to make a conformity determination for the nonattainment area. If a metropolitan planning area includes more than one air basin or nonattainment area, a conformity determination must be made for each air basin or nonattainment area. The conformity SIP revision must establish interagency consultation procedures which address how conformity determinations will be made in such circumstances.

3. Locating the Motor Vehicle Emissions Budget in the SIP

Existing SIPs may not all have an explicitly labeled motor vehicle emissions budget. EPA indicated in the General Preamble to Title I of the Clean Air Act Amendments of 1990 that the highway and transit vehicle related emissions included in the SIP would be considered to be the emissions budget. Without a clearly indicated intent in the SIP otherwise, the SIP's estimate of future highway and transit emissions used in the milestone or attainment demonstration is the motor vehicle emissions budget.

In general, the SIP will either (1) demonstrate that once the control strategies in the SIP are implemented, emissions from all sources will be less than the identified total emissions that would be consistent with attainment, maintenance, or other required milestone; or (2) demonstrate that emissions from all sources will result in achieving attainment prior to the attainment deadline or will result in ambient concentrations in the attainment deadline year which are lower than necessary to demonstrate attainment. In either case, the SIP demonstration will rely on a projection of emissions from each source category for the attainment year, maintenance period, or other milestone year. The projection of motor vehicle emissions is the motor vehicle emissions budget.

Where the estimate of emissions from all sources is less than required to demonstrate the milestone, attainment, or maintenance, the SIP may explicitly quantify the "safety margin" and include some or all of it in the motor vehicle emissions budget for purposes of conformity. Where the existing SIP is unclear, the State air agency and the appropriate EPA Regional Office should be consulted through the interagency consultation process to define the emission budget. Unless the SIP explicitly quantifies the "safety margin" and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the SIP's estimate of future highway and transit emissions.

If the attainment demonstration includes projections of emissions beyond the attainment year, these projections are not considered emissions budgets for the purposes of transportation conformity unless the SIP explicitly states such an intent. Where the attainment SIP does not establish explicit emissions budgets for years following the attainment year, emissions in analysis years later than the attainment year must be consistent only with the attainment year's emissions budget.

Like the attainment SIP, the maintenance plan contains a quantitative demonstration that the NAAQS can be met for a given period of time into the future. Section 175A of the Clean Air Act requires a maintenance plan to provide for maintenance for a period of ten years from its approval by EPA, but the Act does not specify any particular milestones within this period for which an analysis and demonstration must be made. At a minimum, the SIP should establish an emissions level that will demonstrate maintenance at the end of the ten-year period. EPA will be releasing more specific guidance regarding conformity to budgets in maintenance plans in the future. For areas that have been redesignated to attainment prior to this rule, the MPO and DOT should work with the EPA Regional Office through the interagency

consultation process to interpret the maintenance plan to define an emissions budget. EPA recommends amending maintenance plans to explicitly identify the motor vehicle emissions budget.

Some moderate PM–10 nonattainment areas may have submitted SIPs which demonstrate that the area cannot attain the PM–10 standard by the applicable attainment date. These areas have been or will be reclassified as serious areas under section 188(b) of the Clean Air Act. Such SIPs which do not demonstrate attainment do not have budgets and are not considered control strategy SIPs for the purposes of transportation conformity. Until an attainment demonstration is submitted, these areas must satisfy the interim period criteria in order to demonstrate conformity.

The above discussion on locating the emissions budget in the SIP assumed a simple case in which the geographic boundary of the area to which the budget applies is the same as the nonattainment area boundary. This is the case for ozone nonattainment areas. The Clean Air Act explicitly defines reasonable further progress requirements in terms of the emissions inventory for the entire nonattainment area, and EPA believes that the best interpretation is that the Act also means to have the attainment budget also be defined for the nonattainment area per se. While ozone area SIPs may contain estimates of current and future emissions outside the nonattainment area, these are not budgets for purposes of conformity (unless the State in its conformity SIP revision chooses to go beyond the requirements of the rule).

For CO, PM–10, and NO_2 nonattainment areas, there are either no Clean Air Act requirements for reasonable further progress, or the requirements are not explicitly defined in terms of the nonattainment area inventory as a whole. Moreover, it may be possible for a SIP to demonstrate attainment for one of these pollutants based on an emissions and dispersion modeling domain that is either less or more than the nonattainment area. For example, an entire county may be designated nonattainment for CO, but the actual area of violations and the area analyzed in the SIP may be less than the entire county. CO, PM–10, and NO_2 modeling may also in some cases extend beyond the boundary of the designated nonattainment area, to capture the effect of transport from surrounding areas. If the geographic domain of an attainment demonstration and its emissions estimates are less than the CO, PM–10, or NO_2 nonattainment area and the SIP does not explicitly indicate an intent otherwise, EPA believes the budget applies to that domain. The MPO and DOT should analyze emissions from the transportation plan and TIP for the same area in a consistent manner. If the modeling domain extends beyond the nonattainment area, the budget applies for the portion within the nonattainment area boundary.

4. Revisions to the Emissions Budget

The emissions budget may be revised at any time through the standard SIP revision process, provided the SIP demonstrates that the revised emission budget will not threaten attainment and maintenance of the standard or any milestone in the required timeframe.

The State may choose to revise its SIP emissions budgets in order to reallocate emissions among sources or among pollutants and precursors. For example, if the SIP is revised to provide for greater control of stationary source emissions, the State may choose to increase the motor vehicle emissions budget to allow corresponding growth in motor vehicle emissions (provided the resulting total emissions are still adequate to provide for attainment/maintenance of the NAAQS and to satisfy all other applicable requirements of the Clean Air Act, including section 110(l)). Such a SIP revision must be approved by EPA before it can be used for the purposes of transportation conformity.

In cases where a SIP submitted prior to November 24, 1993 does not have an explicit emissions budget but quantifies a "safety margin" by which emissions from all sources are less than the total emissions that would be consistent with attainment, the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA. All other SIP revisions adjusting the highway and transit emissions budget must be approved by EPA before they are used for the purposes of transportation conformity.

EPA would allow early use of a SIP revision which reallocates part of the safety margin because some SIPs were developed before this rule and without awareness that in the absence of an explicit budget, the emissions projections would be used as the emissions budget for the purposes of conformity. Areas which submit SIPs with budgets after the publication of this rule will also be using the SIP's budget for conformity purposes before it is approved by EPA.

5. Subregional Emissions Budgets

The SIP may specify emissions budgets for subareas of the region, provided that the SIP includes a demonstration that the subregional emissions budget, when combined with all other portions of the emissions inventory, will result in attainment and/or maintenance of the standard. The conformity determination must demonstrate consistency with each subregional emissions budget in the SIP. EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 discussed the possibility of subregional budgets (57 FR 13558, April 16, 1992).

6. Requirements for a SIP Control Strategy to Meet the Budgets

A SIP may not select a desired level of future highway and transit emissions and rely on the requirement for conformity findings by the MPO and DOT to achieve that level of emissions without specifying control measures which are expected to result in that emission level and demonstrating that each measure is enforceable and has adequate resources for implementation (see sections 110(a)(2) (A), (B), and (E) of the Clean Air Act). An approvable SIP must indicate how the State expects to be able to achieve each budgeted level (including any subregionally budgeted level) of emissions by the relevant date. The MPO will usually have been involved in estimating "baseline" future emissions (i.e., emissions in the absence of any new actions to control them), and in designing and estimating benefits for any new controls that are identified in the SIP.

Any type of transportation action affects emissions under some conditions, and therefore the SIP's demonstration of future emissions will in a sense rely on the full collection of those actions that were assumed. EPA believes that all actions which the SIP relies on to reduce travel, such as plans for expanded transit, HOV lanes, other high occupancy facilities or services, and other demand management measures which are reflected in the emissions analysis, do require enforceable commitments from the agencies who will undertake them. Generally, inclusion in the transportation plan and TIP in effect at the time of SIP submittal will be sufficient evidence of adequate resources.

D. NO_2 and PM-10 in the Interim Period

EPA proposed in the NPRM to allow no increase in NO_X and PM-10 emissions above 1990 levels in NO_2 and PM-10 nonattainment areas. As described in the preamble to the NPRM, EPA proposed this requirement rather than the build/no-build test proposed for ozone and CO areas because EPA is not certain what degree of VMT reduction might be needed to pass a build/no-build comparison, and because the Clean Air Act did not appear to require it. (The requirement for contribution to annual emission reductions only refers to ozone and CO areas.)

EPA received significant public comment that a 1990 ceiling on NO_X and PM-10 emissions would impose stringent VMT reduction requirements on many areas. In particular, because PM-10 emissions from reentrained dust are closely related to VMT levels, areas with significant emissions from reentrained dust may have to freeze or decrease VMT in order to demonstrate emissions below 1990 levels.

Therefore, in the final rule EPA allows NO_2 and PM-10 nonattainment areas to demonstrate conformity by either keeping emissions below 1990 (or some other baseline) levels, or by satisfying a build/no-build test. EPA believes that either of these demonstrations is sufficient to assure that there is no increase in the frequency or severity of existing violations during the interim period which can be attributed to the transportation plan, TIP, or project itself. The build/no-build test is consistent with the interim requirements for ozone and CO areas and sufficient to ensure that the transportation plan, TIP, or project is not itself causing a new violation or exacerbating an existing one. EPA is retaining the option of keeping emissions below 1990 (or some other baseline) levels because some commenters expressed support for this approach, and EPA believes some flexibility should be allowed in the absence of definitive information on the VMT reductions necessary for an area to meet either the build/no-build test or an emissions ceiling.

EPA noted in the preamble to the NPRM that there is no requirement for a 1990 inventory in PM-10 and NO_2 nonattainment areas, and invited comment on allowing other years to be used as the baseline. However, Clean Air Act section 172(c)(3) requires a "current" inventory of emissions. Since this will be 1990 in most cases, the final rule establishes 1990 as the baseline year, unless the conformity SIP revision defines it as the year of the baseline emissions inventory used in control strategy SIP development.

E. NO_x Reductions in Ozone Areas in the Interim Period

The NPRM did not propose to require demonstration of NO_x reductions in ozone nonattainment areas during the interim period with a build/no-build test. EPA received significant public comment that the Clean Air Act mandates such reductions. After reviewing the comments and the statute, EPA agrees that Clean Air Act section 176(c)(3)(A)(iii)'s reference to section 182(b)(1) requires a contribution to reductions in NO_x emissions during the interim period, as that section requires reductions in both VOC and NO_x as necessary to demonstrate attainment. Therefore, the final rule requires the build/no-build test in ozone nonattainment areas to be satisfied for both VOC and NO_x, unless the Administrator determines under section 182(f) of the Clean Air Act that additional reductions of NO_x would not contribute to attainment in any area.

F. Transportation Control Measures (TCMs)

1. Demonstration of Timely Implementation

Like the proposal, the final rule will allow the "timely implementation" criterion to be satisfied even if TCMs are behind the schedule in the SIP, i.e., even if a SIP milestone for TCM implementation has already passed or the plan or TIP in question will result in a future implementation milestone being missed. EPA received comment on both sides of this issue, and EPA continues to believe that this approach is a practical necessity to accommodate uncontrollable delays. However, because section 176(c)(2)(B) of the Clean Air Act requires "timely implementation" of TCMs, conformity may be demonstrated when TCMs are delayed only if all obstacles to implementation have been identified and are being overcome, and if State and local agencies with influence over approvals or funding are giving TCMs maximum priority.

EPA believes that the determination of "timely implementation" should focus on the prospective schedule for TCM implementation, and all past delays should be irrelevant. Therefore, it is permissible for the plan/TIP to project completion of a TCM implementation milestone which is later than the SIP schedule if the lateness is due to delays which have already occurred, or due to the time reasonably required to complete remaining essential steps (such as preparation of a NEPA document, design work, right-of-way acquisition, Federal permits, construction, etc.). It is also permissible to allow time for obtaining state or local permits if the project has not yet advanced to the point where a permit could have been applied for.

However, where implementation milestones have been missed or are projected to be missed, agencies must demonstrate that maximum priority is being given to TCM implementation. All possible actions must be taken to shorten the time periods necessary to complete essential steps in TCM implementation—for example, by increasing the funding rate—even though the timing of other projects may be affected. It is not permissible to have prospective discrepancies with the SIP's TCM implementation schedule due to lack of programmed funding in the TIP, lack of commitment to the project by the sponsoring agency, unreasonably long periods to complete future work due to lack of staff or other agency resources, lack of approval or consent by local governmental bodies, or failure to have applied for a permit where necessary work preliminary to such application has been completed. However, where statewide and metropolitan funding resources and planning and management capabilities are fully consumed (within the flexibilities of the Intermodal Surface Transportation Efficiency Act (ISTEA)) with responding to damage from natural disasters, civil unrest, or terrorist acts, TCM implementation can be determined to be timely without regard to the above, provided reasonable efforts are being made. The burden of proof will be on the agencies making conformity determinations to demonstrate that the amount of time to complete remaining implementation steps will not exceed that specified in the SIP without good cause, and that where possible, steps will be completed more rapidly than assumed in the SIP in order to make up lost time.

The determination that obstacles to implementation are being overcome and maximum priority is being given to TCMs is a specific issue which the conformity SIP revisions' interagency consultation procedures must address.

Considerable comment was received regarding priority for TCMs and demonstration of timely implementation of TCMs. In response to comments that a part of § 51.394 "Priority" could be interpreted to weaken timely implementation of TCMs rather than promote it, EPA has deleted language

which required funding decisions to promote the timely implementation of transportation measures in the applicable implementation plan "to the extent that funds are available."

There was also significant comment regarding the relationship between TCM funding and timely implementation. Some commenters suggested that TCMs should be funded before obligations were made for any other TIP projects, or that TCM funds should in some way be set aside. EPA is also concerned that without explicit funding protection for TCMs, it is possible that TCMs in a conforming TIP may not actually have funds obligated. Timely implementation could then be demonstrated in the next TIP through additional promises to fund the TCMs in the upcoming TIP cycle, but no mechanism would force the MPO or project sponsor to obligate funds for TCMs in that TIP cycle once it has started.

After extensive consideration of this issue, EPA has concluded that the Federal transportation funding process does not offer practical opportunities to control the use of appropriated funds once they are apportioned or allocated. State DOTs and MPOs need flexibility in establishing the sequence in which projects are funded, due to unpredictable events in the timing of the project implementation process. This rules out requiring all TCMs to be obligated before other projects.

Furthermore, setting aside funds for TCMs poses special difficulties. A set-aside would in effect be a lower limit on obligations for all other projects. DOT informs EPA that it is not authorized to reduce States' obligation limits in this way. In addition, when TCMs are legitimately delayed for reasons beyond any agency's control, the obligation authority cannot be reserved. If a State will be unable to use its obligation authority by the end of the Federal fiscal year it must be released so DOT can redistribute it to other States that can use it. Any obligation authority not used by the end of the fiscal year lapses and is not available in subsequent years. Therefore, EPA believes it is not reasonable to impose extra controls on how MPOs and State DOTs spend Federal highway and transit funds, beyond the requirements for maximum priority for approval and funding and for timely implementation of TCMs. The ISTEA requirements for fiscally constrained transportation plans and TIPs also provide assurance that funds are reasonably available to implement TCMs as well as the other projects in the transportation plan and TIP.

2. SIP Revisions Due to TCM Delays

The preamble to the NPRM requested comment on whether a SIP revision should be required when a TCM falls behind its implementation schedule in the SIP. The final rule does not automatically require a SIP revision when a TCM falls behind the schedule in the SIP. However, plans and TIPs cannot be found in conformity unless the "timely implementation" criterion is satisfied. Therefore, if obstacles to TCM implementation are not being overcome because it is impossible to do so, if State and local agencies are not giving maximum priority to TCMs which are behind schedule, or if the original sponsor or the cooperative planning process decides not to implement the TCM or decides to replace it with another TCM, a SIP revision which removes the TCM will be necessary before plans and TIPs may be found in conformity. (In order to be approved by EPA, such a SIP revision must include substitute measures that achieve emissions reductions sufficient to meet all applicable requirements of the Clean Air Act, including section 110(l).) The interagency consultation procedures established by the conformity SIP revision must include a process to discuss whether delays in TCM implementation should be handled by submitting SIP revisions to remove or substitute TCMs.

This approach is generally consistent with the comments EPA received on this issue. Most commenters did not favor an automatic requirement for a SIP revision in the case of every TCM implementation delay, although many believed that SIP action might be appropriate in certain circumstances. Several commenters supported requiring the SIP to include substitute TCMs and funding sources which would be implemented to ensure that emission reduction goals are met if the implementation of other TCMs were delayed. Although the SIP may have automatic project and/or funding substitutes in the case of TCM delays, the final rule does not require this. In general, the Clean Air Act does not require individual measures to have automatic substitutes in case of non-implementation.

3. Retrospective Analysis of TCMs

Neither the proposal nor the final rule requires the determination of timely implementation to be based on retrospective analyses of TCM effectiveness or otherwise requires MPOs or DOT to affirmatively study and determine whether each TCM had its predicted effectiveness (unless the SIP explicitly includes such a requirement). However, the final rule does require any analysis supporting a conformity determination to reflect the latest available information regarding the effectiveness and actual implementation of the area's TCMs, in order to satisfy the criterion regarding use of the latest planning assumptions.

EPA believes that the transportation community should be held responsible through the conformity process for implementing TCMs which the State committed to in the SIP. However, EPA does not believe it is appropriate to hold the transportation community responsible for achieving the emission reduction goals predicted for each TCM, especially given the difficulty in predicting TCM effectiveness or even measuring project-specific benefits once TCMs are implemented. Because any shortfall in emissions reductions is reflected in future conformity determinations through use of the latest planning assumptions, and because conformity is ultimately based on a comparison with an emissions budget, EPA believes that the conformity process adequately addresses the issue of TCM effectiveness. Shortfalls in emissions reductions from TCMs will either be offset by other measures in the transportation plan and TIP so that the motor vehicle emissions budget is still met, or the transportation plan and TIP will not be in conformity. In addition, serious and above ozone areas are required to track aggregate VMT and vehicle emissions under section 182(c)(5)(A) of the Clean Air Act and overall emissions under section 182(g). CO areas above 12.7 parts per million must also track aggregate VMT each year. Conformity determinations are required to use the latest planning assumptions.

4. TCMs in the Absence of a Conforming Transportation Plan and TIP

Individual projects may not be funded, accepted, or approved unless there is a currently conforming transportation plan and TIP. EPA received public comment indicating that TCMs in the SIP should be able to proceed even in the absence of a conforming transportation plan and TIP, because the commenters considered them to be consistent with the purpose of the SIP.

The final rule would not allow TCMs to proceed without a conforming transportation plan and TIP. Clean Air Act sections 176(c)(2) (C) and (D) clearly require conforming transportation plans and TIPs to exist in order to find projects in conformity. EPA does not believe that Clean Air Act section

176(c)(1)'s very general definition of conformity as meaning conformity to the purpose of the SIP overrules this more specific requirement. According to the final rule, only exempt projects may proceed without a conforming plan and TIP, because these projects are emissions neutral or constitute a de minimis exception to the requirement for a conforming transportation plan and TIP to be in place.

Although it may appear intuitively counterproductive to delay transportation projects which benefit air quality just because an area is unable to develop a conforming transportation plan and TIP, the underlying philosophy of the conformity requirement for transportation plans and TIPs is that transportation actions must be planned and evaluated for emissions effects in the aggregate and for the long term. Allowing project-by-project approvals in the absence of a conforming transportation plan and TIP is contrary to this philosophy. If TCMs proceed outside the context of the transportation plan and TIP, there is no assurance that the alternatives analysis has been properly conducted and that the effect of the TCM on the flow within the network has been properly accounted for.

Furthermore, EPA believes that because many compromises and trade-offs among involved parties may be required to develop a conforming transportation plan and TIP or to revise the SIP so that this is possible, it is important for all constituencies to have a stake in their development. Allowing TCMs to proceed without a conforming transportation plan and TIP may undermine the cooperative transportation planning process.

G. Enforceability

Several commenters remarked that project-level mitigation or control measures which are relied upon to demonstrate conformity should be enforceable. EPA agrees that some mechanism is necessary to ensure that the project design concept and scope (including any mitigation or control measures) which is assumed in a conformity analysis is actually implemented during the construction of the project and operation of the resulting facility or service.

The final rule requires that before a project may be found in conformity, there must be written enforceable commitments from the project sponsor and/or operator that necessary project-level mitigation or control measures will be implemented as part of the construction and operation of the project. Specifically, the rule refers to project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM–10 or CO impacts, or which are included in the project design concept and scope which was used in the supporting plan, TIP, and/or project-level conformity analyses as a condition for making conformity determinations.

Normal project design elements (dimensions, lane widths, materials, etc.) are not mitigation measures. But the mitigation measures would include, for example, construction practices to control fugitive dust. Mitigation measures would also include certain operating policies such as differential SOV/HOV pricing strategies and high-occupancy vehicle designation, unless they are shown not to be critical to the conformity determination. For these cases, the commitment may be either to a specific operating policy, or to an interactive process to determine the operating policy which produces a certain effect (i.e., the effect assumed in the conformity analysis). For example, a project sponsor/operator could commit to either a certain toll, or to a process of setting a toll which results in a given level of average daily traffic on the facility.

Actual other projects that are assumed in a current project's conformity analysis to be completed and operational at a future date—such as parallel non-SOV service—are not considered to be mitigation or control measures for the current project and would not require written commitments. The requirement to use the latest planning assumptions will ensure that conformity analyses reflect the current plans for implementation of such other projects. In combination with the requirement for fiscal constraint and improved metropolitan planning procedures, EPA believes this is adequate assurance that these other projects or their equivalent will be implemented.

If the regional emissions analysis supporting a plan or TIP conformity determination includes project-level mitigation or control measures in a project's design concept and scope, but written commitments from the project sponsor/operator are not obtained prior to the project-level conformity determination, the project must be considered to be "not from a conforming plan and TIP." The project will therefore need to be included in a new regional emissions analysis which may not assume implementation of the mitigation or control measures.

In addition to requiring that written commitments to mitigation measures be obtained from project sponsors prior to making a positive conformity determination, the final rule also requires that project sponsors must comply with such commitments once made. Pursuant to these final rules, EPA can enforce mitigation commitments directly against project sponsors under section 113 of the Clean Air Act, which authorizes EPA to enforce the provisions of rules promulgated under the Act. Once a State conformity SIP revision requiring written commitments to mitigation measures is approved by EPA, such commitments can also be enforced directly against project sponsors by States and citizens under section 304 of the Clean Air Act, which provides for citizen enforcement of requirements under an applicable implementation plan relating to transportation control measures or air quality maintenance.

The concern was raised to EPA that direct enforcement against non-federal parties could violate the prohibition against indirect source review programs in Clean Air Act section 110(a)(5). However, EPA concludes that this prohibition is not relevant to the requirement that project sponsors comply with mitigation commitments. EPA is not promulgating a generally applicable requirement for review of all indirect sources. Rather, EPA is enabling Federal agencies to make positive conformity determinations under Clean Air Act section 176(c) based on voluntary commitments by project sponsors to complete mitigation measures. Project sponsors are not obligated to make such commitments. Where they volunteer to do so to facilitate Federal conformity determinations, EPA is requiring them to live up to such commitments. Without such a requirement, EPA could not allow positive conformity determinations based on mitigation measures prior to actual construction of mitigation measures.

If at a later time (only during the budget period, which extends to or beyond the attainment date) the MPO or project sponsor believes the mitigation measure is no longer necessary for conformity, the project operator may be relieved of its obligation if it shows in a regional emissions analysis of the transportation plan/TIP that the emissions budget(s) can still be met without the mitigation measure, and if it shows that no hot spots will be caused or worsened by not implementing the mitigation measure. The MPO and DOT must confirm that the conformity determinations for the transportation plan, TIP, and project would still be

valid if the mitigation measure is not implemented.

If the mitigation measure was not included in the project design concept and scope which was modeled for the purpose of the transportation plan and TIP conformity determination, the project sponsor or operator would not have to perform a regional emissions analysis in order to be relieved of its obligation. The MPO and DOT could confirm that the conformity determinations for the transportation plan and TIP are valid without further emissions analysis. However, a hot-spot analysis would be necessary in order to demonstrate that the project-level conformity determination is valid even without the mitigation measure.

H. Time Limit on Project-Level Determinations

Several commenters expressed concern that by proposing in the "Applicability" section that projects with a completed NEPA document and a project-level conformity determination may proceed unless there has been a significant change in design concept and scope or a supplemental environmental document for air quality reasons, the proposal would have allowed too many projects to proceed without an updated conformity analysis. Upon reflection, EPA believes that it is appropriate to respect prior determinations for projects which have received final approval, provided there have been no significant changes in project design concept and scope and major steps have been taken to advance the project. However, EPA believes that it is reasonable to require a new conformity determination if there is no ongoing activity that would be delayed during the redetermination process and if several years have elapsed since the original determination, during which emissions models and planning assumptions may have changed.

EPA wants to balance two conflicting goals: (1) To maintain a stable and efficient transportation planning process by avoiding costly reanalysis and project redesign, and (2) to protect air quality by taking into account changes to the real world or to our understanding of it (e.g., changes to the transportation network, the planned transportation network, planning assumptions, or models). By proposing to allow projects which have final approval to proceed, and by proposing to require only one project-level conformity determination, EPA intended to avoid disrupting the implementation process for projects which are underway. To protect air quality by considering new information and changed circumstances, the NPRM relied on DOT's process for reevaluating NEPA documents and determining if supplemental NEPA documents are necessary. However, this process does not have clear consultation procedures or criteria for determining when supplemental analysis is necessary.

Therefore, the final rule allows implementation to continue for only those projects which have a completed NEPA document and project-level conformity determination, and which have had one of the following major steps within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of right-of-way; or approval of the plans, specifications and estimates. The rule would require a new finding of project-level conformity if the State seeks DOT authorization for a new step or phase of a project which has not had one of these major steps within the past three years. Thus, in contrast to the proposal, project-level conformity determinations lapse automatically under certain circumstances rather than lapsing through a DOT determination that a supplemental NEPA document is necessary. DOT's NEPA regulations require reevaluation of NEPA documents for projects which have not had major action for three years; the conformity process will ensure that the effects of new planning assumptions and emissions models are explicitly and affirmatively considered with the benefit of interagency consultation.

Under the EPA/DOT interim guidance issued June 7, 1991 and under the NPRM, projects which had received a conformity determination but had been inactive for more than three years were allowed to be included in the "Baseline" (no-build) scenario, and were also included in the "Action" (build) scenario. Consequently, they did not influence the outcome of the build/no-build comparison even if the actual effect of their completion would be to increase emissions. For the same reasons that EPA believes such inactive projects should receive new project-level conformity determinations before being reactivated, EPA believes that there should be one cycle of plan and TIP analysis in which the project is treated as a newly proposed project. Accordingly, the rule requires that for the first instance after today in which the MPO and DOT apply a build/no-build test to the plan and TIP, the project should appear in the build but not in the no-build scenario, if the project remains in the plan or TIP. In subsequent plan and TIP conformity determinations, the project will appear in both scenarios regardless of how much longer it remains inactive or whether it experiences a new period of inactivity. The project's effects will always be accounted for in the budget test during the transitional or control strategy period, as long as the project has not been removed from the transportation plan.

The requirement to redetermine project-level conformity is independent of the requirement to include the project in the build scenario for one plan and TIP conformity determination. The project may be considered to come from a currently conforming transportation plan and TIP for the purposes of a project-level conformity determination even if the project has not yet been removed from the no-build scenario. This would not relieve the MPO of the responsibility to include the project's emissions only in the build scenario in the next plan and TIP redetermination. However, the MPO and the project sponsor should consult on whether it is desirable to approve the project before it has been analyzed with its emissions included in the build scenario only, since completing the project might reduce options for the rest of the transportation system.

Once a reactivated project with a lapsed project-level determination has been properly analyzed as part of a TIP, the redetermination of project-level conformity will depend upon the consideration of hot spots. In all cases, once a project-level determination has lapsed, a new finding of project-level conformity must be made. However, under certain circumstances, a redetermination of conformity for a project with respect to hot spots may be based on the analysis performed for the previous conformity determination. For example, if there have been changes since the previous analysis to the emissions models, planning assumptions, or current facts or assumptions regarding the transportation network or traffic volumes, it may still be possible to demonstrate that the hot-spot criterion is satisfied by making approximate calculations and judgments about the effect of the latest information on the previous analysis. If the previous analysis predicts a concentration which is not close to the ambient air quality standard and the changes in emissions models or planning assumptions are not significant, it may be possible to demonstrate conformity without a complete reanalysis. Such decisions about models and methodologies for hot-spot analyses are the subject of interagency consultation.

Although EPA wants the effects of new planning assumptions and

emissions models to be considered in project-level redeterminations, EPA does not intend the conformity process to force the development of supplemental NEPA documents. Under NEPA, supplemental documents are not necessary for every project which has not had major steps within three years. Supplemental NEPA documents should only be prepared when there are significant changes as defined by the responsible Federal agency. By allowing certain conformity determinations to be made on the basis of previous analyses, EPA hopes that rigorous reanalyses will not need to be performed in all cases.

I. Interagency Consultation

1. Minimum Standards

Like the proposal, the final rule requires the conformity SIP revision to establish detailed interagency consultation procedures. The rule lists topics which the procedures must address, such as frequency of meetings, without establishing minimum standards. The conformity SIP revision shall determine such specifics and identify the agencies to be involved in the interagency consultation process—in particular, the local transportation agencies (such as county-level implementing agencies) and local air agencies. Commenters suggested examples of specific requirements States may choose to include, such as consultation on the unified planning work program; early notification announcing the initiation of major work efforts; establishment of oversight committees involving all significant, interested parties; forms of announcement of comment periods; interagency notice of public hearings; specific consultation requirements for plans and TIPs which DOT returns to the MPO or State DOT for additional conformity findings; and availability of the MPO's summary and analysis of comments. Because EPA believes that each State should have the flexibility to design the most effective and appropriate consultation process, EPA is not specifically requiring States to include these measures. However, EPA encourages adoption of extensive, effective consultation procedures that will resolve problems as early in the process as possible and that will facilitate the development of approaches to maximize air quality and mobility.

Until the conformity SIP revision is approved by EPA, the consultation requirements of the final rule may be satisfied if reasonable opportunity for interagency consultation is provided.

2. Consequences of Failure to Follow Consultation Procedures

The preamble to the notice of proposed rulemaking asked for comment on what should be the consequences of failure to follow the consultation procedures established in the conformity SIP revision. The final rule establishes as a criterion for determining conformity that the MPO must follow the consultation procedures established by the SIP. Thus, failure to follow the consultation procedures established in the conformity SIP revision would be a violation of the SIP and would also undermine the validity of the conformity determination. The final rule's approach is consistent with the majority of commenters, who believed that the validity of a conformity determination should depend on proper consultation procedures and that each State and participating agencies should jointly develop their own legally enforceable State conformity procedures.

3. Role of State Air Agencies in Conformity Determinations

EPA received many comments regarding the role of State air agencies in determining conformity. EPA believes that a well-defined conflict resolution process provides security to all parties and thus facilitates the informal negotiation and collaboration which is essential to cooperative planning. A well-defined process will also expedite the resolution of disagreements and help prevent the transportation planning process from falling behind schedule if consensus is not achieved.

Therefore, the final rule provides that conflicts among State agencies and between State agencies and MPOs must be escalated to the Governor if they cannot be resolved by State agency heads. The State air agency may delay an MPO or State DOT's conformity determination if interagency consultation has been pursued to the level of the head or chair of both agencies, and if the air agency escalates unsolved issues to the Governor within 14 calendar days. Once the State air agency has appealed, the Governor's concurrence must be obtained for the final conformity determination. If no appeal is made during the 14-day waiting period after the State DOT or MPO has notified the State air agency head of the resolution of its comments, the MPO or State DOT may finalize its conformity determination. The Governor may delegate his or her role in the process, but not to the head or staff of the State or local air agency, State DOT, State transportation commissions or boards, or MPO. The start of the 14-day clock and the form(s) of escalation are to be defined in the consultation procedures established by the SIP revision.

EPA is authorized to address consultation procedures by Clean Air Act section 176(c)(4)(B)(i), and EPA believes that this conflict resolution process is necessary to ensure a meaningful consultation process.

Although the rule does not specify a concurrence role for State air agencies, a State may choose to provide one when it establishes consultation procedures in its conformity SIP revision.

4. EPA Role in Conformity Determinations

The proposal solicited comment on whether EPA should be required to concur on conformity determinations or on the choice of models and methodologies. The final rule does not require EPA concurrence, and the Clean Air Act gives no direct authority to do so. However, the consultation procedures in the conformity SIP revision must address a process for response to the significant comments of involved agencies, including EPA.

5. Interagency Consultation Requirements in DOT's Metropolitan Planning Regulations

In addition to the consultation requirements established by the conformity SIP revision, DOT's metropolitan planning regulations (23 CFR part 450) impose consultation requirements on the MPOs. These regulations specifically require in nonattainment and maintenance areas an agreement between the MPO and the regional air quality agency which describes their respective roles and responsibilities for air quality-related transportation planning. Furthermore, these regulations require that in cases where the metropolitan planning area does not include the entire nonattainment or maintenance area, there must be an agreement between the State DOT, State air agency, other affected local agencies, and the MPO describing the process for cooperative planning and analysis for all projects outside the metropolitan planning area but within the nonattainment or maintenance area. This agreement must indicate how the total transportation-related emissions from the nonattainment or maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purposes of determining conformity.

J. Frequency of Conformity Determinations

1. Grace Periods Following Triggers for Redetermination

Several comments were received regarding the 18-month grace period for redetermination of the transportation plan following the promulgation of the final rule or EPA approval of certain SIP revisions. Some commenters expressed the need for longer or more flexible grace periods, while others believed that the grace periods should be shorter in order to rapidly accommodate new requirements. EPA continues to believe that 18 months is an appropriate balance between the need for conformity determinations to reflect updated information and the need to maintain a stable transportation planning process. Often (if not always) the emissions budget in a newly-approved SIP will have already been used to demonstrate conformity of the existing plan and TIP months earlier through the "transitional period" requirements of the final rule, making the 18-month trigger redundant for budget purposes, although still important for assessing timely implementation of TCMs.

It should be emphasized that any new conformity determination following promulgation of the final rule or approval of a SIP revision involving the motor vehicle emissions budget or TCMs must be made according to the new requirements or the new SIP provisions. The 18-month time period is only a grace period before the conformity status of existing plans must be re-evaluatedin the context of the new requirements. DOT must make conformity determinations on existing plans according to the requirements of today's rule within 18 months, or the conformity status of existing plans will lapse, and no further conformity determinations on projects may be made. MPOs must act before DOT. These determinations may coincide with the periodic adoption of a new transportation plan or TIP, or with a transportation plan and TIP determination otherwise required by the rule (for example, one made to show conformity to a submitted emissions budget).

It should also be emphasized that any conformity determination made after the effective date of the final rule must be made according to the requirements of the final rule, even if the conformity SIP revision has not yet been approved. Once the conformity SIP revision has been approved, conformity determinations must also follow the requirements it establishes. The 18-month time period before transportation plans must have a new conformity determination satisfying the requirements of the final rule is not in any way tied to the deadline for submission of a conformity SIP revision.

2. TIP Amendments

The NPRM proposed that each TIP amendment requires a conformity determination, unless the amendment merely adds or deletes exempt projects. The final rule requires notification to other agencies of such plan and TIP revisions to be an interagency consultation procedure which must be established in the conformity SIP revision. Notification is not expected to occur before the fact, unless the conformity SIP revision requires it.

Some commenters expressed concern that not every TIP amendment involves regionally significant projects or changes in project design concept and scope which are significant. EPA believes that in such cases, no new regional emissions analysis would be required if the MPO and DOT make a finding that the previous analysis is still valid. That is, if the only changes to the TIP involve either projects which are not regionally significant and which were not or could not be modeled in a regional emissions analysis, or changes to project design concept and scope which are not significant, the MPO or DOT could document this and use data from the previous regional emissions analysis to demonstrate satisfaction of the criteria which involve regional analysis. EPA said in the preamble to the NPRM that when a conformity determination is based on a previous analysis and no new transportation or air quality modeling is otherwise required, EPA would not require new modeling solely to incorporate revised planning assumptions (although use of the latest information is always recommended). Therefore, EPA believes that conformity determinations on minor TIP amendments do not necessarily require new regional emissions analysis, although a positive conformity finding must be made and the regional emissions criteria must be satisfied by documenting the appropriateness of relying on the previous analysis.

One commenter also stated that full-blown conformity determinations should not be required if a project is moved between TIP years, but its completion date is still within the same year, or changes by more than a year but not enough to affect a milestone year. Under DOT's metropolitan transportation planning regulations, moving a project from the second or third year of the TIP does not require a TIP amendment, and therefore, a conformity determination would not be required. When a project in the first year of the TIP is delayed, the DOT regulations allow a project to be moved up from the second or third year using the ISTEA project selection procedures or other project selection procedures agreed to by the MPO, State, and transit operator. Furthermore, EPA believes that for conformity determinations on TIP amendments, the demonstration of timely implementation of TCMs should focus on the changes to the TIP which impact TCM implementation. A new status report on implementation of TCMs is not necessarily required for TIP amendments; the status report from the previous conformity determination may be relied on if by its nature the TIP amendment does not affect TCM implementation.

3. SIP Revisions as Triggers

Some commenters also stated that a full-blown conformity determination should not be required every time EPA approves a SIP revision which adds, deletes, or modifies a TCM. In order to be approved, such a SIP revision would have to demonstrate that the added, deleted, or modified TCM is still consistent with attainment, maintenance, or other Clean Air Act milestones. EPA believes that an MPO or DOT could rely on the regional analysis used in the SIP revision to make its conformity determination, if the MPO or DOT makes a finding that the SIP analysis meets this rule's requirements for how regional emissions analyses are performed.

In the preamble to the NPRM, EPA requested comment on whether the trigger for conformity redetermination following a SIP revision should be submission of the SIP revision to EPA, or EPA approval of the SIP revision. EPA received significant comment advocating each of these approaches. In general, the final rule follows the NPRM's approach of using EPA approval of the SIP revision as the triggering event. Section 176(c) of the Clean Air Act refers to conformity to the "applicable implementation plan," and the applicable implementation plan is a SIP which is approved by EPA.

In the context of the interim and transitional period requirements, the final rule does establish a regional emissions test which requires consistency with the motor vehicle emissions budget in the submitted SIP, even before it is approved. EPA requires use of a submitted SIP in this case because EPA believes a SIP emissions budget, even if it is not yet approved, is

the best way to determine "contribution to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7)," in the absence of an approved SIP, as required by section 176(c)(3)(a)(iii) of the Clean Air Act. Even in this case, EPA does not consider the submitted control strategy SIP, or any other SIP which is not yet approved, to be an "applicable implementation plan."

Although EPA is in most cases not adopting the option of triggering conformity determinations with SIP submission, EPA believes the final rule's interim and transitional period criteria and procedures do address the concern of many commenters that the State's control strategy should be used as soon as possible for the purposes of conformity.

4. Additional Triggers

EPA believes the proposed triggers achieve an appropriate balance between maintaining the stability of the transportation planning process and considering new information as expeditiously as possible. Some commenters supported additional triggers, such as changes in assumptions about assumed transit ridership (due to changes in fare structure or the transit network), funding availability, or land use scenarios. EPA believes that these changes are unpredictable, and using them as triggers for new conformity determinations would be disruptive to the transportation planning process. However, the final rule requires such changes to be explicitly recognized in all future conformity determinations, in order to satisfy the criterion which requires use of the latest planning assumptions.

5. Lapsing of Transportation Plan and TIP Conformity Determinations

The final rule clarifies that if transportation plan and TIP conformity determinations are not made within the three-year timeframe for periodic redetermination or within the grace period following a trigger, the conforming status of the transportation plan and TIP will lapse. In the absence of a conforming transportation plan and TIP, no new project-level conformity determinations may be made. Also, although non-federal projects do not require conformity determinations, recipients of Federal highway and transit funds may not approve or adopt regionally significant non-federal projects in the absence of a conforming transportation plan and TIP (see section IV.L. of this preamble). Thus, without a conforming transportation plan and TIP, only the following projects may proceed: projects which are exempted by the conformity rule; projects which have completed all transportation plan, TIP, and project conformity determinations; and non-federal projects which are not regionally significant or which do not involve recipients of Federal funds.

K. Fiscal Constraint

The NPRM included language from ISTEA on fiscal constraint for transportation plans and TIPs. EPA received several comments on this issue. In response to one comment, EPA has clarified that only transportation plans and TIPs which are fiscally constrained according to the requirements of DOT's metropolitan planning regulations (which implement ISTEA) may be found to conform.

Several other comments concerned how the ISTEA language on fiscal constraint should be interpreted. EPA believes that the conformity requirements on fiscal constraint must be consistent with those that DOT establishes, and references DOT's metropolitan planning regulations at 23 CFR part 450 on this subject.

The metropolitan planning regulations require the transportation plan to include a financial plan that demonstrates the consistency of proposed transportation investments with already available and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan. The estimated revenue by existing revenue source (local, State, Federal, and private) available for transportation projects shall be determined and any shortfalls identified. Proposed new revenues and/or revenue sources to cover shortfalls shall be identified, including strategies for ensuring their availability for proposed investments. Existing and proposed revenues shall cover all forecasted capital, operating, and maintenance costs. Cost and revenue projections shall be based on data reflecting the existing situation and historical trends. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of projects and programs to reach air quality compliance.

The metropolitan planning regulations at 23 CFR 450 also require the TIP to be financially constrained and include a financial plan that demonstrates which projects can be implemented using current sources and which projects are to be implemented using proposed new sources (while the existing transportation is being adequately operated and maintained). Only projects for which construction and operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial analysis, the MPO shall take into account all projects and strategies funded under title 23 U.S.C. and the Federal Transit Act, other Federal funds, local sources, State assistance, and private participation. In nonattainment and maintenance areas, projects included in the first two years of the TIP must be limited to those for which funds are available or committed.

"Available" funds means funds derived from an existing source of funds dedicated to or historically used for transportation purposes which the financial plan (in the TIP approved by the MPO and the Governor) shows to be available to fund projects. In the case of State funds which are not dedicated to or historically used for transportation purposes, only those funds that the Governor has control of may be considered "committed" funds. In this case, approval of the TIP by the Governor will be considered a commitment of funds. For local or private sources of funding not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing/letter of intent by the responsible official or body having control of the funds will constitute a commitment. Where the use of State, local or private funds not dedicated to or historically used for transportation purposes is proposed and a commitment as described above cannot be made, this funding source should be treated as a new funding source and must be demonstrated to be a "reasonably available new source."

With respect to Federal funding sources, "available" or "committed" shall be taken to mean authorized and/or appropriated funds the financial plan shows to be available to the area. Where the transportation plan or TIP period extends beyond the current authorization period for Federal program funds, "available" funds may include an extrapolation based on current/past authorizations of Federal funds that are distributed by formula. For Federal funds that are distributed on a discretionary basis, including Section 3 and "demo funding," any funding

beyond that currently authorized and targeted to the area should be treated as a new source and must be demonstrated to be a "reasonably available new source."

For periods beyond years 1 and 2 of the TIP in nonattainment and maintenance areas, for TIPs in other areas, and for the transportation plan, funding must be "reasonably available," but need not be currently available or committed. Hence, new funding sources may also be considered. New funding sources are revenue sources that do not currently exist or that require some steps (legal, executive, legislative, etc.) before a jurisdiction, agency, or private party can commit such revenues to transportation. Simply identifying new funding sources without identifying strategies for ensuring their availability will not be acceptable. Under the regulations, the financial plan must identify strategies for ensuring their availability. It is expected that the strategies, particularly for new funding sources requiring legislation, voter approval or multi-agency actions, would include a specific plan of action that describes the steps that will be taken to ensure that the funds will be available within the timeframe shown in the financial plan.

The plan of action should provide information such as how the support of the public, elected officials, business community, and special interests will be obtained, e.g., comprehensive and continuing program to make the public and others aware of the need for new revenue sources and the consequences of not providing them. Past experience (including historical data) with obtaining this type of funding, e.g., success in obtaining legislative and/or voter approval for new bond issues, tax increases, special appropriations of funds, etc. should be included. Where efforts are already underway to obtain a new revenue source, information such as the amount of support (and/or opposition) for the measure(s) by the public, elected officials, business community, and special interests should be provided.

For innovative financing techniques, the plan of action should identify the specific actions that are necessary to implement these techniques, including the responsible parties, steps (including the timetable) to be taken to complete the actions and extent of commitment by the responsible parties for the necessary actions.

Following are examples of specific cases where new funding sources should not generally be considered to be "reasonably available": (1) Past efforts to enact new revenue sources have generally not been successful; (2) the extent of current support by the public, elected officials, business community, and/or special interests indicates passage of a pending funding measure is doubtful; or (3) there is no specific plan of action for securing the funding source and/or other information that demonstrates a strong likelihood that funds will be secured.

Since the financial plans will be included in the metropolitan transportation plans and TIPs, the public and other interested parties will have an opportunity to review and comment on the financial plans through the public involvement process required under the metropolitan planning regulations. Similarly, agencies involved in the conformity process will have an opportunity to review and comment on the financial plans through the interagency consultation procedures established by the conformity SIP revision, which must contain a process for circulating draft documents (including plans and TIPs) for comment prior to approval.

L. Non-federal Projects

The NPRM proposed that non-federal projects (i.e., projects which receive no Federal funding and require no Federal approval but which are adopted or approved by an entity that receives Federal transportation funds for other projects) do not require conformity determinations. However, to ensure that the transportation sector overall contributes to emissions reductions in the interim period as required, and because Federal and non- federal projects eventually share the same SIP motor vehicle emissions budget, the NPRM proposed to require the regional emissions analyses for conformity determinations on transportation plans and TIPs to include all known regionally significant non-federal projects. The final rule retains these two features but differs from the proposal as described below.

1. Requirements For Adoption or Approval of Projects By Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Act

EPA received significant public comment on the issue of conformity's applicability to non-federal projects. The final rule does not require non-federal projects to have a conformity determination (i.e., a finding that the project satisfies all the rule's criteria and procedures, including hot-spot analysis and regional analysis). EPA continues to believe, as described in the NPRM, that the better reading of the Clean Air Act does not apply all of these aspects of conformity to non-federal projects.

However, upon consideration of public comments, EPA believes that the NPRM's solitary requirement to account for known regionally significant non-federal projects does not fully comply with the best reading of Clean Air Act Section 176(c)(2)(C). Section 176(c)(2)(C) says explicitly that "a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23 U.S.C. or the Urban Mass Transportation Act * * * only if it comes from a conforming transportation plan and TIP," or (to paraphrase) if a regional emissions analysis demonstrates that the plan and TIP would still conform if the project were included.

EPA has decided that "transportation project" in Section 176(c)(2)(C) of the Clean Air Act is best interpreted as meaning any transportation project, rather than only Federally funded or approved projects. The statutory language does not limit the phrase "transportation project" in any way. Accordingly, the final rule requires that before adopting or approving a regionally significant non-federal transportation project, recipients of title 23 U.S.C. or Federal Transit Act funds must determine either that the project was included in a conforming plan and TIP, or was included in the original regional emissions analysis supporting the plan or TIP's adoption, or that a new regional emissions analysis including the plan, TIP, and project demonstrates that the plan and TIP would still conform if the project were implemented.

DOT would have no responsibility for ensuring that recipients of Federal funds make the proper determinations before they adopt or approve regionally significant non-federal projects. However, failure of a recipient of Federal funds to determine that a regionally significant non-federal project is included in a conforming plan and TIP (or regional emissions analysis of a plan and TIP) would be a violation of the SIP and of the Clean Air Act Section 176(c)(2)(C).

EPA's interpretation of "transportation project" to mean any transportation project rather than only Federally funded or approved projects, can be applied to every other use of "transportation project" throughout Section 176(c), without contradicting any aspect of EPA's rule and without requiring conformity determinations on such projects. This is because section 176(c)(1) of the Clean Air Act, which defines conformity, requires conformity

determinations only for transportation projects which are adopted, accepted, or funded by an MPO or DOT.

Although Section 176(c)(2)(C) refers to "projects" in general, EPA is limiting its requirement regarding approval or adoption by recipients of Federal funds to regionally significant projects. Section 176(c)(2)(C) requires projects to either come from a conforming plan and TIP, or meet the Section 176(c)(2)(D) requirement that a regional emissions analysis demonstrate that the plan and TIP would still conform if the project were implemented. By their nature, projects which are not regionally significant would meet at least the terms of Section 176(c)(2)(D), or they would fail to meet these terms by at most a de minimis amount. These projects either cannot be incorporated into the transportation network demand model, are emissions neutral, or their effect is implicitly captured in the modeling of regionally significant projects (through the universal practice of assuming that the amount of off-network travel is a function of the travel predicted to occur on regionally significant facilities that are represented in the network model). Consequently, EPA is exempting from this requirement those non-federal projects which are not regionally significant.

Recipients of title 23 U.S.C. or Federal Transit Act funds include recipient agencies at any level of State, county, city, or regional government. Private landowners or developers, and contractors or grant recipients (including local government agencies) which are only paid for services or products created by their own employees, are not considered recipients of funds. That is, if an agency receives title 23 U.S.C. or Federal Transit Act funds and then uses the funds to pay private landowners or developers, contractors, or grant recipients, the private entities/contractors/grant recipients are not thereby considered recipients of Federal funds for the purposes of this requirement, and their other non-federal projects would not be subject to this requirement. Furthermore, projects which do not involve any participation by recipients of Federal funds are not subject to this requirement.

The requirement regarding approval or adoption of regionally significant non-federal projects by recipients of funds does apply when recipients of funds approve regionally significant projects which they are not implementing themselves. This includes approvals to connect regionally significant privately built roads to public roads, and/or transfer of ownership to a public entity.

Although the Clean Air Act refers to adoption or approval of projects, the line separating tentative planning from actual implementation of non-federal projects may not always be clear. The specific step considered to be adoption or approval may depend on what other steps exist in a recipient's process. The SIP must designate what action by each affected recipient constitutes adoption or approval. EPA believes that adoption/approval is never later than the execution of a contract for site preparation or construction. Adoption/approval will often be earlier, for example, when an elected or appointed commission or administrator takes a final action allowing or directing lower-level personnel to proceed.

Although MPOs do not necessarily have an adoption or approval role, if an MPO does adopt or approve any highway or transit project, regardless of funding source, a full project-level conformity determination which satisfies all the requirements of today's rule is required.

2. Disclosure and Consultation Requirements for Non-federal Projects

Upon consideration of public comment, EPA concluded that the NPRM's solitary requirement to account for known regionally significant projects does not adequately protect against situations in which a project sponsor does not inform the MPO of its intent to undertake a project because it anticipates objection from others in the transportation planning process. Or, a sponsor may consider its thought processes too preliminary to constitute an intention or plan. Also conceivable are situations in which the MPO purposely does not include a known project in the emissions modeling because of the anticipated difficulty it would cause for the transportation plan and TIP's regional emissions conformity test. In these situations, emissions increases from non-federal projects could not be simultaneously offset, and projects could be irreversibly committed before transportation planning participants realized the need to offset their impacts.

The final rule addresses these situations by (1) making disclosure of regionally significant non-federal projects a requirement of the conformity SIP's consultation provisions; (2) explicitly stating that disclosure is required even if the project sponsor has not made a final decision; (3) requiring MPOs to include all disclosed or otherwise known regionally significant non-federal projects in the regional emissions analysis; (4) requiring MPOs to specifically respond in writing to any comments that known plans for a regionally significant non-federal project have not been properly reflected in the regional emissions analysis; and (5) requiring recipients of Federal funds to determine that their regionally significant non-federal projects satisfy the requirements of section 176(c)(2)(C) of the Clean Air Act before the projects are adopted or approved (i.e., determine that the projects are included in a conforming transportation plan or TIP or are included in a regional emissions analysis of the plan and TIP). These five requirements are directly imposed as Federal regulation; they must also be established as conformity SIP provisions. Failure to observe the consultation requirements (items 1 through 4, discussed above) would be a violation of the SIP.

The final rule requires the conformity SIP to establish a mechanism which ensures that other recipients of Federal funds disclose to the MPO on a regular basis their plans for construction of regionally significant non-federal projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered). Changes in such plans must be disclosed immediately. The final rule also requires consultation between the MPO and project sponsors to determine the non-federal projects' location and design concept and scope to be used in the regional emissions analysis, particularly for projects for which the sponsor does not report a single intent because the sponsor's alternatives selection process is not yet complete. If the MPO assumes a design concept and scope which is different from the sponsor's ultimate choice, the next regional emissions analysis for a conformity determination must reflect the most recent information regarding the project's design concept and scope.

3. Response to Comments

Although EPA does not agree with the commenters who believe the Clean Air Act requires conformity determinations for non-federal projects, EPA believes that the final rule addresses many of these commenters' practical concerns. Because the final rule prohibits the implementation of regionally significant non-federal projects until their emissions impacts are accounted for in the regional emissions analysis, the integrity of the transportation planning process is preserved. There is no opportunity to escape or delay the conformity implications of a project by shifting its funding from Federal to non-federal sources, and a formal

mechanism will be established to ensure that plans for regionally significant non-federal projects are disclosed to the MPO. In this way, the impacts of non-federal projects will be considered at the same time as the impacts of Federal projects, and Federal projects (or non-federal projects by other sponsors) will not be forced to offset the emissions of non-federal projects in later transportation plans and TIPs, after the non-federal projects have already been built.

Furthermore, in the absence of a conforming transportation plan and TIP, project sponsors will not be able to adopt or approve new regionally significant non-federal projects. This ensures that all participants in the transportation planning process are involved in the effort to develop a conforming transportation plan and TIP, and that regionally significant non-federal projects are not proceeding without necessary emissions offsets from other transportation projects.

The final rule's approach is also consistent with the comments EPA received regarding the potential burden of making conformity determinations for non-federal projects. The final rule does not impose any significant additional substantive burden on MPOs or project sponsors beyond that of the NPRM, because the NPRM also required the impacts of regionally significant non-federal projects to be accounted for in the regional emissions analysis of the plan and TIP. DOT's proposed rule on metropolitan planning (58 FR 12064, March 2, 1993) requires the transportation plan to include regionally significant non-federal projects, and requires the TIP to include for informational purposes all regionally significant projects to be funded with non-federal funds.

V. Discussion of Comments

A. Applicability

1. Incomplete Data, Transitional, and "Not Classified" Areas

Because incomplete data and transitional ozone areas and CO "not classified" areas are designated nonattainment, the NPRM's conformity requirements applied to them. EPA received significant public comment that these areas should be exempt from conformity requirements.

EPA believes that section 176(c)(1)(B) of the Clean Air Act, which requires that no activity may "cause or contribute to any new violation of any standard in any area, or increase the frequency or severity of any existing violation of any standard in any area" requires that conformity requirements apply to all nonattainment areas. However, as with attainment areas (as described above), EPA agrees that the burden of determining conformity according to the requirements proposed in the NPRM may outweigh the incremental protection it provides to air quality in incomplete data, transitional, and "not classified" nonattainment areas, given that these areas already may be at little risk of experiencing violations of ambient standards.

As described above, EPA will be issuing in the near future a supplemental notice of proposed rulemaking which proposes criteria and procedures to apply conformity to attainment areas. EPA intends that this proposal will offer flexible, low-resource criteria and procedures for certain attainment areas which must make conformity determinations. In this supplemental proposal EPA will also consider how to amend the requirements for incomplete data, transitional, and "not classified" areas so that the analysis requirements for these areas more closely correspond to the potential risk of NAAQS violations in these areas.

2. Length of the Maintenance Period

The NPRM proposed that the maintenance period lasts indefinitely. Several commenters recommended that the maintenance period be finite. Three-year, five-year, and twenty-year maintenance periods were suggested.

The final rule limits the length of the maintenance period to twenty years, unless the applicable implementation plan specifies a longer maintenance period. Because the maintenance plan required by section 175A of the Clean Air Act must address twenty years, EPA believes that conformity determinations are required for at least that time. If the maintenance plan establishes emissions budgets for more than twenty years, the area would be required to show conformity to that maintenance plan for more than twenty years. In the absence of intent in the maintenance plan to extend the maintenance period, EPA believes it is appropriate for the maintenance period to coincide with the period addressed by the maintenance plan. Once the maintenance period ends, maintenance areas will be subject to the forthcoming rule addressing conformity in attainment areas as applicable, and will therefore be protected from falling back into nonattainment.

3. Statewide Transportation Plans and Statewide Transportation Improvement Programs (STIPs)

The NPRM proposed that transportation plans, TIPs, and transportation projects must be found to conform. Some commenters stated that conformity should also apply to statewide transportation plans and STIPs, which are newly required by ISTEA and DOT's statewide planning regulations at 23 CFR part 450.

The final rule requires conformity determinations only for metropolitan transportation plans and TIPs developed under 23 CFR part 450. EPA believes that STIPs are not TIPs as the latter term is meant in Clean Air Act section 176(c), and that conformity therefore does not apply to them directly. However, this exclusion does not in any way reduce the protection afforded by the conformity process. DOT's statewide planning regulations require that the Governor may not adopt a metropolitan transportation plan or TIP into the statewide transportation plan or STIP unless the metropolitan plan or TIP has been found to conform. Because not all areas of a State are required to perform conformity analyses, EPA believes that it is more practical to ensure conformity by making conformity determinations at the metropolitan level, before incorporation into the statewide plan or STIP, and that the Clean Air Act requires nothing more.

Furthermore, regional emissions analyses for the purposes of conformity are to be conducted under this rule only for each nonattainment area or area subject to a maintenance plan under Clean Air Act section 175A, not on a statewide basis. Therefore, there is no advantage to analyzing for conformity groups of projects aggregated at the State level. EPA believes that DOT's statewide planning regulations provide adequate assurance that the statewide plan and STIP include only projects from conforming metropolitan plans and TIPs.

4. Other Transportation Modes

The NPRM for this rule applied conformity only to actions by FHWA and FTA. EPA received some public comment on whether the transportation conformity regulations should apply to other modes of transportation, such as railroads, airports, and ports.

The final transportation conformity rule applies its criteria and procedures only to FHWA and FTA actions. EPA believes that the special "transportation" provisions in Clean Air Act sections 176(c)(2) and 176(c)(3) clearly are addressed only to

transportation plans, programs, and projects developed under title 23 U.S.C. and the Federal Transit Act, which do not address projects involving railroads, airports, and ports. However, the general conformity rule covers all other Federal actions, including those associated with railroads, airports, and ports.

As some commenters pointed out, there is no planning authority for these activities vested in the MPO under ISTEA. Although ISTEA emphasizes intermodal planning, MPOs have only a coordination responsibility. In general, MPOs are not comprehensive transportation or land use agencies. Airport, rail, and shipping systems are covered by separate Federal law, and the TIP is not the appropriate tool for controlling these activities.

However, EPA also agrees with some commenters that the State may develop an appropriate mechanism for dealing with other transportation modes, either through the transportation or general conformity process.

5. Highway and Transit Operational Actions

The NPRM's proposed definition of "transit project" specifically did not encompass transit operational actions such as route changes, service schedule adjustments, or fare changes (58 FR 3788). The NPRM also did not intend conformity to apply to changes in road or bridge tolls (58 FR 3773). EPA invited comment on what type of limited application of conformity to these types of actions might be appropriate and received a substantial response from the public on this issue.

The final rule does not consider highway and transit operational actions such as route, schedule, fare, or toll changes to be a "transportation project" subject to conformity. However, as described in the NPRM, any changes of this sort must be included in the background modeling assumptions for subsequent conformity determinations. The final rule further clarifies this by requiring that changes to transit operating policies and assumed transit ridership be documented in the conformity determination in order to demonstrate use of the latest planning assumptions.

Although EPA acknowledges that certain operational actions may be significant, EPA was unable to identify a defensible threshold above which conformity determinations should be required or triggered, nor a legal rationale for requiring conformity review of such activities. EPA believes that it is not practical or appropriate for all operational actions to be found to conform before they are implemented, or for these actions to trigger conformity determinations. As described in the preamble to the NPRM, FTA is specifically prohibited from becoming involved in local decisions such as fares, routes, and schedules, so section 176(c) does not seem to directly apply to such actions. Furthermore, changes in such policies are frequent, and transit operators need the flexibility to respond quickly to local needs. Requiring conformity for these types of actions would be unnecessarily burdensome, especially because transportation models cannot measure the impacts of most individual route and schedule changes. Using changes in operational policies to trigger new determinations of plans and TIPs also seems impractical because operational changes are frequent and unpredictable.

6. Multiple Stage Projects

Some commenters requested clarification of how EPA intends to treat projects with multiple stages. The NPRM and the final rule define "highway project" to consist of all required phases necessary for implementation. NEPA requires projects to have logical termini and independent utility. Therefore, project-level conformity determinations are made on entire projects as defined by NEPA, not stages of them. NEPA termini must be included in the regional analysis and project-level analysis before the project may be found to conform. If only some of the project's stages are included in the conforming TIP, the project may still be found to conform provided the total project is included in the regional emissions analysis.

Hot spots must be addressed separately for different project phases if there is significant delay between them, in order to prevent violations being caused for a period of years before later phases which would correct the violations are actually programmed and built.

7. Project-level Determinations

Some commenters requested clarification on the responsibilities for project-level determinations. Section 176(c) of the Clean Air Act requires transportation projects which are funded or approved by FHWA or FTA to be found to conform before they can be adopted or approved by an MPO or approved, accepted, or funded by DOT. MPOs do not necessarily adopt or approve projects, and are not required by the Clean Air Act to make project-level conformity determinations unless they perform a project-level adoption or approval role. Project-level conformity determinations are clearly necessary, however, in order for DOT to fund a project. EPA anticipates that if the MPO does not adopt or approve a project, the project sponsor (e.g., the State DOT) will make a project-level conformity determination of its own, or will at least perform the required analysis and recommend an affirmative determination, in order to facilitate DOT's conformity determination. This is similar to the way NEPA analyses are conducted, and EPA expects that most project-level conformity determinations will be made as part of the NEPA process.

8. Projects Which Are Not From a Conforming Transportation Plan and TIP

Regional analysis. Some commenters requested clarification on how conformity determinations are made for projects in rural nonattainment areas which are not associated with a metropolitan area, and in areas which are outside the MPO boundary but inside the boundary of a nonattainment or Clean Air Act section 175A maintenance plan area that is dominated by a metropolitan area ("donut areas").

The NPRM and the final rule require the conformity SIP revision to include in its interagency consultation procedures a process involving the MPO and State DOT for cooperative planning and analysis for determining conformity of projects in donut areas. Because an MPO must consider in its regional analysis of transportation plans and TIPs all highway and transit projects in the nonattainment or maintenance area, the MPO and State DOT may choose to actually include donut area projects in the transportation plan and TIP. In such cases, no further regional analysis of such projects would be necessary.

If projects in donut areas are not specifically included in the transportation plan and TIP, the project-level conformity determination would have to document that such projects were included in the original regional emissions analysis used to demonstrate conformity of the existing transportation plan and TIP. Another option is to perform a complete reanalysis in which the project is hypothetically assumed to be added to the transportation plan and TIP, and the combination is tested to see if it would satisfy all the conformity criteria for transportation plans and TIPs. If it would, the project may be found to conform. EPA notes that this reanalysis must use the latest planning assumptions and emissions models, which may have changed since the TIP was adopted. Of the three options, EPA

believes that all parties involved will be better served by pursuing the first or second option.

In isolated rural nonattainment areas (and other areas which do not contain a metropolitan planning area and which are not part of a nonattainment or maintenance Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area) there is no metropolitan transportation plan or TIP which requires a regional emissions analysis. The final rule provides that projects in such areas may satisfy the regional emissions conformity test if the projects in the nonattainment or maintenance area which are funded or approved by FHWA or FTA are grouped together and analyzed in a regional emissions analysis, together with all other regionally significant projects expected in the nonattainment or maintenance area. Projects need not be demonstrated to meet the regional emissions criteria on an individual basis; rather, one regional emissions analysis may be performed which includes them all. The statewide plan and STIP will provide one mechanism for identifying the projects which need to be regionally analyzed. Responsibilities for conducting such analysis shall be determined through the conformity SIP, but EPA anticipates that the State DOT will be primarily responsible for conformity analyses in such areas.

In isolated rural areas, non-federal projects may be considered to have been included in a regional emissions analysis of the transportation plan or TIP if they are grouped with Federal projects in the nonattainment or maintenance area in the statewide plan and STIP for the purposes of a regional emissions analysis.

Interim period. EPA proposed that during the interim period, projects not from a conforming transportation plan or TIP be afforded the same opportunity to demonstrate conformity that such projects have in the control strategy period. Specifically, projects not from a conforming transportation plan and TIP could be included in a regional emissions analysis of the projects together with those of the conforming plan and TIP in order to determine whether the plan and TIP would still conform to the SIP. This opportunity is provided for all projects without limitation in section 176(c)(2)(D) of the Clean Air Act. Some commenters indicated that this provision should not be applicable during the interim period, by which they mean the period prior to adoption (or approval) of an emissions budget.

Section 176(c)(3) of the Clean Air Act provides certain alternative methods for demonstrating conformity with respect to both plans and TIPs as well as projects during an interim period, defined as the period prior to the approval of the conformity SIP revision. However, the statute nowhere indicates that the provisions of section 176(c)(3) are the exclusive method of determining conformity during the interim period as the term is used in this rule and by the commenters. Section 176(c)(3) provides that during the interim period, conformity of projects "will be demonstrated" if certain tests are met. It does not say that conformity may only be demonstrated through those tests.

EPA concludes that while projects may take advantage of the provisions of section 176(c)(3) during the interim period, they may also demonstrate conformity under section 176(c)(2) where possible. Therefore, EPA is retaining in the final rule the provisions allowing the use of project-level determinations under section 176(c)(2)(D) during the interim period, with the applicable interim criteria in the final rule substituted for the statute's "emission reduction projections and schedules assigned to such plans and programs" as the benchmark against which conformity is measured.

9. Multiple Nonattainment Areas and MPOs

Some commenters requested clarification on how conformity determinations should be made if a metropolitan planning area includes multiple nonattainment areas, or if a nonattainment area includes multiple MPOs. In general, interagency relationships and responsibilities will be established by the conformity SIP revision. If a metropolitan planning area includes more than one nonattainment area, a conformity determination must be made for each nonattainment area. Emissions budgets established in the SIP(s) for the included nonattainment areas may not be combined or reallocated. Build/no-build tests must be applied separately in each nonattainment area. Where a nonattainment area includes multiple MPOs, the control strategy SIP may either allocate emissions budgets to each metropolitan planning area, or the MPOs must act together to make a conformity determination for the nonattainment area.

EPA also expects there to be agreements among agencies on how to make conformity determinations for multistate nonattainment areas.

B. Applicable Implementation Plans

The NPRM defined the "applicable implementation plan" to which conformity must be demonstrated as a SIP which has been approved by EPA or a Federal implementation plan which has been promulgated by EPA. EPA received some comments expressing concerns that in some areas, notably in California, the approved SIP is quite outdated, although there have been relatively recent SIP submissions which EPA has not yet approved. These commenters argued that it is most appropriate to determine conformity with the SIP submission, which represents the most recent SIP control strategies, rather than the approved SIP.

The final rule retains the NPRM's definition of "applicable implementation plan." EPA believes that it does not have the authority to require conformity to an implementation plan which has not been approved by EPA and therefore does not have the force of Federal law. (During the transitional period, EPA requires use of the submitted SIP to determine contribution to annual emission reductions, but does not consider the submitted SIP to be the "applicable implementation plan" to which transportation plans, TIPs, and projects must conform.) Because EPA does not believe that SIPs approved before 1990 have motor vehicle emissions budgets which are applicable for conformity purposes, TCMs are the relevant element of an old approved SIP. Areas with outdated SIPs have been required to demonstrate timely implementation of TCMs in the SIP at least since the June 1991 EPA/DOT interim conformity guidance. At that time, EPA urged areas to revise their SIPs to remove any TCMs which are outdated and no longer appropriate, to prevent failure to implement them from prohibiting conformity determinations. EPA continues to believe that because the statute requires that conformity be demonstrated with the approved SIP, any outdated elements of that SIP which areas are concerned would prohibit conformity determinations must be revised through the SIP process. EPA will strive to expedite its action on such SIP revisions.

C. Conformity SIP Revisions

EPA requested comment in the preamble to the NPRM regarding the legal form of the conformity SIP revision. Commenters asserted that States should not be required to formally adopt regulations embodying the conformity procedures. EPA has reviewed this issue and concludes that the appropriate form of the State conformity procedures depends upon the requirements of local law, so long as the selected form complies with all

Clean Air Act requirements for adoption, submittal to EPA, and implementation of SIPs.

Clean Air Act section 110(a)(2)(A) requires that all SIP measures be enforceable, and section 110(a)(2)(E) requires that States have adequate authority under local law to implement the SIP. Read together, these provisions require that the State have the authority under State law to compel compliance with the SIP conformity procedures by the persons or entities to which they apply, in whatever form the procedures may take.

For the most part, EPA believes that adopted regulations will be required at the State or local level to enable States to require MPOs, project sponsors, recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, and DOT to comply with the requirements of State conformity procedures. However, EPA understands that in some States, environmental board resolutions or air agency administrative orders could provide adequate authority. EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures.

Whatever the form, EPA expects the State procedures to mirror portions of the text of EPA's rule essentially verbatim to ensure compliance with Clean Air Act section 176(c), especially §§ 51.392 (definitions), 51.394 (applicability), and §§ 51.410 through 51.446 (criteria), except where the State chooses to make its procedures more stringent than the EPA rule, as provided by § 51.396 of today's rule.

EPA believes that, due to limitations on the waiver of sovereign immunity in the Clean Air Act, if a State wishes to apply more stringent conformity rules for the purpose of attaining air quality, it may do so only if the same requirements are imposed on non-federal as well as Federal actions. Differing State conformity rules may not cause a more significant or unusual obstacle to Federal agencies than non-federal agencies for the same type of action. Therefore, if a State determines that more stringent conformity criteria and procedures are necessary, these requirements must be imposed on all similar actions whether the sponsoring agency is a Federal or non-federal entity; non-federal entities include State and local agencies and private sponsors.

If a State elects to impose more stringent conformity requirements, they must not be so narrowly construed as to apply in practical effect only to Federal actions. For example, if a State decides that actions of employers with more than 500 employees require conformity determinations, and the Federal government is the only employer of this size in a particular jurisdiction, then this rule would be viewed as discriminatory and would not be permitted. Consequently, more stringent State conformity rules must not only be written to apply similarly to all Federal and non-federal entities, but they must be able to be implemented so that they apply in a nondiscriminatory way in practice. For a full discussion of the issue of State authority to impose more stringent conformity requirements, see the preamble to the general conformity final rule ("Determining Conformity of General Federal Actions to State or Federal Implementation Plans").

Some commenters requested clarification on whether attainment areas, which are not subject to the final rule, are required to submit conformity SIP revisions within 12 months of the promulgation of the final rule. The final rule does not require attainment areas to submit conformity SIP revisions. However, as indicated in the preamble section "Discussion of Major Issues," EPA intends to issue a supplementary notice of proposed rulemaking which would propose criteria and procedures to apply conformity to attainment areas. EPA intends to require conformity SIP revisions for attainment areas within 12 months following promulgation of a final rule establishing the criteria and procedures applying conformity to attainment areas.

This final rule does require a conformity SIP revision within 12 months following an attainment area's redesignation to nonattainment.

D. Public Participation

The NPRM referenced DOT's then as yet unreleased metropolitan planning regulations implementing ISTEA for public participation requirements. Until those regulations became effective, the NPRM proposed to require agencies to publish their proposed public participation procedures and allow 45 days for written comments. The NPRM also proposed to require MPOs to prepare a summary and analysis of written and oral comments before taking final action on conformity determinations, and to require additional opportunity for public comment if the transportation plan or TIP to be submitted to DOT is significantly different from the one made available for public comment.

EPA received substantial public comment on the issue of public participation. Although some commenters supported the NPRM's approach, some commenters believed that the conformity rule should establish minimum public participation requirements. These commenters suggested a range of minimum requirements, including comment periods, public hearings, and analysis of significant comments.

EPA believes that to facilitate cooperative air quality/transportation planning, the public participation requirements in the conformity rule must be consistent with the public participation procedures in the transportation planning process. Furthermore, EPA believes that DOT's metropolitan planning regulations are the appropriate mechanism for public participation requirements because they address the development of the transportation plan and TIP themselves, not just the conformity determinations.

The metropolitan planning regulations require the metropolitan transportation planning process in general to include a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing public involvement in developing transportation plans and TIPs. The regulations require a minimum public comment period of 45 days before the public involvement process is initially adopted or revised. In serious and above nonattainment areas, the regulations require a public comment period of at least 30 days before approval of plans, TIPs, and major amendments. In nonattainment area transportation management areas (TMAs), at least one formal public meeting must be held annually on the development of the transportation plan and the TIP. The regulations also require a summary and analysis of comments and additional opportunities for comment after significant changes, as proposed by the conformity NPRM. Public involvement processes must be periodically reviewed by the MPO for effectiveness, and DOT will review the procedures during certification reviews and as otherwise necessary.

The NPRM and the final rule require public participation on project-level conformity determinations only as otherwise required by law (e.g., as part of the NEPA process). EPA and DOT expect that project-level conformity determinations will be made as part of the NEPA process.

Because DOT's metropolitan planning regulations require MPOs to establish and publish their public participation procedures, and the conformity rule

requires that these procedures be followed before conformity may be determined, the conformity rule does not require public participation procedures to be part of the applicable implementation plan.

E. Plan Content

1. Plan Specificity

The NPRM proposed to require transportation plans adopted after January 1, 1995 in serious and above ozone and CO nonattainment areas to specifically describe the transportation system in certain horizon years, in sufficient detail to use a transportation network demand model. EPA received public comment that this provision requires too much specificity for a transportation plan. In particular, commenters were concerned that there is such uncertainty in 20-year forecasts that the plan and TIP will always be inconsistent in the out-years. Furthermore, some commenters stated that it is difficult to select "best guess" alternatives prior to corridor analyses, and doing so may prejudge alternatives.

The final rule retains the requirements for plan content and separate regional analysis requirements for "specific" plans, as proposed in the NPRM. EPA recognizes the limitations of long-range planning, and agrees that the long-range transportation plan should be a flexible planning document which does not foreclose consideration of alternatives. However, EPA wants the conformity demonstration for a transportation plan to show that the area can develop and model a transportation strategy that is consistent with the SIP's required emission reductions for milestone years, the attainment year, and maintenance in the following years. This demonstrates that an area has developed one transportation system scenario which is consistent with the SIP, and that the area is implementing those activities which must begin now in order to achieve a transportation system consistent with the SIP. The area is free to later choose different alternatives, provided the new transportation plan demonstrates that the new transportation system scenario is also consistent with the SIP (i.e., the revised transportation plan is found to conform).

EPA is emphasizing project-specific transportation plans for serious and above ozone and CO areas, because state-of-the-art transportation network demand modeling requires project detail to the extent that a regionally significant project affects the speed-capacity relationship, the connectivity of the network, and significant alternatives to the use of single-occupant vehicles. EPA recognizes that detailed descriptions of projects in the later years of the transportation plan represent assumptions about those future projects, and expects that project descriptions will be modified to reflect information from corridor analyses as areas periodically update their transportation plans. At the time of the project-level conformity determination, if the project's design concept and scope is significantly different from that in the currently conforming transportation plan and TIP, new regional analysis including the project is required.

As EPA explained in the preamble to the NPRM, the transportation system must be analyzed in the context of the transportation plan, because the TIP's timeframe is too short to account for everything in the years the SIP's emissions budgets are addressing. To show that a budget for a future year will be met, it will be necessary to account for all facilities and services expected to be operational in that year, even if they are not yet in the TIP because they do not yet need to be started. Where a specific plan is not required by this rule, one may be otherwise needed to meet the requirements of ISTEA. Wherever a non-specific plan is permissible under both the Clean Air Act and ISTEA, the TIP must show conformity to all future emission budgets, taking into account those projects included in the TIP, any other projects specifically included in the transportation plan, and regionally significant non-federal projects.

2. Timeframe of the Transportation Plan

Several commenters requested that transportation plans be required to cover at least 20 years. The NPRM proposed to require regional emissions analyses to estimate emissions in the last year of the transportation plan's forecast period.

ISTEA requires the metropolitan transportation plan to address a period of at least 20 years. The requirement for a 20-year forecast period is covered in the DOT metropolitan planning regulations.

F. Relationship of Plan and TIP Conformity With the National Environmental Policy Act (NEPA) Process

EPA received comments suggesting that transportation plans and TIPs should be subject to NEPA. DOT's metropolitan planning regulations already require an analysis of major transportation investments. Under this provision, an appropriate range of alternatives would be analyzed for various factors, including social, economic, and environmental effects. Pending completion of the analysis, either one particular alternative version of the project or the no-build alternative for the corridor in which the major investment is located would be evaluated as part of the plan and TIP conformity analysis. This corridor/subarea analysis of alternatives serves as input to the draft NEPA document.

No Federal approval action is taken on the transportation plan or TIP, and there is no specific Federal commitment to fund projects in the plan or TIP. Furthermore, since the financial plans for the plans and TIPs must include all sources of funds, including State, local, and private sources, it is likely that some of the projects included will never be proposed for Federal funding. In view of this, it is not appropriate to extend the NEPA process to transportation plans and TIPs. In any case, doing so would be an action under NEPA, not the Clean Air Act, and is beyond the scope of this rulemaking.

G. Latest Planning Assumptions

EPA proposed that conformity determinations must use the latest planning assumptions. In response to public comment, the final rule explicitly requires key assumptions to be specified and included in the draft documents and supporting materials used during the interagency and public consultation process.

Some commenters also expressed concern that conformity determinations may be using assumptions which are different from the SIP assumptions, because they are more recent. It should be expected that conformity determinations will deviate from the SIP's assumptions regarding VMT growth, demographics, trip generation, etc., because the conformity determinations are required by Clean Air Act section 176(c)(1) to use the most recent planning assumptions. The final rule does not require, as a commenter suggested, that the conformity determination require an assessment of the degree to which key assumptions in the transportation modeling process are deviating from those used in the SIP, and if the deviations are significant, require an evaluation of the impact of the deviation on the area's ability to reach the SIP's emissions target. EPA is not requiring this process because the conformity determinations themselves are intended to demonstrate that given the most recent planning assumptions and emissions models, the SIP's emissions reductions will be met. However, States may require such a process in their conformity SIP revisions.

The final rule does require that ambient temperatures be consistent with those used in the SIP, and allows other factors assumed in the SIP, such as the fraction of travel in a hot stabilized engine mode, to be modified in a conformity determination only under certain conditions.

H. Latest Emissions Model

EPA proposed to require a new version of the motor vehicle emissions model to be used in any conformity analysis begun three months after its release, unless EPA and DOT announce an extension of the grace period in the **Federal Register**.

EPA received comments stating that the grace period was both too long and too short, and requesting clarification on how the grace period would be extended. EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs must use the model's new emission factors. EPA encourages all agencies to inform EPA of the impacts of new emissions models in their areas, and EPA may pause to seek such input before determining the length of the grace period.

EPA is concerned that the proposal would have considered analyses begun before a new model is released or during the grace period to satisfy the "latest emissions model" criterion indefinitely. Therefore, the final rule provides that a final environmental document may continue to use the previous version of the motor vehicle emissions model provided no more than three years have passed since the draft was issued.

MOBILE5a internally bearing the release date of March 26, 1993, including "MOBILE5 Information Sheet #2: Estimating Idle Emission Factors Using MOBILE5," is hereby announced by EPA to be the latest motor vehicle emissions model outside California. There will be a one-year grace period prior to required use of this model for CO hot-spot or regional analyses for conformity determinations, beginning November 24, 1993. Future revisions and their grace periods will be announced in the **Federal Register**. EPA also hereby announces that in California, EMFAC7F is the latest motor vehicle emissions model, and the three-month grace period for use of this model begins November 24, 1993.

I. TCMs

The NPRM proposed to require timely implementation of those TCMs in the SIP which are eligible for title 23 U.S.C. or Federal Transit Act funding. Some commenters stated that all TCMs should meet the timely implementation test, regardless of their source of funding. The final rule retains the provisions of the NPRM.

Clean Air Act section 176(c)(2)(B) requires TIPs to provide for timely implementation of TCMs, but does not define TCMs. The statute is therefore ambiguous with respect to which TCMs must be implemented, and EPA may take any reasonable interpretation of the definition of TCMs. *Chevron* v. *NRDC*, 467 U.S. 837 (1984). Since plans and TIPs can at the most "provide for" only those projects which are eligible for Federal funding, it is reasonable to define those TCMs required to be implemented by Clean Air Act section 176(c)(2)(B) to be only those SIP TCMs that are eligible for Federal funding.

J. Regional Emissions Analysis

1. Regionally Significant Projects

The NPRM defined "regionally significant" to mean a facility with an arterial or higher functional classification, plus any other facility that serves regional travel needs (such as access to and from the area outside of the region; to major activity centers in the region; or to transportation terminals) and would normally be included in the modeling for the transportation network.

EPA received comments indicating that "regionally significant" should be more clearly defined, perhaps by a quantifiable threshold. Some commenters believed that "regionally significant" should be defined by the State or air quality agency, that the definition should include only freeways, or that the definition should be based upon air quality impact.

The final rule includes a definition of "regionally significant project" which is substantially similar to that in the NPRM. EPA has been unable to determine a quantifiable threshold that would consistently and appropriately reflect the concept of "regionally significant" and believes it is appropriate to allow flexibility and professional judgment in the definition of "regionally significant."

In response to comment that "arterial" is not a DOT functional classification, the final rule specifies that regionally significant includes, at a minimum, all principal arterials. Although EPA believes that some minor arterials are regionally significant, EPA believes that requiring all minor arterials to be modeled on a network model could involve a significant change in current modeling practice. Therefore, the final rule makes the determination of regionally significant projects a topic of interagency consultation, and allows the definition of regionally significant to be expanded through this process. The interagency consultation process must specifically address which minor arterials are also regionally significant.

Some commenters pointed out that the NPRM's definition of "regionally significant" relied on highway terminology, and it was not clear that transit projects were also covered by the definition. Therefore, the final rule also defines any fixed guideway transit system or extension that offers an alternative to regional highway travel to be regionally significant.

2. Projects Included in the Regional Emissions Analysis

EPA proposed criteria which required regional emissions analysis of projects in the transportation plan and TIP and all other regionally significant projects expected in the nonattainment or maintenance area. Some commenters expressed concern about projects in the transportation plan and TIP which cannot normally be modeled with a transportation network demand model. The final rule clarifies that emissions from projects which are not regionally significant, but which have or affect vehicle travel, may be estimated in accordance with reasonable professional practice. For example, the regional emissions analysis may assume that VMT on local streets not represented in the network model is a certain percentage of network VMT, without explicitly considering the new local streets. In addition to projects that are not regionally significant, the benefits of TCMs that cannot be analyzed through the modeling process may be estimated in accordance with reasonable professional practice.

EPA proposed that the regional emissions analysis could not include for emissions reduction credit any TCMs which have been delayed beyond the schedule in the SIP, until implementation has been assured. In response to public comment, the final rule clarifies that if a TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the regional analysis may include that emission reduction credit.

The final rule also clarifies that during the control strategy and maintenance periods, control programs

which are external to the transportation system itself (e.g., tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, oxygenated or reformulated gasoline or diesel fuel) may be assumed in the regional emissions analysis only if the program has been adopted by a State or local government, if an opt-in to a Federally-enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, determine its effective date, or not implement the program.

The build/no-build test may assume the above programs, but the same assumptions must be made in both the "build" and "no build" case. During the transitional period, control measures or programs which are committed to in a SIP submission which is not yet approved by EPA may be assumed for emission reduction credit when demonstrating consistency with the SIP submission's motor vehicle emissions budget.

3. Modeling Procedures

EPA proposed several attributes which a transportation network demand model must possess. In some cases, EPA specifically did not require certain attributes unless the necessary information was available. Some commenters believed that EPA should commit to review the attributes which were not specifically required. EPA intends to continue to review progress in transportation modeling, and the public can also petition for future rulemaking.

Some commenters expressed concern that the cumulative effect of non-regionally significant projects is not accounted for in the regional emissions analysis. The NPRM and the final rule specifically say that reasonable methods shall be used to estimate vehicle travel on off-network roadways. EPA believes that one such method would be to consider VMT on non-regionally significant facilities to be some percentage of network VMT. The rule requires documentation of all key assumptions used in emissions analyses, so there will be opportunity for public review of how vehicle travel is considered.

EPA asked for comment on whether serious PM–10 nonattainment areas should be required to use transportation network demand models, as required for serious and above ozone and CO areas. Comments were received on both sides of the issue. The final rule does not require network models in PM–10 areas, because EPA believes that the resources involved in such modeling efforts may often exceed the benefits in PM–10 areas. In many PM–10 areas, regional PM–10 emissions are due to construction-related fugitive dust and re-entrained dust, for which transportation network demand models may not offer special advantages. Agencies in PM- 10 areas must consult with each other on how to model PM–10 emissions.

4. Build/no-build Test

Based on comments received on the interim period regional emissions test, EPA believes it is important to clarify that because both the "build" and "no-build" scenarios must make the same assumptions regarding fleet turnover, inspection and maintenance programs, reformulated gasoline, etc., emission reductions from these programs and control measures are factored out and the emission reductions from the transportation plans and programs themselves are isolated.

K. Hot-spot Criteria and Analysis

EPA proposed to require projects to demonstrate that they eliminate or reduce the severity and number of localized CO violations in CO nonattainment areas. In response to comment, EPA has clarified in the final rule that this criterion applies in the project area. That is, a project is responsible for eliminating or reducing CO violations in the area substantially affected by the project. If there are no localized CO violations and would not be any in the project area, the project satisfies this criterion.

Some commenters also requested clarification on the hot-spot criteria. EPA intends that the hot-spot analysis compare concentrations with and without the project based on modeling of conditions in the analysis year. The hot-spot analysis is intended to assess possible violations due to the project in combination with changes in background levels over time. Estimation of background concentrations may take into account the effectiveness of anticipated control measures in the SIP if they are already enforceable and creditable in the SIP.

EPA proposed to allow the hot-spot criteria to be satisfied without quantitative hot-spot analysis if a qualitative demonstration can be made based on consideration of local factors. EPA requested comment on cutoffs on project size, geography, or other characteristics above which quantitative modeling is always required. EPA's November 1992 "Guideline for Modeling Carbon Monoxide from Roadway Intersections" requires for the purposes of SIP development the quantitative modeling of all intersections that are Level-of-Service (LOS) D, E, or F or that will change to LOS D, E, or F because of increased traffic volumes related to a new project in the vicinity. EPA's guidance also requires modeling of the top three intersections in the area based on highest traffic volume and the top three intersections based on the worst LOS.

Therefore, the final rule requires that projects involving or affecting any such intersections must be quantitatively modeled using that EPA guidance. The final rule would still allow qualitative analysis for projects at other locations if it clearly demonstrates satisfaction of the hot-spot criteria.

EPA also requested comment on when quantitative PM–10 hot-spot modeling is required. The comments EPA received were generally consistent with the approach discussed in the preamble to the NPRM. Therefore, although the hot-spot criterion in general allows either qualitative or quantitative demonstrations (as discussed above), the final rule explicitly requires quantitative PM–10 hot-spot modeling for projects at sites within the area substantially affected by the project at which violations have been verified by monitoring, and at sites which have essentially identical roadway and vehicle emissions and dispersion characteristics (including sites near one at which a violation has been monitored). These sites shall be identified through interagency consultation. In PM–10 nonattainment and maintenance areas, new or expanded bus terminals and transfer points and commuter rail terminals which increase the number of diesel vehicles congregating at a single location will generally require quantitative hot-spot analysis, except in cases where it can be demonstrated, based on appropriate dispersion modeling for projects of similar size, configuration, and activity levels, that there is no threat of a violation of the PM–10 standard. Conformity determinations on bus purchases (for replacements or minor expansions of the existing fleet) would not have to consider potential PM–10 hot-spot violations, as discussed in the preamble to the NPRM, because the incremental improvement in emissions spread over the service area of a metropolitan transit operator is considered to be a de minimis impact on air quality. Moreover, FTA has no control over how

these new, cleaner buses are to be deployed in local operations.

Several commenters were concerned about the technical capability to perform PM–10 hot-spot analysis. EPA will be releasing technical guidance on how to use existing modeling tools to perform PM–10 hot-spot analysis. The requirements for quantitative PM–10 hot-spot analysis will not take effect until the **Federal Register** has announced availability of this guidance. Also, FTA plans to issue guidance shortly on PM–10 hot-spot analysis for several common types of transit projects. This guidance will help project sponsors determine when quantitative hot-spot analysis is needed and how to perform the analysis.

EPA also requested comment on how to define "new" violations as opposed to relocated violations. Commenters did not propose any such clarification, and no language on this subject has been added to the final rule. EPA continues to believe that a seemingly new violation may be considered to be a relocation and reduction of an existing violation only if it were in the area substantially affected by the project and if the predicted design value for the "new" site would be less than the design value at the "old" site without the project—that is, if there would be a net air quality benefit.

Although no comment was received on the subject, problems may arise with respect to projects which dispersion modeling predicts to have a range of air quality effects in the "area substantially affected by the project." A project may, for example, reduce existing concentrations at several receptors while increasing concentrations at others.

EPA plans to issue guidance which would clarify the concept of "the area substantially affected by the project" and allow conformity demonstrations to distinguish between new and relocated violations. For example, while EPA believes that a "new" violation within the same intersection as an existing violation could be considered a relocation, whether a new violation miles from the existing violation should likewise be considered to be "relocated" as a result of changed traffic patterns is a question EPA will seek to address in this post-rule guidance. Interested parties are invited to provide their views to EPA for consideration.

L. Exempt Projects

EPA proposed a list of projects which, because they had no emissions impact, were considered to be neutral or de minimis and therefore should be exempt from conformity requirements. EPA received no comments opposing an exempt project list, but received a number of comments suggesting both additions and deletions to it.

EPA agrees with commenters that emergency truck pullovers, directional and informational signs, and transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities) are emissions neutral, and the final rule exempts these types of projects. Transportation enhancement activities are defined by ISTEA as "provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals), preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, and mitigation of water pollution due to highway runoff."

The final rule also exempts repair of damage from natural disasters, civil unrest, or terrorist acts, except for projects involving substantial functional, locational, or capacity changes. Finally, the final rule also exempts specific activities which do not involve or lead directly to construction, such as planning and technical studies, grants for training and research programs, planning activities conducted pursuant to titles 23 and 49 U.S.C., and Federal-aid systems revisions. These activities do not contribute to emissions, and they do not fall under the definition of construction or a project under 23 U.S.C. 101(a).

Because intersection signalization projects which are systemwide may have regional emissions impacts, EPA has clarified that only intersection signalization projects at individual intersections are exempt from regional emissions analysis. As proposed in the NPRM, however, all intersection signalization projects in CO and PM–10 areas are required to have a determination regarding their localized air quality impacts.

The final rule clarifies that in PM–10 nonattainment and maintenance areas, rehabilitation of buses and purchase of new buses to replace existing vehicles or for minor expansions of the fleet are exempt projects only if they are in compliance with the SIP's control measures involving such projects (if any). For example, if the SIP specifies that new buses will be alternatively fueled, purchases of diesel buses would not be exempt.

EPA agrees with commenters that deletion of ridesharing and vanpooling promotion activities would have emissions impacts. However, deletion of these activities would not be exempt under the NPRM or final rule because it is not "continuation of ridesharing and vanpooling promotion activities at current levels."

Some commenters asserted that operating assistance to transit agencies should not be exempt. EPA believes that operating assistance should remain exempt because FTA has no control over how operating assistance is used locally, and because increases or decreases in operating assistance at the Federal level may be balanced by new sources of revenue at the State and local level. To the extent that the local cooperative planning process influences the level of operating assistance, the increase or decrease in operating assistance is necessarily offset by changes in capital assistance for transit in the same metropolitan area. Therefore, the net effect on financing for transit should be neutral. However, the final rule does require conformity determinations to use and document the latest assumptions regarding transit operating policies and assumed transit ridership.

A number of commenters proposed exempting other types of projects from the conformity requirements, notably travel demand management actions whose air quality effects cannot be accurately assessed in a regional modeling context. The objective in implementing a program or project involving travel demand management is to achieve measurable reductions in congestion and vehicle emissions within a corridor or at a specific site; thus, it is not appropriate to exempt such programs or projects from conformity requirements. The final rule does state that if the effects of these projects cannot be discerned through traditional regional travel demand modeling, other accepted methods of quantifying their effects are encouraged.

Some commenters requested clarification of projects on the exempt list. EPA intends that intersection channelization include left-turn/right-turn slots and continuous left turn lanes, as well as those lanes/movements that are physically separated. Advance land acquisitions (23 CFR part 712 or 23 CFR part 771) are a parcel or limited number of parcels which are acquired to protect a property from imminent development and increased costs which would tend to limit a choice of

transportation alternatives, or are acquired to alleviate particular hardship to a property owner at his or her request. This is only allowed in emergency or extraordinary cases, and only after the State department of transportation has given official notice to the public that a preferred highway or transit location has been selected, held a public hearing, or provided an opportunity for a public hearing.

VI. Environmental and Health Benefits

This rule will help ensure that the implementation plan achieves its goal of attaining air quality standards. The environmental and health benefits of attaining the national ambient air quality standards are attributable to the strategies contained in the implementation plan rather than to this rule directly.

VII. Economic Impact

The primary impact of this rule involves the increased requirements for MPOs to perform regional transportation and emissions modeling and document the regional air quality impacts of transportation plans and programs. Because conformity requirements have existed in some form since 1977, the framework for consultation and TCM tracking has already been established.

The impact of this rule on MPOs may vary widely depending on the pollutant for which an area is in nonattainment, the classification of the nonattainment area, the population of the area, and the technical capabilities already developed in the area.

A DOT survey in September 1992 of MPOs in 98 ozone nonattainment areas indicated that during Phase I of the interim period, most MPOs are spending less than $50,000 for a conformity determination on the transportation plan and TIP. Of the 68 MPOs responding, 76% are spending less than $50,000, 21% are spending between $50,001 and $100,000, and 3% are spending between $100,001–250,000. MPOs serving populations over one million had clearly higher conformity costs than MPOs serving smaller populations.

Conformity determinations are required whenever a transportation plan or TIP is adopted or amended. DOT's metropolitan planning regulations at 23 CFR part 450 require transportation plans to be reviewed and updated at least every three years in nonattainment and maintenance areas, and they require TIPs to be updated at least every two years.

The conformity rule also requires periodic redetermination of conformity for transportation plans and TIPs at least every three years. However, because DOT's metropolitan planning regulations require new transportation plans and TIPs at least that often, the conformity rule's provisions for periodic redetermination should not impose any new burden.

Finally, the conformity rule requires a conformity determination for the transportation plan within 18 months after EPA approves a SIP revision which affect TCMs or the motor vehicle emissions budget.

Transportation projects also require conformity determinations. In ozone and NO_2 nonattainment areas, the conformity requirements are satisfied provided the project is included in a current, conforming transportation plan and TIP. If the project is not included in the transportation plan and TIP, a regional emissions analysis including the transportation plan, TIP, and project must be performed. In CO and PM–10 nonattainment areas, project-level conformity determinations also require a hot-spot analysis. This analysis of localized impacts is performed as part of the existing NEPA process.

There are approximately 300 ozone, CO, NO2, and PM–10 nonattainment areas. Because some areas are in nonattainment for more than one pollutant, there are about 250 individual nonattainment areas which are required to perform conformity determinations. EPA expects that areas will determine conformity for TIPs annually, and in general, areas will determine conformity for transportation plans once every three years.

If it is assumed that the ozone areas surveyed by DOT in September 1992 are representative of all nonattainment areas, the estimated total annual conformity costs for the nation's transportation plans and TIPs is $16,625,000. This is a preliminary estimate based on the requirements contained in the interim conformity guidance EPA and DOT are solicity further information from MPO's which will be used in the preparation of the information collection request (see VIII. B. Reporting and Recordkeeping Requirements) subsequent to the publication of this rule.

These estimates do not necessarily reflect the costs which will result from this final rule. On one hand, these may be overestimates of the costs, because determinations will probably become less expensive as the MPOs gain experience. For example, for future determinations it may be possible to perform the modeling with fewer runs. On the other hand, these estimates do not reflect the more specific requirements of this rule and may therefore underestimate the cost of determinations in the control strategy period. EPA welcomes reports from MPOs on the costs of making conformity determinations on plans and TIPs according to the requirements of this rule.

Because ISTEA and other CAA provisions also directly or indirectly require increased modeling, it is difficult to entirely separate the costs attributable to the conformity requirements alone. For example, ISTEA assigns more responsibility to the MPOs and shifts the planning focus to intermodalism and congestion management. This will require more sophisticated transportation modeling. The VMT tracking and forecasting requirements in sections 182 and 187 of the CAA will also promote the use of transportation demand network models in some nonattainment areas.

In addition, although the conformity requirements may prompt additional data collection and model development, these costs cannot be solely attributed to conformity. It is an ongoing responsibility of MPOs to review and upgrade their analysis capabilities to reflect the most recent understanding of travel demand and transportation forecasting. Resource constraints during the 1980's prevented many MPOs from updating their analysis procedures, so conformity is in many cases simply raising the priority of modeling improvements.

Metropolitan planning is eligible for funds under ISTEA. In addition, EPA has attempted to minimize the costs of conformity in several ways. First, EPA is establishing flexible methodological requirements for regional analyses in areas which do not use network models in order to accommodate the varying technical capabilities of MPOs. In addition, by designating projects which are exempt from conformity determinations or regional analyses, EPA is allowing project sponsors to conserve their analysis resources. Finally, EPA has attempted to minimize the frequency of conformity redetermination by requiring periodic redetermination only every three years (which is the longest period allowed by the Clean Air Act), by limiting the number of triggers for redetermination, and by allowing grace periods before the use of new emissions models and following an area's reclassification.

VIII. Administrative Requirements

A. Administrative Designation

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency

must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* DOT will be preparing an information collection request subsequent to the publication of this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation will affect Federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000.

Recipients of title 23 U.S.C. or Federal Transit Act funds must determine that their highway and transit projects are included in a conforming transportation plan and TIP, or a regional emissions analysis including the project, transportation plan, and TIP must demonstrate that the transportation plan and TIP would still conform if the project were implemented. Because MPOs are responsible for performing regional emissions analysis which includes all such projects, and because DOT's metropolitan planning regulations at 23 CFR part 450 already require such projects to be included in the transportation plan, and in the TIP for informational purposes, this requirement does not pose a significant burden for small entities.

Potential delays in highway construction that may result from the need to make positive conformity determinations as required by this rule could appear to adversely affect small entities that may be relying upon future highway construction to provide them with certain benefits. However, any such delays would merely preserve the status quo, and would not limit any benefits currently available to small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Ozone.

Dated: November 15, 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 follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401-7671p.

2. Part 51 is amended by adding a new subpart T to read as follows:

Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

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Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

§ 51.390 Purpose.

The purpose of this subpart is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

§ 51.392 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Control strategy implementation plan revision is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Control strategy period with respect to particulate matter less than 10 microns in diameter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM_{10}, NO_2, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA means the Federal Transit Administration of DOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to § 51.404.

Hot-spot analysis is an estimation of likely future localized CO and PM_{10} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Incomplete data area means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause

a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance period with respect to a pollutant or pollutant precursor means that period of time beginning when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in section 182(g)(1) and section 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NOx budget if NOx reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq).

NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Not classified area means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

Phase II of the interim period with respect to a pollutant or pollutant precursor means that period of time after the effective date of this rule, lasting until the earlier of the following:

(1) Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or

(2) The date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has notified the State, MPO, and DOT of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in § 51.448.

Project means a highway project or transit project.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Rural transport ozone nonattainment area means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act section 182(h) as a rural transport area.

Standard means a national ambient air quality standard.

Submarginal area means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transitional area means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

Transitional period with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant

control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in § 51.448.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

§ 51.394 Applicability.

(a) *Action applicability.* (1) Except as provided for in paragraph (c) of this section or § 51.460, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 51.450 applies to such projects if they are regionally significant.

(b) *Geographic applicability.* (1) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(2) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

(3) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under section 182(f) of the CAA that additional reductions of NO_X would not contribute to attainment);

(ii) Nitrogen oxides in nitrogen dioxide areas; and

(iii) Volatile organic compounds, nitrogen oxides, and PM_{10} in PM_{10} areas if:

(A) During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT; or

(B) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(c) *Limitations.* (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

§ 51.396 Implementation plan revision.

(a) States with areas subject to this rule must submit to the EPA and DOT a revision to their implementation plan which contains criteria and procedures for DOT, MPOs and other State or local agencies to assess the conformity of transportation plans, programs, and projects, consistent with these regulations. This revision is to be submitted by November 25, 1994 (or within 12 months of an area's redesignation from attainment to nonattainment, if the State has not previously submitted such a revision). EPA will provide DOT with a 30-day comment period before taking action to approve or disapprove the submission. A State's conformity provisions may contain criteria and procedures more stringent than the requirements described in these regulations only if the State's conformity provisions apply equally to non-federal as well as Federal entities.

(b) The Federal conformity rules under this subpart and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as the required conformity implementation plan revision is approved by EPA. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable implementation plan, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the State revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(c) To be approvable by EPA, the implementation plan revision submitted to EPA and DOT under this section shall address all requirements of this subpart in a manner which gives them full legal effect. In particular, the revision shall incorporate the provisions of the following sections of this subpart in verbatim form, except insofar as needed to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in these sections:

§§ 51.392, 51.394, 51.398, 51.400, 51.404, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.448, 51.450, 51.460, and 51.462.

§ 51.398 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

§ 51.400 Frequency of conformity determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) *Transportation plans.* (1) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 51.460. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) Conformity of existing transportation plans must be redetermined within 18 months of the following, or the existing conformity determination will lapse:

(i) November 24, 1993;

(ii) EPA approval of an implementation plan revision which:

(A) Establishes or revises a transportation-related emissions budget (as required by CAA sections 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide); or

(B) Adds, deletes, or changes TCMs; and

(iii) EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

(4) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.

(c) *Transportation improvement programs.* (1) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 51.460.

(3) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in § 51.460. Otherwise, the existing conformity determination for the TIP will lapse.

(4) In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.

(d) *Projects.* FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

§ 51.402 Consultation.

(a) *General.* The implementation plan revision required under § 51.396 shall include procedures for interagency consultation (Federal, State, and local) and resolution of conflicts.

(1) The implementation plan revision shall include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before the implementation plan revision is approved by EPA, MPOs and State departments of transportation before making conformity determinations must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section.

(b) *Interagency consultation procedures: General factors.* (1) States shall provide in the implementation plan well-defined consultation procedures whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures shall include at a minimum the general factors listed below and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) *Interagency consultation procedures: Specific processes.* Interagency consultation procedures shall also include the following specific processes:

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§ 51.460 and 51.462) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by § 51.418(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by § 51.454(d), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis; and

(vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in § 51.460.

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 51.400; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed;

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 51.452.

(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys).

(7) A process (including Federal agencies) for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption.

(d) *Resolving conflicts.* Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by § 51.396 shall define the procedures for starting of the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

§ 51.404 Content of transportation plans.

(a) *Transportation plans adopted after January 1, 1995 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas.* The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and § 51.402;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept,

design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) *Moderate areas reclassified to serious.* Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) *Transportation plans for other areas.* Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of §§ 51.410 through 51.446.

(d) *Savings.* The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

§ 51.406 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in §§ 51.410 through 51.446 for projects not from a TIP before NEPA process completion.

§ 51.408 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

§ 51.410 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

(a) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in §§ 51.412 through 51.446 as listed in Table 1 in paragraph (b) of this section, and must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(b) The following table indicates the criteria and procedures in §§ 51.412 through 51.446 which apply for each action in each time period.

TABLE 1.—CONFORMITY CRITERIA

Action	Criteria
All Periods	
Transportation Plan ...	§§ 51.412, 51.414, 51.416, 51.418(b).
TIP	§§ 51.412, 51.414, 51.416, 51.418(c).
Project (From a conforming plan and TIP).	§§ 51.412, 51.414, 51.416, 51.420, 51.422, 51.424, 51.426.
Project (Not from a conforming plan and TIP).	§§ 51.412, 51.414, 51.416, 51.418(d), 51.420, 51.424, 51.426.
Phase II of the Interim Period	
Transportation Plan ...	§§ 51.436, 51.442.
TIP	§§ 51.438, 51.444.
Project (From a conforming plan and TIP).	§ 51.434.
Project (Not from a conforming plan and TIP).	§ 51.434, 51.440, 51.446.
Transitional Period	
Transportation Plan ...	§§ 51.428, 51.436, 51.442.
TIP	§ 51.430, 51.438, 51.444.
Project (From a conforming plan and TIP).	§ 51.434.
Project (Not from a conforming plan and TIP).	§§ 51.432, 51.434, 51.440, 51.446.
Control Strategy and Maintenance Periods	
Transportation Plan ...	§ 51.428.
TIP	§ 51.430.
Project (From a conforming plan and TIP).	No additional criteria.

TABLE 1.—CONFORMITY CRITERIA—Continued

Action	Criteria
Project (Not from a conforming plan and TIP).	§ 51.432.

51.412 The conformity determination must be based on the latest planning assumptions.

51.414 The conformity determination must be based on the latest emission estimation model available.

51.416 The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by § 51.396.

51.418 The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

51.420 There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

51.422 The project must come from a conforming transportation plan and program.

51.424 The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas.

51.426 The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan.

51.428 The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

51.430 The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

51.432 The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

51.434 The FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

51.436 The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.

51.438 The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

51.440 The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

51.442 The transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

51.444 The TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

51.446 The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

§ 51.412 Criteria and procedures: Latest planning assumptions.

(a) The conformity determination, with respect to all other applicable criteria in §§ 51.414 through 51.446, must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 51.402.

§ 51.414 Criteria and procedures: Latest emissions model.

(a) The conformity determination must be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the **Federal Register**.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the **Federal Register**.

(c) Conformity analyses for which the emissions analysis was begun during the grace period or before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the **Federal Register** notice of availability, provided no more than three years have passed since the draft environmental document was issued.

§ 51.416 Criteria and procedures: Consultation.

The MPO must make the conformity determination according to the consultation procedures in this rule and in the implementation plan revision required by § 51.396, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until the implementation plan revision required by § 51.396 is approved by EPA, the conformity determination must be made according to the procedures in §§ 51.402(a)(2) and 51.402(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

§ 51.418 Criteria and procedures: Timely implementation of TCMs.

(a) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§ 51.420 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 51.400.

§ 51.422 Criteria and procedures: Projects from a plan and TIP.

(a) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy § 51.404, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by § 51.458(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

§ 51.424 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).

(a) The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 51.402(c)(1)(i) and 51.454.

(c) For projects which are not of the type identified by § 51.454(a) or § 51.454(d), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of § 51.454(b).

§ 51.426 Criteria and procedures: Compliance with PM_{10} control measures.

The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM_{10} emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

§ 51.428 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

(a) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 51.464. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met: (b) A regional emissions analysis shall be performed as follows:

(1) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

(i) VOC as an ozone precursor;

(ii) NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment;

(iii) CO;

(iv) PM_{10} (and its precursors VOC and/or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM_{10} nonattainment problem or establishes a budget for such emissions); or

(v) NO_x (in NO_2 nonattainment or maintenance areas);

(2) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(3) The emissions analysis methodology shall meet the requirements of § 51.452;

(4) For areas with a transportation plan that meets the content requirements of § 51.404(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

(5) For areas with a transportation plan that does not meet the content requirements of § 51.404(a), the

emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(c) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (b)(1) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

(1) If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

(2) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

(3) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

(4) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

§ 51.430 Criteria and procedures: Motor vehicle emissions budget (TIP).

(a) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 51.464. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met:

(b) For areas with a conforming transportation plan that fully meets the content requirements of § 51.404(a), this criterion may be satisfied without additional regional analysis if:

(1) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and

(2) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(ii) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(3) If the requirements in paragraphs (b)(1) and (b)(2) of this section are not met, then:

(i) The TIP may be modified to meet those requirements; or

(ii) The transportation plan must be revised so that the requirements in paragraphs (b)(1) and (b)(2) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (b)(1) and (b)(2) of this section.

(c) For areas with a transportation plan that does not meet the content requirements of § 51.404(a), a regional emissions analysis must meet all of the following requirements:

(1) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(2) The analysis methodology shall meet the requirements of § 51.452(c); and

(3) The regional analysis shall satisfy the requirements of §§ 51.428(b)(1), 51.428(b)(5), and 51.428(c).

§ 51.432 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).

(a) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 51.464. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(b) For areas with a conforming transportation plan that meets the content requirements of § 51.404(a):

(1) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

(i) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(ii) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of the project is not significantly different from that described in the transportation plan.

(2) If the requirements in paragraph (b)(1) of this section are not met, a regional emissions analysis must be performed as follows:

(i) The analysis methodology shall meet the requirements of § 51.452;

(ii) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis

must include emissions from all previously approved projects which were not from a transportation plan and TIP; and

(iii) The emissions analysis shall meet the requirements of §§ 51.428(b)(1), 51.428(b)(4), and 51.428(c).

(c) For areas with a transportation plan that does not meet the content requirements of § 51.404(a), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

(1) The analysis methodology meets the requirements of § 51.452(c);

(2) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and

(3) The regional analysis satisfies the requirements of §§ 51.428(b)(1), 51.428(b)(5), and 51.428(c).

§ 51.434 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

(a) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 51.402(c)(1)(i) and 51.454.

(c) For projects which are not of the type identified by § 51.454(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of § 51.454(b).

§ 51.436 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

(a) A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 51.464. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 51.452. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 51.438 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

(a) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 51.464. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 51.452. Emissions in milestone years which are between analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 51.440 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A Transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 51.464. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of § 51.436 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 51.442 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (transportation plan).

(a) A transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either

paragraph (b) or (c) of this section are met.

(b) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and of each transportation-related precursor of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 51.436(c), and the "Action" scenario, as defined in § 51.436(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional PM_{10} emissions in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and in NO_x emissions in an NO_2 nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of § 51.452. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(4) Demonstrate that the regional PM_{10} emissions and PM_{10} precursor emissions, where applicable, (for PM_{10} nonattainment areas) and NO_x emissions (for NO_2 nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(c) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(1) Determine the baseline regional emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) and NO_x (for NO_2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by § 51.396 defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(2) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of § 51.452. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(3) Demonstrate that for each analysis year the emissions estimated in paragraph (c)(2) of this section are no greater than baseline emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) or NO_x (for NO_2 nonattainment areas) from highway and transit sources.

§ 51.444 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (TIP).

(a) A TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (b) or paragraph (c) of this section are met.

(b) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated, according to the requirements of § 51.442(b)(1).

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 51.438(c), and the "Action" scenario, as defined in § 51.438(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios as required by § 51.442(b)(3), and make the demonstration required by § 51.442(b)(4).

(c) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within

the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by § 51.442(c) (1)–(3).

§ 51.446 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of § 51.442 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and § 51.442(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 51.448 Transition from the interim period to the control strategy period.

(a) *Areas which submit a control strategy implementation plan revision after November 24, 1993.* (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (a)(1) of this section.

(ii) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) *Areas which have not submitted a control strategy implementation plan revision.* (1) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(2) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(c) *Areas which have not submitted a complete control strategy implementation plan revision.* (1) For areas where EPA notifies the State, MPO, and DOT after November 24, 1993 that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(1) (i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(2) For areas where EPA has determined before November 24, 1993 that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(d) *Areas which submitted a control strategy implementation plan before November 24, 1993.* (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (d)(1) of this section.

(ii) Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (d)(2) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(e) *Projects.* If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (e) (1) and (2) of this section must be met.

(1) Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "Action" scenario (as required by §§ 51.436 through 51.446) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

(2) In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in § 51.402(d), which applies for any State air agency comments on a conformity determination.

(f) *Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.* (1) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (a)(1) and (d)(1) of this section) does not require new emissions analysis and does not have to satisfy the requirements of §§ 51.412 and 51.414 if:

(i) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

(ii) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

(2) A redetermination of conformity as described in paragraph (f)(1) of this section is not considered a conformity determination for the purposes of § 51.400(b)(4) or § 51.400(c)(4) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of § 51.410 within three years of the last determination which did not rely on paragraph (f)(1) of this section.

(g) *Ozone nonattainment areas.* (1) The requirements of paragraph (b)(1) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act section 182(b)(1) requires to be submitted to EPA November 15, 1993.

(2) The requirements of paragraph (b)(1) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act section 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (b)(1) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act section 182(b)(1).

(3) The requirements of paragraph (a) of this section apply when the implementation plan revisions required by Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) are submitted.

(h) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 51.464 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 51.464 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (b) of this section do not apply to these areas at any time.

(i) *Maintenance plans.* If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act section 175A is submitted to EPA, the

requirements of paragraph (a) or (d) of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

§ 51.450 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of § 51.420 and the requirements of one of the following paragraphs (a) through (e) of this section are met:

(a) The project comes from a conforming plan and program consistent with the requirements of § 51.422;

(b) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(c) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of § 51.432;

(d) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of § 51.440 (in ozone and CO nonattainment areas) or § 51.446 (in PM_{10} and NO_2 nonattainment areas); or

(e) During the transitional period, the project satisfies the requirements of both paragraphs (c) and (d) of this section.

§ 51.452 Procedures for determining regional transportation-related emissions.

(a) *General requirements.* (1) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by § 51.402. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Notwithstanding paragraph (a)(3) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in §§ 51.428 through 51.432, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of §§ 51.428 through 51.432 are satisfied.

(5) A regional emissions analysis for the purpose of satisfying the requirements of §§ 51.436 through 51.440 may account for the programs in paragraph (a)(4) of this section, but the same assumptions about these programs shall be used for both the "Baseline" and "Action" scenarios.

(b) *Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995.* Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (b)(1) through (5) of this section.

(1) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

(i) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

(ii) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

(iii) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

(iv) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

(v) Free-flow speeds on network links shall be based on empirical observations;

(vi) Peak and off-peak travel demand and travel times must be provided;

(vii) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

(viii) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which

emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

(ix) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

(x) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

(xi) Consideration of emissions increases from construction-related congestion is not specifically required.

(2) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

(3) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(4) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(5) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to § 51.402 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(c) *Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995.* (1) Procedures which satisfy some or all of the requirements of paragraph (a) of this section shall be used in all areas not subject to paragraph (a) of this section in which those procedures have been the previous practice of the MPO.

(2) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(d) *Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas.* This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

(1) Conformity demonstrations for projects in these areas may satisfy the requirements of §§ 51.432, 51.440, and 51.446 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

(2) The requirements of § 51.432 shall be satisfied according to the procedures in § 51.432(c), with references to the "transportation plan" taken to mean the statewide transportation plan.

(3) The requirements of §§ 51.440 and 51.446 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

(4) The requirement of § 51.450(b) shall be satisfied if:

(i) The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of §§ 51.432, 51.440, or 51.446 (as modified by paragraphs (d)(2) and (d)(3) of this section), as appropriate for the time period and pollutant; and

(ii) The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

(e) *PM_{10} from construction-related fugitive dust.* (1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

§ 51.454 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).

(a) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51, appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2–78–027R), unless, after the interagency consultation process described in § 51.402 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

(1) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;

(2) For those intersections at Level-of-Service D, E, or F, or those that will

change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

(3) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(4) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

(5) Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

(b) In cases other than those described in paragraph (a) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

(c) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

(d) PM_{10} hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM_{10} hot-spot analysis shall be determined through the interagency consultation process required in § 51.402. In PM_{10} nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the **Federal Register** that these requirements are in effect.

(e) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(f) PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to the implementation of such measures, as required by § 51.458(a).

(g) CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§ 51.456 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§ 51.458 Enforceability of design concept and scope and project-level mitigation and control measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §§ 51.428 through 51.432 and §§ 51.436 through 51.440 or used in the project-level hot-spot

analysis required by §§ 51.424 and 51.434.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in § 51.396 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of §§ 51.424, 51.428, and 51.430 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 51.402. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of §§ 51.428 and 51.430 and that the project still satisfies the requirements of § 51.424, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

§ 51.460 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see § 51.402(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

TABLE 2.—EXEMPT PROJECTS

Safety
Railroad/highway crossing.
Hazard elimination program.
Safer non-Federal-aid system roads.
Shoulder improvements.
Increasing sight distance.
Safety improvement program.
Traffic control devices and operating assistance other than signalization projects.
Railroad/highway crossing warning devices.
Guardrails, median barriers, crash cushions.
Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.
Mass Transit
Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles.[1]
Purchase of office, shop, and operating equipment for existing facilities.
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
Construction or renovation of power, signal, and communications systems.
Construction of small passenger shelters and information kiosks.
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
Rehabilitation or reconstruction of track structures, track, and track bed in existing rights-of-way.
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet.[1]
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.
Air Quality
Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.
Other
Specific activities which do not involve or lead directly to construction, such as:
Planning and technical studies.
Grants for training and research programs.
Planning activities conducted pursuant to titles 23 and 49 U.S.C.
Federal-aid systems revisions.
Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Advance land acquisitions (23 CFR part 712 or 23 CFR part 771).
Acquisition of scenic easements.
Plantings, landscaping, etc.

TABLE 2.—EXEMPT PROJECTS—Continued

Sign removal.
Directional and informational signs.
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

[1] PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§ 51.462 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see § 51.402(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

TABLE 3.—PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

§ 51.464 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

(a) *Application.* This section applies in the following areas:

(1) Rural transport ozone nonattainment areas;

(2) Marginal ozone areas;

(3) Submarginal ozone areas;

(4) Transitional ozone areas;

(5) Incomplete data ozone areas;

(6) Moderate CO areas with a design value of 12.7 ppm or less; and

(7) Not classified CO areas.

(b) *Default conformity procedures.* The criteria and procedures in §§ 51.436 through 51.440 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in §§ 51.428 through 51.432, except as otherwise provided in paragraph (c) of this section.

(c) *Optional conformity procedures.* The State or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in §§ 51.428 through 51.432 apply in lieu of the procedures in §§ 51.436 through 51.440.

3. A new part 93 is added to read as follows:

PART 93—DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

Subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

Sec.
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93.115 Criteria and procedures: Projects from a plan and TIP.
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93.118 Criteria and procedures: Motor vehicle emissions budget (transportation plan).
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93.120 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).
93.121 Criteria and procedures: Localized CO violations (hot spots) in the interim period.
93.122 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).
93.123 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).
93.124 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).
93.125 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (transportation plan).
93.126 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (TIP).
93.127 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (project not from a plan and TIP).
93.128 Transition from the interim period to the control strategy period.
93.129 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.
93.130 Procedures for determining regional transportation-related emissions.
93.131 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).
93.132 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).
93.133 Enforceability of design concept and scope and project-level mitigation and control measures.
93.134 Exempt projects.
93.135 Projects exempt from regional emissions analyses.
93.136 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

Authority: 42 U.S.C. 7401–7671p.

Subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

§ 93.100 Purpose.

The purpose of this subpart is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

§ 93.101 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Control strategy implementation plan revision is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Control strategy period with respect to particulate matter less than 10 microns in diameter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM_{10}, NO_2, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA means the Federal Transit Administration of DOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to § 93.106.

Hot-spot analysis is an estimation of likely future localized CO and PM_{10} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Incomplete data area means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance period with respect to a pollutant or pollutant precursor means

that period of time beginning when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_X) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_X budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_X budget if NO_X reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Not classified area means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

Phase II of the interim period with respect to a pollutant or pollutant precursor means that period of time after the effective date of this rule, lasting until the earlier of the following: submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or the date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has notified the State, MPO, and DOT of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in § 93.128.

Project means a highway project or transit project.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Rural transport ozone nonattainment area means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act section 182(h) as a rural transport area.

Standard means a national ambient air quality standard.

Submarginal area means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transitional area means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

Transitional period with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in § 93.128.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the

purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

§ 93.102 Applicability.

(a) *Action applicability.* (1) Except as provided for in paragraph (c) of this section or § 93.134, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 93.129 applies to such projects if they are regionally significant.

(b) *Geographic applicability.* (1) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(2) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

(3) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under section 182(f) of the CAA that additional reductions of NO_X would not contribute to attainment);

(ii) Nitrogen oxides in nitrogen dioxide areas; and

(iii) Volatile organic compounds, nitrogen oxides, and PM_{10} in PM_{10} areas if:

(A) During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT; or

(B) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(c) *Limitations.* (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

§ 93.103 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

§ 93.104 Frequency of conformity determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) *Transportation plans.* (1) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 93.134. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) Conformity of existing transportation plans must be redetermined within 18 months of the following, or the existing conformity determination will lapse:

(i) November 24, 1993;

(ii) EPA approval of an implementation plan revision which:

(A) Establishes or revises a transportation-related emissions budget (as required by CAA sections 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide); or

(B) Adds, deletes, or changes TCMs; and

(iii) EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

(4) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.

(c) *Transportation improvement programs.* (1) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 93.134.

(3) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in § 93.134. Otherwise, the existing conformity determination for the TIP will lapse.

(4) In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.

(d) *Projects.* FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

§ 93.105 Consultation.

(a) *General.* The implementation plan revision required under § 51.396 of this chapter will include procedures for interagency consultation (Federal, State, and local), and resolution of conflicts.

(1) The implementation plan revision will include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before the implementation plan revision is approved by EPA, MPOs and State departments of transportation before making conformity determinations must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section.

(b) *Interagency consultation procedures: General factors.* (1) States will provide in the implementation plan well-defined consultation procedures whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures will include at a minimum the general factors listed below and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) *Interagency consultation procedures: Specific processes.* Interagency consultation procedures will also include the following specific processes:

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§ 93.134 and 93.135) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by § 93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by § 93.131(d), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis; and

(vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in § 93.134.

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 93.104; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed;

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 93.130.

(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model

development by the MPO (e.g., household/travel transportation surveys).

(7) A process (including Federal agencies) for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption.

(d) *Resolving conflicts.* Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by § 51.396 of this chapter shall define the procedures for starting of the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

§ 93.106 Content of transportation plans.

(a) *Transportation plans adopted after January 1, 1995 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas.* The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and § 93.105;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) *Moderate areas reclassified to serious.* Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) *Transportation plans for other areas.* Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of §§ 93.109 through 93.127.

(d) *Savings.* The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

§ 93.107 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in §§ 93.109 through 93.127 for projects not from a TIP before NEPA process completion.

§ 93.108 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

(a) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in §§ 93.110 through 93.127 as listed in Table 1 in paragraph (b) of this section, and must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(b) The following table indicates the criteria and procedures in §§ 93.110

through 93.127 which apply for each action in each time period.

TABLE 1.—CONFORMITY CRITERIA

Action	Criteria
All Periods	
Transportation Plan	§§ 93.110, 93.111, 93.112, 93.113(b).
TIP	§§ 93.110, 93.111, 93.112, 93.113(c).
Project (From a conforming plan and TIP).	§§ 93.110, 93.111, 93.112, 93.114, 93.115, 93.116, 93.117.
Project (Not from a conforming plan and TIP).	§§ 93.110, 93.111, 93.112, 93.113(d), 93.114, 93.116, 93.117.
Phase II of the Interim Period	
Transportation Plan	§§ 93.122, 93.125.
TIP	§§ 93.123, 93.126.
Project (From a conforming plan and TIP).	§ 93.121.
Project (Not from a conforming plan and TIP).	§ 93.121, 93.124, 93.127.
Transitional Period	
Transportation Plan	§§ 93.118, 93.122, 93.125.
TIP	§§ 93.119, 93.123, 93.126.
Project (From a conforming plan and TIP).	§ 93.121.
Project (Not from a conforming plan and TIP).	§§ 93.120, 93.121, 93.124, 93.127
Control Strategy and Maintenance Periods	
Transportation Plan	§ 93,118.
TIP	§ 93.119.
Project (From a conforming plan and TIP).	No additional criteria.
Project (Not from a conforming plan and TIP).	§ 93.120.

93.110 The conformity determination must be based on the latest planning assumptions.

93.111 The conformity determination must be based on the latest emission estimation model available.

93.112 The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by § 51.396 of this chapter.

93.113 The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

93.114 There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

93.115 The project must come from a conforming transportation plan and program.

93.116 The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas.

93.117 The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan.

93.118 The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

93.119 The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

93.120 The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

93.121 The FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

93.122 The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.

93.123 The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

93.124 The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

93.125 The transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

93.126 The TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

93.127 The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

§ 93.110 Criteria and procedures: Latest planning assumptions.

(a) The conformity determination, with respect to all other applicable criteria in §§ 93.111 through 93.127, must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 93.105.

§ 93.111 Criteria and procedures: Latest emissions model.

(a) The conformity determination must be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the **Federal Register**.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the **Federal Register**.

(c) Conformity analyses for which the emissions analysis was begun during the grace period or before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model

for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the **Federal Register** notice of availability, provided no more than three years have passed since the draft environmental document was issued.

§ 93.112 Criteria and procedures: Consultation.

The MPO must make the conformity determination according to the consultation procedures in this rule and in the implementation plan revision required by § 51.396 of this chapter, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until the implementation plan revision required by § 51.396 of this chapter is approved by EPA, the conformity determination must be made according to the procedures in §§ 93.105(a)(2) and 93.105(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

§ 93.113 Criteria and procedures: Timely implementation of TCMs.

(a) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§ 93.114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 93.104.

§ 93.115 Criteria and procedures: Projects from a plan and TIP.

(a) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy § 93.106, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by § 93.133(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

§ 93.116 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).

(a) The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO

or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 93.105(c)(1)(i) and 93.131.

(c) For projects which are not of the type identified by § 93.131(a) or § 93.131(d), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of § 93.131(b).

§ 93.117 Criteria and procedures: Compliance with PM_{10} control measures.

The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM_{10} emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

§ 93.118 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

(a) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 93.136. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met:

(b) A regional emissions analysis shall be performed as follows:

(1) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

(i) VOC as an ozone precursor;

(ii) NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_X would not contribute to attainment;

(iii) CO;

(iv) PM_{10} (and its precursors VOC and/or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM_{10} nonattainment problem or establishes a budget for such emissions); or

(v) NO_x (in NO_2 nonattainment or maintenance areas);

(2) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(3) The emissions analysis methodology shall meet the requirements of § 93.130;

(4) For areas with a transportation plan that meets the content requirements of § 93.106(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

(5) For areas with a transportation plan that does not meet the content requirements of § 93.106(a), the emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(c) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (b)(1) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

(1) If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

(2) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

(3) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

(4) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

§ 93.119 Criteria and procedures: Motor vehicle emissions budget (TIP).

(a) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 93.136. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met.

(b) For areas with a conforming transportation plan that fully meets the content requirements of § 93.106(a), this criterion may be satisfied without additional regional analysis if:

(1) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and

(2) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the

transportation plan in each of its horizon years;

(ii) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(3) If the requirements in paragraphs (b)(1) and (b)(2) of this section are not met, then:

(i) The TIP may be modified to meet those requirements; or

(ii) The transportation plan must be revised so that the requirements in paragraphs (b)(1) and (b)(2) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (b)(1) and (b)(2) of this section.

(c) For areas with a transportation plan that does not meet the content requirements of § 93.106(a), a regional emissions analysis must meet all of the following requirements:

(1) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(2) The analysis methodology shall meet the requirements of § 93.130(c); and

(3) The regional analysis shall satisfy the requirements of §§ 93.118(b)(1), 93.118(b)(5), and 93.118(c).

§ 93.120 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).

(a) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 93.136. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(b) For areas with a conforming transportation plan that meets the content requirements of § 93.106(a):

(1) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

(i) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(ii) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of the project is not significantly different from that described in the transportation plan.

(2) If the requirements in paragraph (b)(1) of this section are not met, a regional emissions analysis must be performed as follows:

(i) The analysis methodology shall meet the requirements of § 93.130;

(ii) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis must include emissions from all previously approved projects which were not from a transportation plan and TIP; and

(iii) The emissions analysis shall meet the requirements of §§ 93.118(b)(1), 93.118(b)(4), and 93.118(c).

(c) For areas with a transportation plan that does not meet the content requirements of § 93.106(a), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

(1) The analysis methodology meets the requirements of § 93.130(c);

(2) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and

(3) The regional analysis satisfies the requirements of §§ 93.118(b)(1), 93.118(b)(5), and 93.118(c).

§ 93.121 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

(a) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 93.105(c)(1)(i) and 93.131.

(c) For projects which are not of the type identified by § 93.131(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of § 93.131(b).

§ 93.122 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

(a) A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 93.136. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions in NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 93.130. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 93.123 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

(a) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 93.136. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is

contained in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 93.130. Emissions in milestone years which are between analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 93.124 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 93.136. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of § 93.122 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 93.125 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (transportation plan).

(a) A transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either paragraph (b) or (c) of this section are met.

(b) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and of each transportation-related precursor of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 93.122(c), and the "Action" scenario, as defined in § 93.122(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional PM_{10} emissions in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and in NO_x emissions in an NO_2 nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of § 93.130. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(4) Demonstrate that the regional PM_{10} emissions and PM_{10} precursor emissions, where applicable, (for PM_{10} nonattainment areas) and NO_x emissions (for NO_2 nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(c) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(1) Determine the baseline regional emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) and NO_x (for NO_2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by § 51.396 of this chapter defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(2) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of § 93.130. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(3) Demonstrate that for each analysis year the emissions estimated in paragraph (c)(2) of this section are no greater than baseline emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) or NO_x (for NO_2 nonattainment areas) from highway and transit sources.

§ 93.126 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (TIP).

(a) A TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (b) or paragraph (c) of this section are met.

(b) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated, according to the requirements of § 93.125(b)(1).

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 93.123(c), and the "Action" scenario, as defined in § 93.123(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios as required by § 93.125(b)(3), and make the demonstration required by § 93.125(b)(4).

(c) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by § 93.125(c) (1) through (3).

§ 93.127 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of § 93.125 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and § 93.125(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 93.128 Transition from the interim period to the control strategy period.

(a) Areas which submit a control strategy implementation plan revision after November 24, 1993. (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (a)(1) of this section.

(ii) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph

(a)(1) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) *Areas which have not submitted a control strategy implementation plan revision.* (1) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993 and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(2) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(c) *Areas which have not submitted a complete control strategy implementation plan revision.* (1) For areas where EPA notifies the State, MPO, and DOT after November 24, 1993 that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(2) For areas where EPA has determined before November 24, 1993 that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(d) *Areas which submitted a control strategy implementation plan before November 24, 1993.* (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (d)(1) of this section.

(ii) Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (d)(2) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(e) *Projects.* If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (e) (1) and (2) of this section must be met.

(1) Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be

consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "Action" scenario (as required by §§ 93.122 through 93.127) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

(2) In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in § 93.105(d), which applies for any State air agency comments on a conformity determination.

(f) *Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.* (1) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (a)(1) and (d)(1) of this section) does not require new emissions analysis and does not have to satisfy the requirements of §§ 93.110 and 93.111 if:

(i) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

(ii) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

(2) A redetermination of conformity as described in paragraph (f)(1) of this section is not considered a conformity determination for the purposes of § 93.104(b)(4) or § 93.104(c)(4) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of § 93.109 within three years of the last determination which did not rely on paragraph (f)(1) of this section.

(g) *Ozone nonattainment areas.* (1) The requirements of paragraph (b)(1) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act section 182(b)(1) requires to be submitted to EPA November 15, 1993.

(2) The requirements of paragraph (b)(1) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act section 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (b)(1) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act section 182(b)(1).

(3) The requirements of paragraph (a) of this section apply when the implementation plan revisions required by Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) are submitted.

(h) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 93.136 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 93.136 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (b) of this section do not apply to these areas at any time.

(i) *Maintenance plans.* If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act section 175A is submitted to EPA, the requirements of paragraph (a) or (d) of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

§ 93.129 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of § 93.114 and the requirements of one of the following paragraphs (a) through (e) of this section are met:

(a) The project comes from a conforming plan and program consistent with the requirements of § 93.115;

(b) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(c) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of § 93.120;

(d) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of § 93.124 (in ozone and CO nonattainment areas) or § 93.127 (in PM_{10} and NO_2 nonattainment areas); or

(e) During the transitional period, the project satisfies the requirements of both paragraphs (c) and (d) of this section.

§ 93.130 Procedures for determining regional transportation-related emissions.

(a) *General requirements.* (1) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by § 93.105. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing

emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Notwithstanding paragraph (a)(3) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in §§ 93.118 through 93.120, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of §§ 93.118 through 93.120 are satisfied.

(5) A regional emissions analysis for the purpose of satisfying the requirements of §§ 93.122 through 93.124 may account for the programs in paragraph (a)(4) of this section, but the same assumptions about these programs shall be used for both the "Baseline" and "Action" scenarios.

(b) *Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995.* Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (b)(1) through (5) of this section.

(1) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

(i) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

(ii) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

(iii) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

(iv) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

(v) Free-flow speeds on network links shall be based on empirical observations;

(vi) Peak and off-peak travel demand and travel times must be provided;

(vii) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

(viii) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

(ix) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

(x) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

(xi) Consideration of emissions increases from construction-related congestion is not specifically required.

(2) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

(3) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(4) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(5) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to § 93.105 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(c) *Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995.* (1) Procedures which satisfy some or all of the requirements of paragraph (a) of this section shall be used in all areas not subject to paragraph (a) of this section in which those procedures have been the previous practice of the MPO.

(2) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods must also consider future economic activity, transit

alternatives, and transportation system policies.

(d) *Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas.* This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

(1) Conformity demonstrations for projects in these areas may satisfy the requirements of §§ 93.120, 93.124, and 93.127 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

(2) The requirements of § 93.120 shall be satisfied according to the procedures in § 93.120(c), with references to the "transportation plan" taken to mean the statewide transportation plan.

(3) The requirements of §§ 93.124 and 93.127 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

(4) The requirement of § 93.129(b) shall be satisfied if:

(i) The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of §§ 93.120, 93.124, or 93.127 (as modified by paragraphs (d)(2) and (d)(3) of this section), as appropriate for the time period and pollutant; and

(ii) The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

(e) *PM_{10} from construction-related fugitive dust.* (1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

§ 93.131 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).

(a) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51, Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2–78–027R), unless, after the interagency consultation process described in § 93.105 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

(1) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;

(2) For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

(3) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(4) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

(5) Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

(b) In cases other than those described in paragraph (a) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

(c) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

(d) PM_{10} hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM–10 hot-spot analysis shall be determined through the interagency consultation process required in § 93.105. In PM–10 nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the **Federal Register** that these requirements are in effect.

(e) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(f) PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to the implementation of such measures, as required by § 93.133(a).

(g) CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§ 93.132 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not

infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§ 93.133 Enforceability of design concept and scope and project-level mitigation and control measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §§ 93.118 through 93.120 and §§ 93.122–93.124 or used in the project-level hot-spot analysis required by §§ 93.116 and 93.121.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in § 51.396 of this chapter shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of §§ 93.116, 93.118, and 93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 93.105. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of §§ 93.118 and 93.119 and that the project still satisfies the requirements of § 93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

§ 93.134 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

TABLE 2.—EXEMPT PROJECTS

Safety
Railroad/highway crossing.
Hazard elimination program.
Safer non-Federal-aid system roads.
Shoulder improvements.
Increasing sight distance.
Safety improvement program.
Traffic control devices and operating assistance other than signalization projects.
Railroad/highway crossing warning devices.
Guardrails, median barriers, crash cushions.

TABLE 2.—EXEMPT PROJECTS—Continued

Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.

Mass Transit

Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles [1].
Purchase of office, shop, and operating equipment for existing facilities.
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
Construction or renovation of power, signal, and communications systems.
Construction of small passenger shelters and information kiosks.
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet[1].
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

Air Quality

Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.

Other

Specific activities which do not involve or lead directly to construction, such as:
- Planning and technical studies.
- Grants for training and research programs.
- Planning activities conducted pursuant to titles 23 and 49 U.S.C.
- Federal-aid systems revisions.

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Advance land acquisitions (23 CFR part 712 or 23 CFR part 771).
Acquisition of scenic easements.
Plantings, landscaping, etc.
Sign removal.
Directional and informational signs.
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

[1] In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§ 93.135 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

TABLE 3.—PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

D

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

§ 93.136 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

(a) *Application.* This section applies in the following areas:

(1) Rural transport ozone nonattainment areas;
(2) Marginal ozone areas;
(3) Submarginal ozone areas;
(4) Transitional ozone areas;
(5) Incomplete data ozone areas;
(6) Moderate CO areas with a design value of 12.7 ppm or less; and
(7) Not classified CO areas.

(b) *Default conformity procedures.* The criteria and procedures in §§ 93.122 through 93.124 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in §§ 93.118 through 93.120, except as otherwise provided in paragraph (c) of this section.

(c) *Optional conformity procedures.* The State or MPO may voluntarily develop an attainment demonstration

and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in §§ 93.118 through 93.120 apply in lieu of the procedures in §§ 93.122 through 93.124.

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Wednesday
November 24, 1993

Part III

The President

Proclamation 6628—National Family Week, 1993 and 1994

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Presidential Documents

Title 3—

The President

Proclamation 6628 of November 22, 1993

National Family Week, 1993 and 1994

By the President of the United States of America

A Proclamation

Families are our Nation's lifeblood and strength. No matter its size or composition, it is the source of our ideals and the birthplace of our memories. Connected families in vital communities are essential to this country's future.

The common bonds of family love, sharing, and mutual support have for generations shaped the character of our society. Anchored by strong insights, deeply felt convictions, moral principles, and concern for societal improvement and well-being, families have used their devotion, creative ideals, and energies to define themselves, their communities, and the Nation.

The willing acceptance of family obligations and the unselfish shouldering of responsibilities are core components of caring families. Families encourage and foster teamwork, as well as individuality, personal sacrifice, personal attainment, and a wide range of joys and life experiences.

America has maintained its unique position in the history of nations because we have not forgotten the teachings of our forebears. We have thrived because we, their children, have remained committed to advancing the causes of liberty and justice. Even in times of national crisis, we have recalled the importance of our national family tree, always returning to the promise of its protective shade.

As families across the country gather in thanksgiving, it is particularly appropriate that we pause as a Nation to acknowledge the blessings of love and loyalty that families bring to their members and through them, to the community of America. Like our democracy, all of our families must strive to be nurturing and steady. All of our children, grandparents, mothers and fathers must know that no matter the challenges we face, we can be secure in the love and support of a family. This lesson is among our founders' most precious gifts. Fulfilling their ideal is each generation's most profound responsibility.

The Congress, by House Joint Resolution 79, has designated the week of November 21, 1993, and the week of November 20, 1994, as "National Family Week" and has authorized and requested the President to issue a proclamation in observance of these weeks.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of November 21, 1993, and the week of November 20, 1994, as National Family Week. I invite the States, communities, and people of the United States to observe these weeks with appropriate ceremonies and programs in appreciation of our Nation's families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

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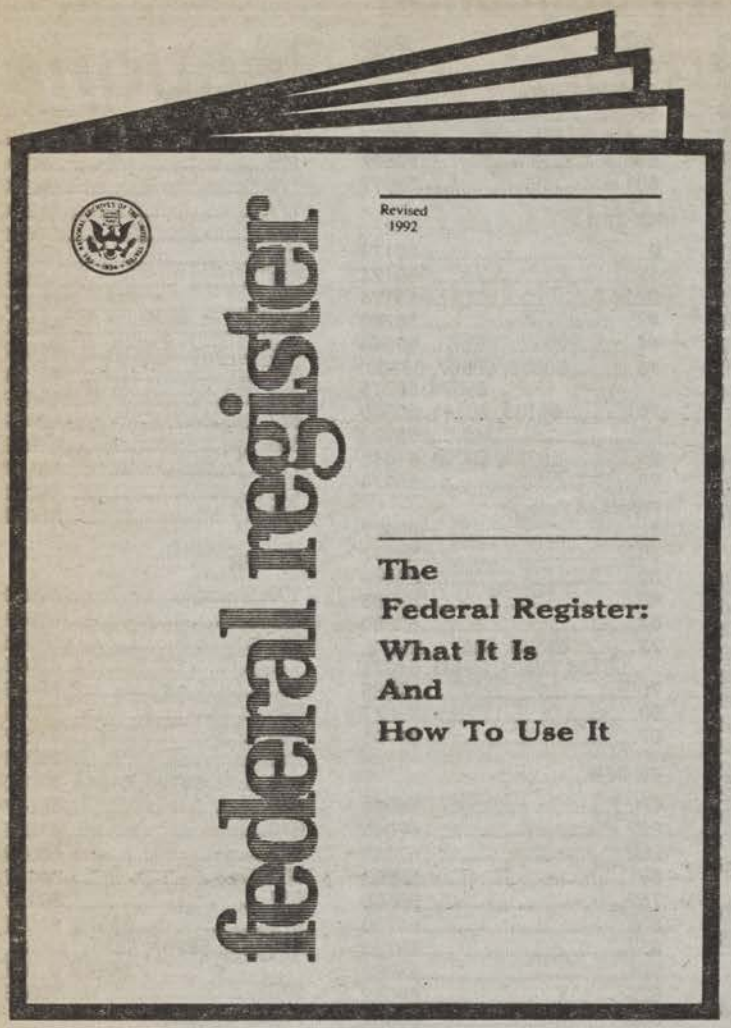

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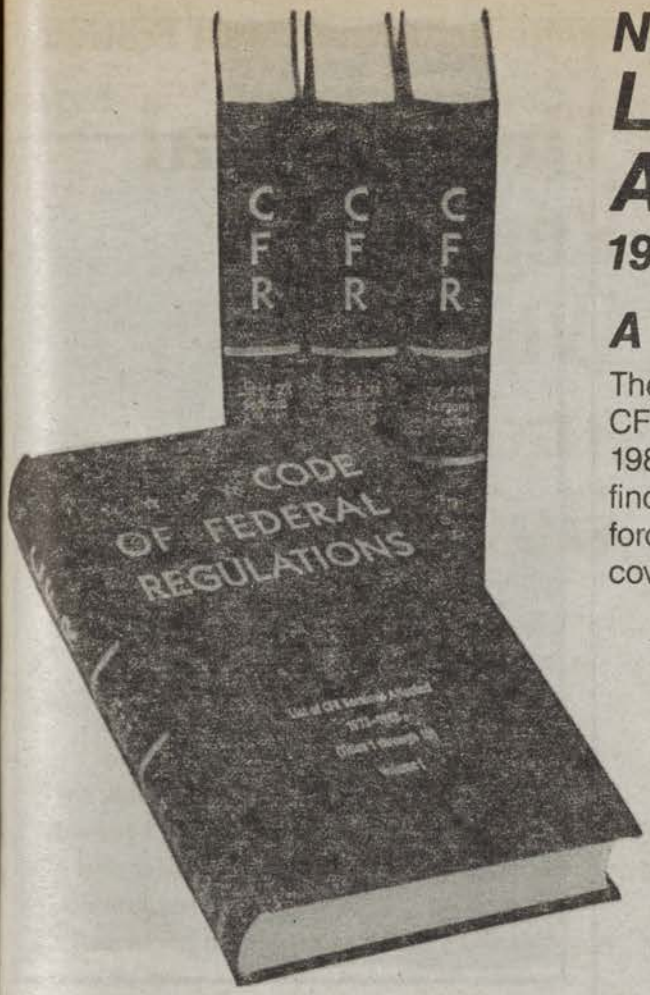

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